

**INTERNATIONAL COURT OF JUSTICE**

***CERTAIN IRANIAN ASSETS***

**(ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)**

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**REJOINDER**

**SUBMITTED BY**

**THE UNITED STATES OF AMERICA**

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**ANNEXES**

**VOLUME I**

**Annexes 254 through 278**



# ANNEX 254



**Draft articles on  
Responsibility of States for Internationally Wrongful Acts,  
with commentaries  
2001**

Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, as corrected.



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conduct may be attributable to several States at the same time. Under chapter IV, one State may be responsible for the internationally wrongful act of another, for example if the act was carried out under its direction and control. Nonetheless the basic principle of international law is that each State is responsible for its own conduct in respect of its own international obligations.

(7) The articles deal only with the responsibility of States. Of course, as ICJ affirmed in the *Reparation for Injuries* case, the United Nations “is a subject of international law and capable of possessing international rights and duties ... it has capacity to maintain its rights by bringing international claims”.<sup>55</sup> The Court has also drawn attention to the responsibility of the United Nations for the conduct of its organs or agents.<sup>56</sup> It may be that the notion of responsibility for wrongful conduct is a basic element in the possession of international legal personality. Nonetheless, special considerations apply to the responsibility of other international legal persons, and these are not covered in the articles.<sup>57</sup>

(8) As to terminology, the French term *fait internationalement illicite* is preferable to *délit* or other similar expressions which may have a special meaning in internal law. For the same reason, it is best to avoid, in English, such terms as “tort”, “delict” or “delinquency”, or in Spanish the term *delito*. The French term *fait internationalement illicite* is better than *acte internationalement illicite*, since wrongfulness often results from omissions which are hardly indicated by the term *acte*. Moreover, the latter term appears to imply that the legal consequences are intended by its author. For the same reasons, the term *hecho internacionalmente ilícito* is adopted in the Spanish text. In the English text, it is necessary to maintain the expression “internationally wrongful act”, since the French *fait* has no exact equivalent; nonetheless, the term “act” is intended to encompass omissions, and this is made clear in article 2.

## **Article 2. Elements of an internationally wrongful act of a State**

**There is an internationally wrongful act of a State when conduct consisting of an action or omission:**

**(a) is attributable to the State under international law; and**

**(b) constitutes a breach of an international obligation of the State.**

### *Commentary*

(1) Article 1 states the basic principle that every internationally wrongful act of a State entails its international responsibility. Article 2 specifies the conditions required to establish the existence of an internationally wrong-

ful act of the State, i.e. the constituent elements of such an act. Two elements are identified. First, the conduct in question must be attributable to the State under international law. Secondly, for responsibility to attach to the act of the State, the conduct must constitute a breach of an international legal obligation in force for that State at that time.

(2) These two elements were specified, for example, by PCIJ in the *Phosphates in Morocco* case. The Court explicitly linked the creation of international responsibility with the existence of an “act being attributable to the State and described as contrary to the treaty right[s] of another State”.<sup>58</sup> ICJ has also referred to the two elements on several occasions. In the *United States Diplomatic and Consular Staff in Tehran* case, it pointed out that, in order to establish the responsibility of the Islamic Republic of Iran:

[f]irst, it must determine how far, legally, the acts in question may be regarded as imputable to the Iranian State. Secondly, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable.<sup>59</sup>

Similarly in the *Dickson Car Wheel Company* case, the Mexico-United States General Claims Commission noted that the condition required for a State to incur international responsibility is “that an unlawful international act be imputed to it, that is, that there exist a violation of a duty imposed by an international juridical standard”.<sup>60</sup>

(3) The element of attribution has sometimes been described as “subjective” and the element of breach as “objective”, but the articles avoid such terminology.<sup>61</sup> Whether there has been a breach of a rule may depend on the intention or knowledge of relevant State organs or agents and in that sense may be “subjective”. For example, article II of the Convention on the Prevention and Punishment of the Crime of Genocide states that: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such ...” In other cases, the standard for breach of an obligation may be “objective”, in the sense that the advertence or otherwise of relevant State organs or agents may be irrelevant. Whether responsibility is “objective” or “subjective” in this sense depends on the circumstances, including the content of the primary obligation in question. The articles lay down no general rule in that regard. The same is true of other standards, whether they involve some degree of fault, culpability, negligence or want of due diligence. Such standards vary from one context to another for reasons which essentially relate to the object and purpose of the treaty provision or other rule giving rise to the primary obligation. Nor do the articles lay down any presumption in this regard as between the different

<sup>58</sup> See footnote 34 above.

<sup>59</sup> *United States Diplomatic and Consular Staff in Tehran, Judgment*, I.C.J. Reports 1980, p. 3, at p. 29, para. 56. Cf. page 41, para. 90. See also *Military and Paramilitary Activities in and against Nicaragua* (footnote 36 above), pp. 117–118, para. 226; and *Gabčíkovo-Nagymaros Project* (footnote 27 above), p. 54, para. 78.

<sup>60</sup> See footnote 42 above.

<sup>61</sup> Cf. *Yearbook ... 1973*, vol. II, p. 179, document A/9010/Rev.1, paragraph (1) of the commentary to article 3.

<sup>55</sup> *Reparation for Injuries* (see footnote 38 above), p. 179.

<sup>56</sup> *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion*, I.C.J. Reports 1999, p. 62, at pp. 88–89, para. 66.

<sup>57</sup> For the position of international organizations, see article 57 and commentary.

possible standards. Establishing these is a matter for the interpretation and application of the primary rules engaged in the given case.

(4) Conduct attributable to the State can consist of actions or omissions. Cases in which the international responsibility of a State has been invoked on the basis of an omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two. Moreover, it may be difficult to isolate an “omission” from the surrounding circumstances which are relevant to the determination of responsibility. For example, in the *Corfu Channel* case, ICJ held that it was a sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of the mines in its territorial waters and did nothing to warn third States of their presence.<sup>62</sup> In the *United States Diplomatic and Consular Staff in Tehran* case, the Court concluded that the responsibility of the Islamic Republic of Iran was entailed by the “inaction” of its authorities which “failed to take appropriate steps”, in circumstances where such steps were evidently called for.<sup>63</sup> In other cases it may be the combination of an action and an omission which is the basis for responsibility.<sup>64</sup>

(5) For particular conduct to be characterized as an internationally wrongful act, it must first be attributable to the State. The State is a real organized entity, a legal person with full authority to act under international law. But to recognize this is not to deny the elementary fact that the State cannot act of itself. An “act of the State” must involve some action or omission by a human being or group: “States can act only by and through their agents and representatives.”<sup>65</sup> The question is which persons should be considered as acting on behalf of the State, i.e. what constitutes an “act of the State” for the purposes of State responsibility.

(6) In speaking of attribution to the State what is meant is the State as a subject of international law. Under many legal systems, the State organs consist of different legal persons (ministries or other legal entities), which are regarded as having distinct rights and obligations for which they alone can be sued and are responsible. For the purposes of the international law of State responsibility the position is different. The State is treated as a unity, consistent with its recognition as a single legal person in international law. In this as in other respects the attribution of conduct to the State is necessarily a normative operation. What is crucial is that a given event is sufficiently

connected to conduct (whether an act or omission) which is attributable to the State under one or other of the rules set out in chapter II.

(7) The second condition for the existence of an internationally wrongful act of the State is that the conduct attributable to the State should constitute a breach of an international obligation of that State. The terminology of breach of an international obligation of the State is long established and is used to cover both treaty and non-treaty obligations. In its judgment on jurisdiction in the *Factory at Chorzów* case, PCIJ used the words “breach of an engagement”.<sup>66</sup> It employed the same expression in its subsequent judgment on the merits.<sup>67</sup> ICJ referred explicitly to these words in the *Reparation for Injuries* case.<sup>68</sup> The arbitral tribunal in the “*Rainbow Warrior*” affair referred to “any violation by a State of any obligation”.<sup>69</sup> In practice, terms such as “non-execution of international obligations”, “acts incompatible with international obligations”, “violation of an international obligation” or “breach of an engagement” are also used.<sup>70</sup> All these formulations have essentially the same meaning. The phrase preferred in the articles is “breach of an international obligation” corresponding as it does to the language of Article 36, paragraph 2 (c), of the ICJ Statute.

(8) In international law the idea of breach of an obligation has often been equated with conduct contrary to the rights of others. PCIJ spoke of an act “contrary to the treaty right[s] of another State” in its judgment in the *Phosphates in Morocco* case.<sup>71</sup> That case concerned a limited multilateral treaty which dealt with the mutual rights and duties of the parties, but some have considered the correlation of obligations and rights as a general feature of international law: there are no international obligations of a subject of international law which are not matched by an international right of another subject or subjects, or even of the totality of the other subjects (the international community as a whole). But different incidents may attach to a right which is held in common by all other subjects of international law, as compared with a specific right of a given State or States. Different States may be beneficiaries of an obligation in different ways, or may have different interests in respect of its performance. Multilateral obligations may thus differ from bilateral ones, in view of the diversity of legal rules and institutions and the wide variety of interests sought to be protected by them. But whether any obligation has been breached still raises the two basic questions identified in article 2, and this is so whatever the character or provenance of the obligation breached. It is a separate question who may invoke the responsibility arising from the breach of an obligation: this question is dealt with in Part Three.<sup>72</sup>

<sup>62</sup> *Corfu Channel, Merits* (see footnote 35 above), pp. 22–23.

<sup>63</sup> *United States Diplomatic and Consular Staff in Tehran* (see footnote 59 above), pp. 31–32, paras. 63 and 67. See also *Velásquez Rodríguez v. Honduras* case, Inter-American Court of Human Rights, Series C, No. 4, para. 170 (1988): “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions”; and *Affaire relative à l’acquisition de la nationalité polonaise*, UNRIIAA, vol. I (Sales No. 1948.V.2), p. 401, at p. 425 (1924).

<sup>64</sup> For example, under article 4 of the Convention relative to the Laying of Automatic Submarine Contact Mines (Hague Convention VIII of 18 October 1907), a neutral Power which lays mines off its coasts but omits to give the required notice to other States parties would be responsible accordingly.

<sup>65</sup> *German Settlers in Poland, Advisory Opinion, 1923, P.C.I.J., Series B, No. 6*, p. 22.

<sup>66</sup> *Factory at Chorzów, Jurisdiction* (see footnote 34 above).

<sup>67</sup> *Factory at Chorzów, Merits* (*ibid.*).

<sup>68</sup> *Reparation for Injuries* (see footnote 38 above), p. 184.

<sup>69</sup> “*Rainbow Warrior*” (see footnote 46 above), p. 251, para. 75.

<sup>70</sup> At the Conference for the Codification of International Law, held at The Hague in 1930, the term “any failure ... to carry out the international obligations of the State” was adopted (see *Yearbook ... 1956*, vol. II, p. 225, document A/CN.4/96, annex 3, article 1).

<sup>71</sup> See footnote 34 above.

<sup>72</sup> See also article 33, paragraph 2, and commentary.

(9) Thus there is no exception to the principle stated in article 2 that there are two necessary conditions for an internationally wrongful act—conduct attributable to the State under international law and the breach by that conduct of an international obligation of the State. The question is whether those two necessary conditions are also sufficient. It is sometimes said that international responsibility is not engaged by conduct of a State in disregard of its obligations unless some further element exists, in particular, “damage” to another State. But whether such elements are required depends on the content of the primary obligation, and there is no general rule in this respect. For example, the obligation under a treaty to enact a uniform law is breached by the failure to enact the law, and it is not necessary for another State party to point to any specific damage it has suffered by reason of that failure. Whether a particular obligation is breached forthwith upon a failure to act on the part of the responsible State, or whether some further event must occur, depends on the content and interpretation of the primary obligation and cannot be determined in the abstract.<sup>73</sup>

(10) A related question is whether fault constitutes a necessary element of the internationally wrongful act of a State. This is certainly not the case if by “fault” one understands the existence, for example, of an intention to harm. In the absence of any specific requirement of a mental element in terms of the primary obligation, it is only the act of a State that matters, independently of any intention.

(11) Article 2 introduces and places in the necessary legal context the questions dealt with in subsequent chapters of Part One. Subparagraph (a)—which states that conduct attributable to the State under international law is necessary for there to be an internationally wrongful act—corresponds to chapter II, while chapter IV deals with the specific cases where one State is responsible for the internationally wrongful act of another State. Subparagraph (b)—which states that such conduct must constitute a breach of an international obligation—corresponds to the general principles stated in chapter III, while chapter V deals with cases where the wrongfulness of conduct, which would otherwise be a breach of an obligation, is precluded.

(12) In subparagraph (a), the term “attribution” is used to denote the operation of attaching a given action or omission to a State. In international practice and judicial decisions, the term “imputation” is also used.<sup>74</sup> But the term “attribution” avoids any suggestion that the legal process of connecting conduct to the State is a fiction, or that the conduct in question is “really” that of someone else.

<sup>73</sup> For examples of analysis of different obligations, see *United States Diplomatic and Consular Staff in Tehran* (footnote 59 above), pp. 30–33, paras. 62–68; “*Rainbow Warrior*” (footnote 46 above), pp. 266–267, paras. 107–110; and WTO, Report of the Panel, *United States—Sections 301–310 of the Trade Act of 1974* (WT/DS152/R), 22 December 1999, paras. 7.41 et seq.

<sup>74</sup> See, e.g., *United States Diplomatic and Consular Staff in Tehran* (footnote 59 above), p. 29, paras. 56 and 58; and *Military and Paramilitary Activities in and against Nicaragua* (footnote 36 above), p. 51, para. 86.

(13) In subparagraph (b), reference is made to the breach of an international obligation rather than a rule or a norm of international law. What matters for these purposes is not simply the existence of a rule but its application in the specific case to the responsible State. The term “obligation” is commonly used in international judicial decisions and practice and in the literature to cover all the possibilities. The reference to an “obligation” is limited to an obligation under international law, a matter further clarified in article 3.

### **Article 3. Characterization of an act of a State as internationally wrongful**

**The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.**

#### *Commentary*

(1) Article 3 makes explicit a principle already implicit in article 2, namely that the characterization of a given act as internationally wrongful is independent of its characterization as lawful under the internal law of the State concerned. There are two elements to this. First, an act of a State cannot be characterized as internationally wrongful unless it constitutes a breach of an international obligation, even if it violates a provision of the State’s own law. Secondly and most importantly, a State cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law. An act of a State must be characterized as internationally wrongful if it constitutes a breach of an international obligation, even if the act does not contravene the State’s internal law—even if, under that law, the State was actually bound to act in that way.

(2) As to the first of these elements, perhaps the clearest judicial decision is that of PCIJ in the *Treatment of Polish Nationals* case.<sup>75</sup> The Court denied the Polish Government the right to submit to organs of the League of Nations questions concerning the application to Polish nationals of certain provisions of the Constitution of the Free City of Danzig, on the ground that:

according to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter’s Constitution, but only on international law and international obligations duly accepted ... [C]onversely, a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force ... The application of the Danzig Constitution may ... result in the violation of an international obligation incumbent on Danzig towards Poland, whether under treaty stipulations or under general international law ... However, in cases of such a nature, it is not the Constitution and other laws, as such, but the international obligation that gives rise to the responsibility of the Free City.<sup>76</sup>

(3) That conformity with the provisions of internal law in no way precludes conduct being characterized as internationally wrongful is equally well settled. Interna-

<sup>75</sup> *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, p. 4.

<sup>76</sup> *Ibid.*, pp. 24–25. See also “*Lotus*”, Judgment No. 9, 1927, P.C.I.J., Series A, No. 10, p. 24.

He claimed that he had not had a fair hearing, contrary to article 6, paragraph 1, of the European Convention on Human Rights. The Court noted that:

The Contracting States enjoy a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of article 6 § 1 in this field. The Court's task is not to indicate those means to the States, but to determine whether the result called for by the Convention has been achieved ... For this to be so, the resources available under domestic law must be shown to be effective and a person "charged with a criminal offence" ... must not be left with the burden of proving that he was not seeking to evade justice or that his absence was due to *force majeure*.<sup>210</sup>

The Court thus considered that article 6, paragraph 1, imposed an obligation of result.<sup>211</sup> But, in order to decide whether there had been a breach of the Convention in the circumstances of the case, it did not simply compare the result required (the opportunity for a trial in the accused's presence) with the result practically achieved (the lack of that opportunity in the particular case). Rather, it examined what more Italy could have done to make the applicant's right "effective".<sup>212</sup> The distinction between obligations of conduct and result was not determinative of the actual decision that there had been a breach of article 6, paragraph 1.<sup>213</sup>

(12) The question often arises whether an obligation is breached by the enactment of legislation by a State, in cases where the content of the legislation *prima facie* conflicts with what is required by the international obligation, or whether the legislation has to be implemented in the given case before the breach can be said to have occurred. Again, no general rule can be laid down that is applicable to all cases.<sup>214</sup> Certain obligations may be breached by the mere passage of incompatible legislation.<sup>215</sup> Where this is so, the passage of the legislation without more entails the international responsibility of the enacting State, the

legislature itself being an organ of the State for the purposes of the attribution of responsibility.<sup>216</sup> In other circumstances, the enactment of legislation may not in and of itself amount to a breach,<sup>217</sup> especially if it is open to the State concerned to give effect to the legislation in a way which would not violate the international obligation in question. In such cases, whether there is a breach will depend on whether and how the legislation is given effect.<sup>218</sup>

### Article 13. International obligation in force for a State

**An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.**

#### Commentary

(1) Article 13 states the basic principle that, for responsibility to exist, the breach must occur at a time when the State is bound by the obligation. This is but the application in the field of State responsibility of the general principle of intertemporal law, as stated by Judge Huber in another context in the *Island of Palmas* case:

[A] juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.<sup>219</sup>

Article 13 provides an important guarantee for States in terms of claims of responsibility. Its formulation ("does not constitute ... unless ...") is in keeping with the idea of a guarantee against the retrospective application of international law in matters of State responsibility.

(2) International tribunals have applied the principle stated in article 13 in many cases. An instructive example is provided by the decision of Umpire Bates of the United States-Great Britain Mixed Commission concerning the

<sup>210</sup> *Colozza v. Italy*, Eur. Court H.R., Series A, No. 89 (1985), pp. 15–16, para. 30, citing *De Cubber v. Belgium*, *ibid.*, No. 86 (1984), p. 20, para. 35.

<sup>211</sup> Cf. *Plattform "Ärzte für das Leben" v. Austria*, in which the Court gave the following interpretation of article 11:

"While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used ... In this area the obligation they enter into under article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved" (Eur. Court H.R., Series A, No. 139, p. 12, para. 34 (1988)).

In the *Colozza* case (see footnote 210 above), the Court used similar language but concluded that the obligation was an obligation of result. Cf. C. Tomuschat, "What is a 'breach' of the European Convention on Human Rights?", *The Dynamics of the Protection of Human Rights in Europe: Essays in Honour of Henry G. Schermers*, Lawson and de Blois, eds. (Dordrecht, Martinus Nijhoff, 1994), vol. 3, p. 315, at p. 328.

<sup>212</sup> *Colozza* case (see footnote 210 above), para. 28.

<sup>213</sup> See also *The Islamic Republic of Iran v. The United States of America*, cases A15 (IV) and A24, Iran-U.S. C.T.R., vol. 32, p. 115 (1996).

<sup>214</sup> Cf. *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* (footnote 83 above), p. 30, para. 42.

<sup>215</sup> A uniform law treaty will generally be construed as requiring immediate implementation, i.e. as embodying an obligation to make the provisions of the uniform law a part of the law of each State party: see, e.g., B. Conforti, "Obblighi di mezzi e obblighi di risultato nelle convenzioni di diritto uniforme", *Rivista di diritto internazionale privato e processuale*, vol. 24 (1988), p. 233.

<sup>216</sup> See article 4 and commentary. For illustrations, see, e.g., the findings of the European Court of Human Rights in *Norris v. Ireland*, Eur. Court H.R., Series A, No. 142, para. 31 (1988), citing *Klass and Others v. Germany*, *ibid.*, No. 28, para. 33 (1978); *Marckx v. Belgium*, *ibid.*, No. 31, para. 27 (1979); *Johnston and Others v. Ireland*, *ibid.*, No. 112, para. 42 (1986); *Dudgeon v. the United Kingdom*, *ibid.*, No. 45, para. 41 (1981); and *Modinos v. Cyprus*, *ibid.*, No. 259, para. 24 (1993). See also *International responsibility for the promulgation and enforcement of laws in violation of the Convention (arts. 1 and 2 American Convention on Human Rights)*, Advisory Opinion OC-14/94, Inter-American Court of Human Rights, Series A, No. 14 (1994). The Inter-American Court also considered it possible to determine whether draft legislation was compatible with the provisions of human rights treaties: *Restrictions to the Death Penalty (arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83, Series A, No. 3 (1983).

<sup>217</sup> As ICJ held in *LaGrand, Judgment* (see footnote 119 above), p. 497, paras. 90–91.

<sup>218</sup> See, e.g., WTO, Report of the Panel (footnote 73 above), paras. 7.34–7.57.

<sup>219</sup> *Island of Palmas* (Netherlands/United States of America), UNRIIAA, vol. II (Sales No. 1949.V.1), p. 829, at p. 845 (1928). Generally on intertemporal law, see resolution I adopted in 1975 by the Institute of International Law at its Wiesbaden session, *Annuaire de l'Institut de droit international*, vol. 56 (1975), pp. 536–540; for the debate, *ibid.*, pp. 339–374; for M. Sørensen's reports, *ibid.*, vol. 55 (1973), pp. 1–116. See further W. Karl, "The time factor in the law of State responsibility", Spinedi and Simma, eds., *op. cit.* (footnote 175 above), p. 95.

conduct of British authorities who had seized United States vessels engaged in the slave trade and freed slaves belonging to United States nationals. The incidents referred to the Commission had taken place at different times and the umpire had to determine whether, at the time each incident took place, slavery was “contrary to the law of nations”. Earlier incidents, dating back to a time when the slave trade was considered lawful, amounted to a breach on the part of the British authorities of the international obligation to respect and protect the property of foreign nationals.<sup>220</sup> The later incidents occurred when the slave trade had been “prohibited by all civilized nations” and did not involve the responsibility of Great Britain.<sup>221</sup>

(3) Similar principles were applied by Arbitrator Asser in deciding whether the seizure and confiscation by Russian authorities of United States vessels engaged in seal hunting outside Russia’s territorial waters should be considered internationally wrongful. In his award in the “*James Hamilton Lewis*” case, he observed that the question had to be settled “according to the general principles of the law of nations and the spirit of the international agreements in force and binding upon the two High Parties at the time of the seizure of the vessel”.<sup>222</sup> Since, under the principles in force at the time, Russia had no right to seize the United States vessel, the seizure and confiscation of the vessel were unlawful acts for which Russia was required to pay compensation.<sup>223</sup> The same principle has consistently been applied by the European Commission and the European Court of Human Rights to deny claims relating to periods during which the European Convention on Human Rights was not in force for the State concerned.<sup>224</sup>

(4) State practice also supports the principle. A requirement that arbitrators apply the rules of international law in force at the time when the alleged wrongful acts took place is a common stipulation in arbitration agreements,<sup>225</sup> and undoubtedly is made by way of explicit confirmation of a generally recognized principle. International law writers who have dealt with the question recognize that the wrongfulness of an act must be established on the ba-

sis of the obligations in force at the time when the act was performed.<sup>226</sup>

(5) State responsibility can extend to acts of the utmost seriousness, and the regime of responsibility in such cases will be correspondingly stringent. But even when a new peremptory norm of general international law comes into existence, as contemplated by article 64 of the 1969 Vienna Convention, this does not entail any retrospective assumption of responsibility. Article 71, paragraph 2 (b), provides that such a new peremptory norm “does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm”.

(6) Accordingly, it is appropriate to apply the intertemporal principle to all international obligations, and article 13 is general in its application. It is, however, without prejudice to the possibility that a State may agree to compensate for damage caused as a result of conduct which was not at the time a breach of any international obligation in force for that State. In fact, cases of the retrospective assumption of responsibility are rare. The *lex specialis* principle (art. 55) is sufficient to deal with any such cases where it may be agreed or decided that responsibility will be assumed retrospectively for conduct which was not a breach of an international obligation at the time it was committed.<sup>227</sup>

(7) In international law, the principle stated in article 13 is not only a necessary but also a sufficient basis for responsibility. In other words, once responsibility has accrued as a result of an internationally wrongful act, it is not affected by the subsequent termination of the obligation, whether as a result of the termination of the treaty which has been breached or of a change in international law. Thus, as ICJ said in the *Northern Cameroons* case:

[I]f during the life of the Trusteeship the Trustee was responsible for some act in violation of the terms of the Trusteeship Agreement which resulted in damage to another Member of the United Nations or to one of its nationals, a claim for reparation would not be liquidated by the termination of the Trust.<sup>228</sup>

Similarly, in the “*Rainbow Warrior*” arbitration, the arbitral tribunal held that, although the relevant treaty obli-

<sup>220</sup> See the “*Enterprize*” case, Lapradelle-Politis (footnote 139 above), vol. I, p. 703 (1855); and Moore, *History and Digest*, vol. IV, p. 4349, at p. 4373. See also the “*Hermosa*” and “*Créole*” cases, Lapradelle-Politis, *op. cit.*, p. 704 (1855); and Moore, *History and Digest*, vol. IV, pp. 4374–4375.

<sup>221</sup> See the “*Lawrence*” case, Lapradelle-Politis, *op. cit.*, p. 741; and Moore, *History and Digest*, vol. III, p. 2824. See also the “*Volusia*” case, Lapradelle-Politis, *op. cit.*, p. 741.

<sup>222</sup> *Affaire des navires Cape Horn Pigeon, James Hamilton Lewis, C. H. White et Kate and Anna*, UNRIAA, vol. IX (Sales No. 59.V.5), p. 66, at p. 69 (1902).

<sup>223</sup> See also the “*C. H. White*” case, *ibid.*, p. 74. In these cases the arbitrator was required by the arbitration agreement itself to apply the law in force at the time the acts were performed. Nevertheless, the intention of the parties was clearly to confirm the application of the general principle in the context of the arbitration agreement, not to establish an exception. See further the *S.S. “Lisman”* case, *ibid.*, vol. III (Sales No. 1949.V.2), p. 1767, at p. 1771 (1937).

<sup>224</sup> See, e.g., *X v. Germany*, application No. 1151/61, Council of Europe, European Commission of Human Rights, *Recueil des décisions*, No. 7 (March 1962), p. 119 (1961) and many later decisions.

<sup>225</sup> See, e.g., Declarations exchanged between the Government of the United States of America and the Imperial Government of Russia, for the submission to arbitration of certain disputes concerning the international responsibility of Russia for the seizure of American ships, UNRIAA, vol. IX (Sales No. 59.V.5), p. 57 (1900).

<sup>226</sup> See, e.g., P. Tavernier, *Recherches sur l’application dans le temps des actes et des règles en droit international public: problèmes de droit intertemporel ou de droit transitoire* (Paris, Librairie générale de droit et de jurisprudence, 1970), pp. 119, 135 and 292; D. Bindschler-Robert, “De la rétroactivité en droit international public”, *Recueil d’études de droit international en hommage à Paul Guggenheim* (University of Geneva Law Faculty/Graduate Institute of International Studies, 1968), p. 184; M. Sørensen, “Le problème intertemporel dans l’application de la Convention européenne des droits de l’homme”, *Mélanges offerts à Polys Modinos* (Paris, Pedone, 1968), p. 304; T. O. Elias, “The doctrine of intertemporal law”, *AJIL*, vol. 74, No. 2 (April 1980), p. 285; and R. Higgins, “Time and the law: international perspectives on an old problem”, *International and Comparative Law Quarterly*, vol. 46 (July 1997), p. 501.

<sup>227</sup> As to the retroactive effect of the acknowledgement and adoption of conduct by a State, see article 11 and commentary, especially paragraph (4). Such acknowledgement and adoption would not, without more, give retroactive effect to the obligations of the adopting State.

<sup>228</sup> *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 15, at p. 35.

gation had terminated with the passage of time, France's responsibility for its earlier breach remained.<sup>229</sup>

(8) Both aspects of the principle are implicit in the ICJ decision in the *Certain Phosphate Lands in Nauru* case. Australia argued there that a State responsibility claim relating to the period of its joint administration of the Trust Territory for Nauru (1947–1968) could not be brought decades later, even if the claim had not been formally waived. The Court rejected the argument, applying a liberal standard of laches or unreasonable delay.<sup>230</sup> But it went on to say that:

[I]t will be for the Court, in due time, to ensure that Nauru's delay in seising [*sic*] it will in no way cause prejudice to Australia with regard to both the establishment of the facts and the determination of the content of the applicable law.<sup>231</sup>

Evidently, the Court intended to apply the law in force at the time the claim arose. Indeed that position was necessarily taken by Nauru itself, since its claim was based on a breach of the Trusteeship Agreement, which terminated at the date of its accession to independence in 1968. Its claim was that the responsibility of Australia, once engaged under the law in force at a given time, continued to exist even if the primary obligation had subsequently terminated.<sup>232</sup>

(9) The basic principle stated in article 13 is thus well established. One possible qualification concerns the progressive interpretation of obligations, by a majority of the Court in the *Namibia* case.<sup>233</sup> But the intertemporal principle does not entail that treaty provisions are to be interpreted as if frozen in time. The evolutionary interpretation of treaty provisions is permissible in certain cases,<sup>234</sup> but this has nothing to do with the principle that a State can only be held responsible for breach of an obligation which was in force for that State at the time of its conduct. Nor does the principle of the intertemporal law mean that facts occurring prior to the entry into force of a particular obligation may not be taken into account where these are otherwise relevant. For example, in dealing with the obligation to ensure that persons accused are tried without undue delay, periods of detention prior to the entry into force of that obligation may be relevant as facts, even though no compensation could be awarded in respect of the period prior to the entry into force of the obligation.<sup>235</sup>

<sup>229</sup> "Rainbow Warrior" (see footnote 46 above), pp. 265–266.

<sup>230</sup> *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240, at pp. 253–255, paras. 31–36. See article 45, subparagraph (b), and commentary.

<sup>231</sup> *Certain Phosphate Lands in Nauru*, *ibid.*, p. 255, para. 36.

<sup>232</sup> The case was settled before the Court had the opportunity to consider the merits: *Certain Phosphate Lands in Nauru*, Order of 13 September 1993, I.C.J. Reports 1993, p. 322; for the settlement agreement, see Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice concerning Certain Phosphate Lands in Nauru (Nauru, 10 August 1993) (United Nations, Treaty Series, vol. 1770, No. 30807, p. 379).

<sup>233</sup> *Namibia* case (see footnote 176 above), pp. 31–32, para. 53.

<sup>234</sup> See, e.g., *Tyrer v. the United Kingdom*, Eur. Court H.R., Series A, No. 26, pp. 15–16 (1978).

<sup>235</sup> See, e.g., *Zana v. Turkey*, Eur. Court H.R., Reports, 1997–VII, p. 2533 (1997); and J. Pauwelyn, "The concept of a 'continuing violation' of an international obligation: selected problems", BYBIL, 1995, vol. 66, p. 415, at pp. 443–445.

#### Article 14. Extension in time of the breach of an international obligation

**1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.**

**2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.**

**3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.**

#### Commentary

(1) The problem of identifying when a wrongful act begins and how long it continues is one which arises frequently<sup>236</sup> and has consequences in the field of State responsibility, including the important question of cessation of continuing wrongful acts dealt with in article 30. Although the existence and duration of a breach of an international obligation depends for the most part on the existence and content of the obligation and on the facts of the particular breach, certain basic concepts are established. These are introduced in article 14. Without seeking to be comprehensive in its treatment of the problem, article 14 deals with several related questions. In particular, it develops the distinction between breaches not extending in time and continuing wrongful acts (see paragraphs (1) and (2) respectively), and it also deals with the application of that distinction to the important case of obligations of prevention. In each of these cases it takes into account the question of the continuance in force of the obligation breached.

(2) Internationally wrongful acts usually take some time to happen. The critical distinction for the purpose of article 14 is between a breach which is continuing and one which has already been completed. In accordance with paragraph 1, a completed act occurs "at the moment when the act is performed", even though its effects or consequences may continue. The words "at the moment" are intended to provide a more precise description of the time frame when a completed wrongful act is performed,

<sup>236</sup> See, e.g., *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 35; *Phosphates in Morocco* (footnote 34 above), pp. 23–29; *Electricity Company of Sofia and Bulgaria*, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 64, at pp. 80–82; and *Right of Passage over Indian Territory* (footnote 207 above), pp. 33–36. The issue has often been raised before the organs of the European Convention on Human Rights. See, e.g., the decision of the European Commission of Human Rights in the *De Becker v. Belgium* case, application No. 214/56, *Yearbook of the European Convention on Human Rights*, 1958–1959, p. 214, at pp. 234 and 244; and the Court's judgments in *Ireland v. the United Kingdom*, Eur. Court H.R., Series A, No. 25, p. 64 (1978); *Papamichalopoulos and Others v. Greece*, *ibid.*, No. 260–B, para. 40 (1993); and *Agrotexim and Others v. Greece*, *ibid.*, No. 330–A, p. 22, para. 58 (1995). See also E. Wyler, "Quelques réflexions sur la réalisation dans le temps du fait internationalement illicite", RGDI, vol. 95, p. 881 (1991).

that these arise towards or are invoked by a person or entity other than a State. In other words, the provisions of Part Two are without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State, and article 33 makes this clear.

### *Article 29. Continued duty of performance*

**The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.**

#### *Commentary*

(1) Where a State commits a breach of an international obligation, questions as to the restoration and future of the legal relationship thereby affected are central. Apart from the question of reparation, two immediate issues arise, namely, the effect of the responsible State's conduct on the obligation which has been breached, and cessation of the breach if it is continuing. The former question is dealt with by article 29, the latter by article 30.

(2) Article 29 states the general principle that the legal consequences of an internationally wrongful act do not affect the continued duty of the State to perform the obligation it has breached. As a result of the internationally wrongful act, a new set of legal relations is established between the responsible State and the State or States to whom the international obligation is owed. But this does not mean that the pre-existing legal relation established by the primary obligation disappears. Even if the responsible State complies with its obligations under Part Two to cease the wrongful conduct and to make full reparation for the injury caused, it is not relieved thereby of the duty to perform the obligation breached. The continuing obligation to perform an international obligation, notwithstanding a breach, underlies the concept of a continuing wrongful act (see article 14) and the obligation of cessation (see subparagraph (a) of article 30).

(3) It is true that in some situations the ultimate effect of a breach of an obligation may be to put an end to the obligation itself. For example, a State injured by a material breach of a bilateral treaty may elect to terminate the treaty.<sup>424</sup> But as the relevant provisions of the 1969 Vienna Convention make clear, the mere fact of a breach and even of a repudiation of a treaty does not terminate the treaty.<sup>425</sup> It is a matter for the injured State to react to the breach to the extent permitted by the Convention. The injured State may have no interest in terminating the treaty as distinct from calling for its continued performance. Where a treaty is duly terminated for breach, the termination does not affect legal relationships which have accrued under the treaty prior to its termination, includ-

ing the obligation to make reparation for any breach.<sup>426</sup> A breach of an obligation under general international law is even less likely to affect the underlying obligation, and indeed will never do so *as such*. By contrast, the secondary legal relation of State responsibility arises on the occurrence of a breach and without any requirement of invocation by the injured State.

(4) Article 29 does not need to deal with such contingencies. All it provides is that the legal consequences of an internationally wrongful act within the field of State responsibility do not affect any continuing duty to comply with the obligation which has been breached. Whether and to what extent that obligation subsists despite the breach is a matter not regulated by the law of State responsibility but by the rules concerning the relevant primary obligation.

### *Article 30. Cessation and non-repetition*

**The State responsible for the internationally wrongful act is under an obligation:**

- (a) to cease that act, if it is continuing;**
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.**

#### *Commentary*

(1) Article 30 deals with two separate but linked issues raised by the breach of an international obligation: the cessation of the wrongful conduct and the offer of assurances and guarantees of non-repetition by the responsible State if circumstances so require. Both are aspects of the restoration and repair of the legal relationship affected by the breach. Cessation is, as it were, the negative aspect of future performance, concerned with securing an end to continuing wrongful conduct, whereas assurances and guarantees serve a preventive function and may be described as a positive reinforcement of future performance. The continuation in force of the underlying obligation is a necessary assumption of both, since if the obligation has ceased following its breach, the question of cessation does not arise and no assurances and guarantees can be relevant.<sup>427</sup>

(2) Subparagraph (a) of article 30 deals with the obligation of the State responsible for the internationally wrongful act to cease the wrongful conduct. In accordance with article 2, the word "act" covers both acts and omissions. Cessation is thus relevant to all wrongful acts extending in time "regardless of whether the conduct of a State is

<sup>424</sup> See footnote 422 above.

<sup>425</sup> Indeed, in the *Gabčíkovo-Nagymaros Project* case, ICJ held that continuing material breaches by both parties did not have the effect of terminating the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System (see footnote 27 above), p. 68, para. 114.

<sup>426</sup> See, e.g., "Rainbow Warrior" (footnote 46 above), p. 266, citing Lord McNair (dissenting) in *Ambatielos, Preliminary Objection, I.C.J. Reports 1952*, p. 28, at p. 63. On that particular point the Court itself agreed, *ibid.*, p. 45. In the *Gabčíkovo-Nagymaros Project* case, Hungary accepted that the legal consequences of its termination of the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System on account of the breach by Czechoslovakia were prospective only, and did not affect the accrued rights of either party (see footnote 27 above), pp. 73–74, paras. 125–127. The Court held that the Treaty was still in force, and therefore did not address the question.

<sup>427</sup> 1969 Vienna Convention, art. 70, para. 1.

an action or an omission ... since there may be cessation consisting in abstaining from certain actions".<sup>428</sup>

(3) The tribunal in the "*Rainbow Warrior*" arbitration stressed "two essential conditions intimately linked" for the requirement of cessation of wrongful conduct to arise, "namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued".<sup>429</sup> While the obligation to cease wrongful conduct will arise most commonly in the case of a continuing wrongful act,<sup>430</sup> article 30 also encompasses situations where a State has violated an obligation on a series of occasions, implying the possibility of further repetitions. The phrase "if it is continuing" at the end of subparagraph (a) of the article is intended to cover both situations.

(4) Cessation of conduct in breach of an international obligation is the first requirement in eliminating the consequences of wrongful conduct. With reparation, it is one of the two general consequences of an internationally wrongful act. Cessation is often the main focus of the controversy produced by conduct in breach of an international obligation.<sup>431</sup> It is frequently demanded not only by States but also by the organs of international organizations such as the General Assembly and Security Council in the face of serious breaches of international law. By contrast, reparation, important though it is in many cases, may not be the central issue in a dispute between States as to questions of responsibility.<sup>432</sup>

(5) The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State's obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law.

(6) There are several reasons for treating cessation as more than simply a function of the duty to comply with the primary obligation. First, the question of cessation only arises in the event of a breach. What must then occur depends not only on the interpretation of the primary obligation but also on the secondary rules relating to rem-

edies, and it is appropriate that they are dealt with, at least in general terms, in articles concerning the consequences of an internationally wrongful act. Secondly, continuing wrongful acts are a common feature of cases involving State responsibility and are specifically dealt with in article 14. There is a need to spell out the consequences of such acts in Part Two.

(7) The question of cessation often arises in close connection with that of reparation, and particularly restitution. The result of cessation may be indistinguishable from restitution, for example in cases involving the freeing of hostages or the return of objects or premises seized. Nonetheless, the two must be distinguished. Unlike restitution, cessation is not subject to limitations relating to proportionality.<sup>433</sup> It may give rise to a continuing obligation, even when literal return to the *status quo ante* is excluded or can only be achieved in an approximate way.

(8) The difficulty of distinguishing between cessation and restitution is illustrated by the "*Rainbow Warrior*" arbitration. New Zealand sought the return of the two agents to detention on the island of Hao. According to New Zealand, France was obliged to return them to and to detain them on the island for the balance of the three years; that obligation had not expired since time spent off the island was not to be counted for that purpose. The tribunal disagreed. In its view, the obligation was for a fixed term which had expired, and there was no question of cessation.<sup>434</sup> Evidently, the return of the two agents to the island was of no use to New Zealand if there was no continuing obligation on the part of France to keep them there. Thus, a return to the *status quo ante* may be of little or no value if the obligation breached no longer exists. Conversely, no option may exist for an injured State to renounce restitution if the continued performance of the obligation breached is incumbent upon the responsible State and the former State is not competent to release it from such performance. The distinction between cessation and restitution may have important consequences in terms of the obligations of the States concerned.

(9) Subparagraph (b) of article 30 deals with the obligation of the responsible State to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. Assurances and guarantees are concerned with the restoration of confidence in a continuing relationship, although they involve much more flexibility than cessation and are not required in all cases. They are most commonly sought when the injured State has reason to believe that the mere restoration of the pre-existing situation does not protect it satisfactorily. For example, following repeated demonstrations against the United States Embassy in Moscow from 1964 to 1965, President Johnson stated that:

The U.S. Government must insist that its diplomatic establishments and personnel be given the protection which is required by international law and custom and which is necessary for the conduct of diplomatic relations between states. Expressions of regret and compensation are no substitute for adequate protection.<sup>435</sup>

<sup>428</sup> "*Rainbow Warrior*" (see footnote 46 above), p. 270, para. 113.

<sup>429</sup> *Ibid.*, para. 114.

<sup>430</sup> For the concept of a continuing wrongful act, see paragraphs (3) to (11) of the commentary to article 14.

<sup>431</sup> The focus of the WTO dispute settlement mechanism is on cessation rather than reparation: Marrakesh Agreement establishing the World Trade Organization, annex 2 (Understanding on Rules and Procedures governing the Settlement of Disputes), especially article 3, paragraph 7, which provides for compensation "only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement". On the distinction between cessation and reparation for WTO purposes, see, e.g., Report of the Panel, *Australia-Subsidies Provided to Producers and Exporters of Automotive Leather* (WT/DS126/RW and Corr.1), 21 January 2000, para. 6.49.

<sup>432</sup> For cases where ICJ has recognized that this may be so, see, e.g., *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, *Merits, Judgment*, I.C.J. Reports 1974, p. 175, at pp. 201–205, paras. 65–76; and *Gabčíkovo-Nagymaros Project* (footnote 27 above), p. 81, para. 153. See also C. D. Gray, *Judicial Remedies in International Law* (Oxford, Clarendon Press, 1987), pp. 77–92.

<sup>433</sup> See article 35 (b) and commentary.

<sup>434</sup> UNRIIAA, vol. XX, p. 217, at p. 266, para. 105 (1990).

<sup>435</sup> Reprinted in ILM, vol. 4, No. 2 (July 1965), p. 698.

Such demands are not always expressed in terms of assurances or guarantees, but they share the characteristics of being future-looking and concerned with other potential breaches. They focus on prevention rather than reparation and they are included in article 30.

(10) The question whether the obligation to offer assurances or guarantees of non-repetition may be a legal consequence of an internationally wrongful act was debated in the *LaGrand* case. This concerned an admitted failure of consular notification contrary to article 36 of the Vienna Convention on Consular Relations. In its fourth submission, Germany sought both general and specific assurances and guarantees as to the means of future compliance with the Convention. The United States argued that to give such assurances or guarantees went beyond the scope of the obligations in the Convention and that ICJ lacked jurisdiction to require them. In any event, formal assurances and guarantees were unprecedented and should not be required. Germany's entitlement to a remedy did not extend beyond an apology, which the United States had given. Alternatively, no assurances or guarantees were appropriate in the light of the extensive action it had taken to ensure that federal and State officials would in future comply with the Convention. On the question of jurisdiction, the Court held:

that a dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court's jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation ... Consequently, the Court has jurisdiction in the present case with respect to the fourth submission of Germany.<sup>436</sup>

On the question of appropriateness, the Court noted that an apology would not be sufficient in any case in which a foreign national had been "subjected to prolonged detention or sentenced to severe penalties" following a failure of consular notification.<sup>437</sup> But in the light of information provided by the United States as to the steps taken to comply in future, the Court held:

that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (*b*), must be regarded as meeting Germany's request for a general assurance of non-repetition.<sup>438</sup>

As to the specific assurances sought by Germany, the Court limited itself to stating that:

if the United States, notwithstanding its commitment referred to ... should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention.<sup>439</sup>

<sup>436</sup> *LaGrand, Judgment* (see footnote 119 above), p. 485, para. 48, citing *Factory at Chorzów, Jurisdiction* (footnote 34 above).

<sup>437</sup> *LaGrand, Judgment* (see footnote 119 above), p. 512, para. 123.

<sup>438</sup> *Ibid.*, p. 513, para. 124; see also the operative part, p. 516, para. 128 (6).

<sup>439</sup> *Ibid.*, pp. 513–514, para. 125. See also paragraph 127 and the operative part (para. 128 (7)).

The Court thus upheld its jurisdiction on Germany's fourth submission and responded to it in the operative part. It did not, however, discuss the legal basis for assurances of non-repetition.

(11) Assurances or guarantees of non-repetition may be sought by way of satisfaction (e.g. the repeal of the legislation which allowed the breach to occur) and there is thus some overlap between the two in practice.<sup>440</sup> However, they are better treated as an aspect of the continuation and repair of the legal relationship affected by the breach. Where assurances and guarantees of non-repetition are sought by an injured State, the question is essentially the reinforcement of a continuing legal relationship and the focus is on the future, not the past. In addition, assurances and guarantees of non-repetition may be sought by a State other than an injured State in accordance with article 48.

(12) Assurances are normally given verbally, while guarantees of non-repetition involve something more—for example, preventive measures to be taken by the responsible State designed to avoid repetition of the breach. With regard to the kind of guarantees that may be requested, international practice is not uniform. The injured State usually demands either safeguards against the repetition of the wrongful act without any specification of the form they are to take<sup>441</sup> or, when the wrongful act affects its nationals, assurances of better protection of persons and property.<sup>442</sup> In the *LaGrand* case, ICJ spelled out with some specificity the obligation that would arise for the United States from a future breach, but added that "[t]his obligation can be carried out in various ways. The choice of means must be left to the United States".<sup>443</sup> It noted further that a State may not be in a position to offer a firm guarantee of non-repetition.<sup>444</sup> Whether it could properly do so would depend on the nature of the obligation in question.

(13) In some cases, the injured State may ask the responsible State to adopt specific measures or to act in a specified way in order to avoid repetition. Sometimes the injured State merely seeks assurances from the responsible State that, in future, it will respect the rights of the injured State.<sup>445</sup> In other cases, the injured State requires specific instructions to be given,<sup>446</sup> or other specific conduct to be

<sup>440</sup> See paragraph (5) of the commentary to article 36.

<sup>441</sup> In the "Dogger Bank" incident in 1904, the United Kingdom sought "security against the recurrence of such intolerable incidents", G. F. de Martens, *Nouveau recueil général de traités*, 2nd series, vol. XXXIII, p. 642. See also the exchange of notes between China and Indonesia following the attack in March 1966 against the Chinese Consulate General in Jakarta, in which the Chinese Deputy Minister for Foreign Affairs sought a guarantee that such incidents would not be repeated in the future, RGDI, vol. 70 (1966), pp. 1013 et seq.

<sup>442</sup> Such assurances were given in the *Doane* incident (1886), Moore, *Digest*, vol. VI, pp. 345–346.

<sup>443</sup> *LaGrand, Judgment* (see footnote 119 above), p. 513, para. 125.

<sup>444</sup> *Ibid.*, para. 124.

<sup>445</sup> See, e.g., the 1901 case in which the Ottoman Empire gave a formal assurance that the British, Austrian and French postal services would henceforth operate freely in its territory, RGDI, vol. 8 (1901), p. 777, at pp. 788 and 792.

<sup>446</sup> See, e.g., the incidents involving the "*Herzog*" and the "*Bundesrath*", two German ships seized by the British Navy in December 1899 and January 1900, during the Boer war, in which Germany drew the attention of Great Britain to "the necessity for issuing instructions

taken.<sup>447</sup> But assurances and guarantees of non-repetition will not always be appropriate, even if demanded. Much will depend on the circumstances of the case, including the nature of the obligation and of the breach. The rather exceptional character of the measures is indicated by the words “if circumstances so require” at the end of subparagraph (b). The obligation of the responsible State with respect to assurances and guarantees of non-repetition is formulated in flexible terms in order to prevent the kinds of abusive or excessive claims which characterized some demands for assurances and guarantees by States in the past.

### Article 31. Reparation

**1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.**

**2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.**

#### Commentary

(1) The obligation to make full reparation is the second general obligation of the responsible State consequent upon the commission of an internationally wrongful act. The general principle of the consequences of the commission of an internationally wrongful act was stated by PCIJ in the *Factory at Chorzów* case:

It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application.<sup>448</sup>

In this passage, which has been cited and applied on many occasions,<sup>449</sup> the Court was using the term “reparation” in its most general sense. It was rejecting a Polish argument that jurisdiction to interpret and apply a treaty did not entail jurisdiction to deal with disputes over the form and quantum of reparation to be made. By that stage of the dispute, Germany was no longer seeking for its national the return of the factory in question or of the property seized with it.

to the British Naval Commanders to molest no German merchantmen in places not in the vicinity of the seat of war”, Martens, *op. cit.* (footnote 441 above), vol. XXIX, p. 456 at p. 486.

<sup>447</sup> In the *Trail Smelter* case (see footnote 253 above), the arbitral tribunal specified measures to be adopted by the Trail Smelter, including measures designed to “prevent future significant fumigations in the United States” (p. 1934). Requests to modify or repeal legislation are frequently made by international bodies. See, e.g., the decisions of the Human Rights Committee: *Torres Ramirez v. Uruguay*, decision of 23 July 1980, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40)*, p. 126, para. 19; *Lanza v. Uruguay*, decision of 3 April 1980, *ibid.*, p. 119, para. 17; and *Dermit Barbato v. Uruguay*, decision of 21 October 1982, *ibid.*, *Thirty-eighth Session, Supplement No. 40 (A/38/40)*, p. 133, para. 11.

<sup>448</sup> *Factory at Chorzów, Jurisdiction* (see footnote 34 above).

<sup>449</sup> Cf. the ICJ reference to this decision in *LaGrand, Judgment* (footnote 119 above), p. 485, para. 48.

(2) In a subsequent phase of the same case, the Court went on to specify in more detail the content of the obligation of reparation. It said:

The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.<sup>450</sup>

In the first sentence, the Court gave a general definition of reparation, emphasizing that its function was the re-establishment of the situation affected by the breach.<sup>451</sup> In the second sentence, it dealt with that aspect of reparation encompassed by “compensation” for an unlawful act—that is, restitution or its value, and in addition damages for loss sustained as a result of the wrongful act.

(3) The obligation placed on the responsible State by article 31 is to make “full reparation” in the *Factory at Chorzów* sense. In other words, the responsible State must endeavour to “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed”<sup>452</sup> through the provision of one or more of the forms of reparation set out in chapter II of this part.

(4) The general obligation of reparation is formulated in article 31 as the immediate corollary of a State’s responsibility, i.e. as an obligation of the responsible State resulting from the breach, rather than as a right of an injured State or States. This formulation avoids the difficulties that might arise where the same obligation is owed simultaneously to several, many or all States, only a few of which are specially affected by the breach. But quite apart from the questions raised when there is more than one State entitled to invoke responsibility,<sup>453</sup> the general obligation of reparation arises automatically upon commission of an internationally wrongful act and is not, as such, contingent upon a demand or protest by any State, even if the form which reparation should take in the circumstances may depend on the response of the injured State or States.

(5) The responsible State’s obligation to make full reparation relates to the “injury caused by the internationally wrongful act”. The notion of “injury”, defined in paragraph 2, is to be understood as including any damage caused by that act. In particular, in accordance with paragraph 2, “injury” includes any material or moral damage caused thereby. This formulation is intended both as inclusive, covering both material and moral damage broadly understood, and as limitative, excluding merely abstract concerns or general interests of a State which is individu-

<sup>450</sup> *Factory at Chorzów, Merits* (see footnote 34 above), p. 47.

<sup>451</sup> Cf. P.-M. Dupuy, “Le fait générateur de la responsabilité internationale des États”, *Collected Courses ... 1984–V* (Dordrecht, Martinus Nijhoff, 1986), vol. 188, p. 9, at p. 94, who uses the term *restauration*.

<sup>452</sup> *Factory at Chorzów, Merits* (see footnote 34 above), p. 47.

<sup>453</sup> For the States entitled to invoke responsibility, see articles 42 and 48 and commentaries. For the situation where there is a plurality of injured States, see article 46 and commentary.



# ANNEX 255



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA

-v-

AHMED AL-MUGHASSIL,  
aka "Abu Omran,"

(Counts 1-46)

ALI AL-HOURI,

(Counts 1-46)

HANI AL-SAYEGH,

(Counts 1-46)

IBRAHIM AL-YACoub,

(Counts 1-46)

ABDEL KARIM AL-NASSER,

(Counts 1-46)

MUSTAFA AL-QASSAB,

(Counts 1-46)

SA'ED AL-BAHAR,

(Counts 1-5)

ABDALLAH AL-JARASH,

(Counts 1-46)

HUSSEIN AL-MUGHIS,

(Counts 1-46)

ALI AL-MARHOUN,

(Counts 1-5)

SALEH RAMADAN,

(Counts 1-5)

MUSTAFA AL-MU'ALEM,

(Counts 1-5)

FADEL AL-ALAWI, and

(Counts 1-5)

JOHN DOE, further described as a Lebanese  
male, approximately 175 cm tall, with fair skin,  
fair hair, and green eyes,

(Counts 1-46)

Defendants.

CRIMINAL NO: 01-228-A

Conspiracy to Kill United States Nationals

(18 U.S.C. § 2332(b))

(Count One)

Conspiracy to Murder United States Employees

(18 U.S.C. §§ 1114, 1117)

(Count Two)

Conspiracy to Use Weapons of Mass Destruction

Against United States Nationals

(18 U.S.C. §§ 2332a(a)(1), (a)(3))

(Count Three)

Conspiracy to Destroy Property of United States

(18 U.S.C. § 844(n))

(Count Four)

Conspiracy to Attack National Defense Premises

(18 U.S.C. § 2155(b))

(Count Five)

Bombing Resulting in Death

(18 U.S.C. §§ 844(f)(1), (f)(3))

(Count Six)

Use of Weapons of Mass Destruction Against United  
States Nationals

(18 U.S.C. §§ 2332a(a)(1), (a)(3))

(Count Seven)

Murder While Using Destructive Device During  
Crime of Violence

(18 U.S.C. § 924(j))

(Counts Eight through Twenty-Six)

) Murder of Federal Employees  
) (18 U.S.C. §§ 1111, 1114)  
) (Counts Twenty-Seven through Forty-Five)  
)  
) Attempted Murder of Federal Employees  
) (18 U.S.C. §§ 1113, 1114)  
) (Count Forty-Six)

## **INDICTMENT**

**June 2001 TERM – AT ALEXANDRIA**

**THE GRAND JURY CHARGES THAT:**

### **COUNT ONE**

#### **Conspiracy to Kill United States Nationals**

##### **Introduction**

##### **Saudi Hizballah**

1. From some time in the 1980s until the date of the filing of this Indictment, Hizballah, or “Party of God,” was the name used by a number of related terrorist organizations operating in Saudi Arabia, Lebanon, Kuwait, and Bahrain, among other places. These Hizballah organizations were inspired, supported, and directed by elements of the Iranian government. Saudi Hizballah, also known as Hizballah Al-Hijaz, was a terrorist organization that operated primarily in the Kingdom of Saudi Arabia and that promoted, among other things, the use of violence against nationals and property of the United States located in Saudi Arabia. Because Saudi Hizballah was an outlaw organization in the Kingdom of Saudi Arabia, its members frequently met and trained in Lebanon, Syria, or Iran.

2. A regular gathering place for members of Saudi Hizballah was the Sayyeda Zeinab shrine in Damascus, Syria, which was an important religious site for adherents of the Shi'ite branch of Islam. Saudi Hizballah drew its members primarily from among young men of the Shi'ite faith who resided in the Eastern Province of Saudi Arabia, near the Persian Gulf. Those young men would frequently have their first contact with Saudi Hizballah during religious pilgrimages to the Sayyeda Zeinab shrine. There, they would be approached by Saudi Hizballah members to gauge their loyalty to Iran and dislike for the government of Saudi Arabia. Young men who wished to join Saudi Hizballah then would be transported to Hizballah-controlled areas in Lebanon for military training and indoctrination.

#### The Defendants

3. Saudi Hizballah organized itself into departments, or "wings," each headed by a Hizballah member and each reporting to the leader of Saudi Hizballah, ABDEL KARIM AL-NASSER.

4. The "military wing" of Saudi Hizballah was headed at all relevant times by AHMED AL-MUGHASSIL, aka "Abu Omran," a native of Qatif, in the Eastern Province of Saudi Arabia. In his role as military commander, AL-MUGHASSIL was in charge of directing terrorist attacks against American interests in Saudi Arabia. AL-MUGHASSIL was actively involved in recruiting young Saudi Shi'ite men to join the ranks of Hizballah; arranging for those men to undergo military training at Hizballah camps in Lebanon and Iran; directing those men in surveillance of potential targets for attack by Hizballah; and planning and supervising terrorist attacks.

5. ALI AL-HOURI was a member of Saudi Hizballah who served as a major recruiter for the Hizballah party; scheduled party functions; and transported explosives for the party. He also acted as a liaison for the party with the Iranian embassy in Damascus, Syria, which was an important source of logistics and support for Saudi Hizballah members traveling to and from Lebanon. AL-HOURI was a close associate of AL-MUGHASSIL and participated directly in surveillance, planning, and execution of terrorist attacks.

6. HANI AL-SAYEGH was a prominent member of Saudi Hizballah. He was actively involved in recruiting young Saudi Shi'ite men to join the ranks of Hizballah; arranging for those men to undergo military training at Hizballah camps in Lebanon and Iran; assisting in the surveillance of potential targets for attack by Hizballah; and carrying out terrorist attacks. AL-SAYEGH also spoke fluent Farsi and enjoyed an unusually close association with certain military elements of the Iranian government.

7. IBRAHIM AL-YACoub was a prominent member of Saudi Hizballah, actively involved in recruiting young Saudi Shi'ite men to join Hizballah, and in planning and carrying out terrorist attacks. He also served as a liaison between Saudi Hizballah and the Lebanese and Iranian Hizballah organizations.

8. MUSTAFA AL-QASSAB was a Shi'ite Muslim from Qatif, Saudi Arabia. He joined Saudi Hizballah in the late 1980s after traveling from Saudi Arabia to Iran and meeting AL-MUGHASSIL and others. Over time, AL-QASSAB came to play an important role in the military affairs of Saudi Hizballah.

9. SA'ED AL-BAHAR was a Qatif native who first became associated with Hizballah in 1988, when AL-YACoub arranged for him to travel to Iran for religious study. He

also spent time with AL-YACoub in Damascus. In Damascus, he met and became close friends with AL-SAYEGH, who introduced him both to Hizballah and to elements of the Iranian government. In Qom, Iran during 1989 or 1990, he also met AL-HOURI, who accompanied him to military training sponsored by the Iranian government in southern Iran.

10. ABDALLAH AL-JARASH was recruited into Hizballah at the Sayyeda Zeinab shrine in Damascus. At the time of his recruitment, AL-JARASH met AL-MUGHASSIL, AL-HOURI, AL-YACoub, and AL-SAYEGH, all of whom were important party members. AL-JARASH learned that, as a member of Hizballah, he would need to be loyal to the party and to Iran; he also learned that the goal of the party was to target foreign interests, American in particular, in Saudi Arabia and elsewhere. In about 1989, AL-JARASH was sent to Lebanon in a Mercedes supplied by the Iranian embassy in Damascus for military training provided by Lebanese Hizballah members. After being trained, he was assigned to recruit others who felt a strong connection to Iran.

11. HUSSEIN AL-MUGHIS was a native of Qatif, Saudi Arabia who came into contact with Hizballah in about 1990, when he traveled to the Sayyeda Zeinab shrine in Damascus and met AL-MUGHASSIL, AL-HOURI, and AL-SAYEGH, among others. With AL-MUGHASSIL's support, AL-MUGHIS underwent religious training in Qom, Iran, where he met AL-YACoub. Then, in about 1992, AL-MUGHASSIL arranged for AL-MUGHIS to spend two weeks in Lebanon receiving weapons and explosives training. At that time, he filled out a Hizballah membership form provided by AL-MUGHASSIL and learned that Hizballah Hijaz and Lebanese Hizballah were both part of Iranian Hizballah. After this training, AL-MUGHASSIL directed AL-MUGHIS to secretly recruit others for Hizballah.

12. ALI AL-MARHOUN was another Shi'ite Muslim from the town of Qatif in Eastern Saudi Arabia. His first contact with the organization came in about 1991, when he met AL-YACOUB at the Sayyeda Zeinab shrine in Damascus. After AL-MARHOUN discovered that both he and AL-YACOUB wished to be martyrs for Islam, AL-YACOUB introduced AL-MARHOUN to AL-MUGHASSIL, who arranged for AL-MARHOUN to travel to Lebanon for Hizballah training and indoctrination.

13. SALEH RAMADAN and MUSTAFA MU'ALEM were recruited into Saudi Hizballah in approximately 1992 by AL-MARHOUN, whom they knew from their common hometown of Qatif, Saudi Arabia. RAMADAN was chosen because he was very religious and a great admirer of Ayatollah Khomeini, the former Supreme Leader of Iran. Both RAMADAN and AL-MU'ALEM agreed to join Hizballah and form a "cell" under AL-MARHOUN. After being recruited by AL-MARHOUN, RAMADAN and AL-MU'ALEM traveled to Lebanon for military training, where they met AL-MUGHASSIL, who had them fill out written applications for Hizballah membership.

14. FADEL AL-ALAWI was a Qatif native who joined Hizballah in about 1992 at the Sayyeda Zeinab shrine in Damascus. He was recruited by AL-QASSAB, who introduced him to AL-MUGHASSIL. Shortly thereafter, AL-MUGHASSIL arranged for AL-ALAWI to undergo military training in Lebanon.

15. JOHN DOE was a member of Lebanese Hizballah who assisted Saudi Hizballah with the construction of the tanker truck bomb used to attack the American military residences at Khobar Towers. He is described as a Lebanese male, approximately 175 cm tall, with fair skin, fair hair, and green eyes.

### Hizballah Seeks a Target

16. In about 1993, AL-MUGHASSIL instructed AL-QASSAB, AL-YACOUB, and AL-HOURI to begin surveillance of Americans in Saudi Arabia. As a result, AL-QASSAB and AL-YACOUB spent three months in Riyadh conducting surveillance of American targets. AL-SAYEGH joined them during this operation. They produced reports, which were passed to AL-MUGHASSIL, then on to Saudi Hizballah chief AL-NASSER, and to officials in Iran. At the end of their mission, AL-MUGHASSIL came in person to meet with them and review their work.

17. Also in about 1993, AL-YACOUB assigned AL-JARASH to conduct surveillance of the United States Embassy in Riyadh, Saudi Arabia and to determine where Americans went and where they lived. Also at AL-YACOUB's direction, AL-JARASH and AL-MARHOUN conducted surveillance of a fish market frequented by Americans, located near the U.S. Embassy in Riyadh. They reported the results of their surveillance to AL-YACOUB.

18. In early 1994, AL-QASSAB began conducting surveillance, focusing on American and other foreign sites in the Eastern Province of Saudi Arabia, an area that includes Khobar. He prepared written reports, which were passed to AL-NASSER and Iranian officials.

19. In about Fall 1994, AL-MARHOUN, RAMADAN, and AL-MU'ALEM began watching American sites in Eastern Saudi Arabia at AL-MUGHASSIL's direction. They passed their reports to AL-MUGHASSIL, who was then spending most of his time in Beirut, Lebanon. At about the same time, AL-BAHAR began conducting surveillance in Saudi Arabia at the direction of an Iranian military officer.

### Discovery of the Americans at Khobar Towers

20. Khobar Towers was a housing complex in Dhahran, Saudi Arabia, which the United States, among other countries, used to house military personnel assigned to Saudi Arabia. Building # 131 was an eight-story structure within the Khobar Towers complex that United States Air Force personnel, among others, used as their place of residence while serving in Saudi Arabia.

21. In late 1994, after extensive surveillance in Eastern Saudi Arabia, AL-MARHOUN, RAMADAN, and AL-MU'ALEM recognized and confirmed Khobar Towers as an important American military location and communicated that fact to AL-MUGHASSIL. Shortly thereafter, AL-MUGHASSIL gave RAMADAN money to find a storage site in the Eastern Province for explosives. During the course of the cell's surveillance, AL-MUGHASSIL reported to AL-MARHOUN that he had received a phone call from a high Iranian government official inquiring about the progress of their surveillance activity.

### The Surveillance Continues

22. In 1995, AL-BAHAR and AL-SAYEGH conducted surveillance at the direction of an Iranian military officer of the area of Jizan, Saudi Arabia, located on the Red Sea near Yemen; they also surveilled American sites in the Eastern Province. Their goal was to gather information to support future attacks against Americans. AL-SAYEGH took their surveillance reports and passed them to the Iranian officer.

23. In about April or May 1995, AL-MARHOUN attended four days of live-fire drills sponsored by Hizballah in Lebanon. While he was there, he met with AL-MUGHASSIL at his Beirut apartment. During that meeting, AL-MUGHASSIL explained to AL-MARHOUN that Hizballah's goal was to expel the Americans from Saudi Arabia. AL-MUGHASSIL also

explained that he had close ties to Iranian officials, who supplied him with money and gave him directions for the party. AL-MUGHASSIL then gave AL-MARHOUN \$2000 in \$100 United States bills to support AL-MARHOUN's cell in their surveillance activity in Saudi Arabia. AL-MARHOUN used the money to finance a trip to Riyadh with RAMADAN to look for American sites.

#### Planning the Khobar Attack

24. In about June 1995, the Hizballah cell composed of AL-MARHOUN, RAMADAN, and AL-MU' ALEM began regular surveillance of Khobar Towers at AL-MUGHASSIL's direction. Shortly thereafter, RAMADAN traveled to Beirut to brief AL-MUGHASSIL, who instructed the cell to continue surveillance.

25. At about the same time in 1995 that RAMADAN went to Beirut to update AL-MUGHASSIL on surveillance activities, AL-ALAWI was summoned to Beirut by AL-MUGHASSIL. Although AL-ALAWI did not see RAMADAN, he noticed surveillance reports from RAMADAN on AL-MUGHASSIL's desk. During their meeting, AL-MUGHASSIL explained to AL-ALAWI that explosives were going to be used against Americans in Saudi Arabia and he instructed AL-ALAWI to drive a vehicle he said contained explosives from Lebanon to Saudi Arabia. AL-ALAWI did so, only to discover that the car held no explosives; AL-MUGHASSIL explained that he had only been testing him.

26. In about October 1995, an unknown man visited AL-ALAWI at his home in Eastern Saudi Arabia and delivered a map of Khobar, saying AL-MUGHASSIL wanted AL-ALAWI to check its accuracy. A short time later, the same man retrieved the map and left a package weighing about one kilogram. AL-ALAWI kept the package until AL-MUGHASSIL

called and told him to deliver it to another man unknown to him. AL-ALAWI did as instructed and did not look inside the package.

27. In the late fall of 1995, RAMADAN brought more surveillance reports to AL-MUGHASSIL in Beirut. It was then that RAMADAN, AL-MARHOUN, and AL-MU'ALEM learned from AL-MUGHASSIL that Hizballah would attack Khobar Towers, using a tanker truck loaded with a mixture of explosives and gasoline.

28. At the end of 1995 or the beginning of 1996, RAMADAN again returned to Beirut, where he and AL-MUGHASSIL again discussed the planned tanker truck attack on Khobar Towers and the fact that RAMADAN, AL-MARHOUN, and AL-MU'ALEM would each have a role in the attack. AL-MUGHASSIL said they would need enough explosives to destroy a row of buildings and that the attack was to serve Iran by driving the Americans out of the Gulf region.

29. In January or February 1996, AL-MUGHASSIL traveled to Qatif, in the Eastern Province, and instructed AL-MARHOUN to find places to hide explosives. In about February, at AL-MUGHASSIL's direction, RAMADAN met AL-MUGHASSIL in Beirut and drove back to Saudi Arabia with a car loaded with hidden explosives. He delivered the car to a man in Qatif who wore a veil over his face.

#### The Spring 1996 Arrests

30. In March 1996, AL-MUGHASSIL summoned AL-ALAWI to Beirut and again outfitted him with a car that was to contain explosives. AL-ALAWI drove the car from Lebanon, through Syria and Jordan, to the Al-Haditha border crossing in northern Saudi Arabia. There, on March 28, 1996, Saudi border guards discovered 38 kilograms of plastic explosives

hidden in the car and arrested AL-ALAWI. Saudi investigators then arrested AL-MARHOUN, AL-MU'ALEM, and RAMADAN on April 6, 7, and 8, 1996, respectively.

#### Al-Mughassil Finds Replacements

31. After the arrests of AL-ALAWI and the AL-MARHOUN cell, AL-MUGHASSIL went back to Saudi Arabia in April or May 1996 to continue the planning for the Khobar attack. On or about May 1, 1996, AL-MUGHASSIL appeared unannounced at AL-JARASH's home in Qatif, explaining that he had come as part of a pilgrimage and was traveling on a false passport. AL-MUGHASSIL told AL-JARASH of the plot to bomb Khobar Towers, gave him a forged Iranian passport, and asked for his help. He told AL-JARASH that AL-ALAWI and AL-MARHOUN had been arrested. He also showed him a map of Khobar and described a plan in which AL-HOURI and AL-QASSAB would be involved; he told AL-JARASH to be ready for a call to action at any time.

32. Three days later, on about May 4, 1996, AL-MUGHASSIL showed up unannounced at AL-MUGHIS's home in Qatif to tell him of a plan to attack an American housing complex. AL-MUGHASSIL explained that AL-JARASH, AL-HOURI, AL-SAYEGH and a Lebanese Hizballah member would help. AL-MUGHASSIL then gave AL-MUGHIS a timing device to hide at his home.

33. Also during the first half of 1996, AL-HOURI arrived at AL-MUGHIS's home on at least two occasions and enlisted AL-MUGHIS's help in hiding large amounts of explosives. They buried 50-kilo bags and paint cans filled with explosives at various sites around Qatif, near Khobar.

### Building the Bomb

34. In early June 1996, AL-MUGHASSIL and the Lebanese Hizballah member, JOHN DOE, started staying at AL-MUGHIS's home in Qatif. Also in early June, a conspirator purchased a tanker truck from a car dealership in Saudi Arabia, using stolen identification. The conspirator paid about 75,000 Saudi riyals for the truck. Over the next two weeks, the conspirators worked at a farm in the Qatif area to convert the tanker truck into a large truck bomb. Present at the farm were AL-MUGHASSIL, AL-HOURI, AL-SAYEGH, AL-QASSAB, and JOHN DOE. AL-MUGHIS assisted by returning the timing device and retrieving hidden explosives, while AL-JARASH supplied tools and wire to the group. During the bomb construction, AL-MUGHASSIL also discussed plans to bomb the United States Consulate in Dhahran, Saudi Arabia.

35. Between June 7 and June 17, 1996, key members of the conspiracy attended a meeting at the Sayyeda Zeinab shrine in Damascus. Present were AL-NASSER, AL-MUGHASSIL, AL-HOURI, AL-YACoub, AL-SAYEGH, AL-QASSAB, and other high-ranking Saudi Hizballah leaders. At that meeting, AL-NASSER, the head of Saudi Hizballah, discussed the bombing with, among others, AL-MUGHASSIL, AL-HOURI, AL-YACoub, AL-SAYEGH, and AL-QASSAB; AL-NASSER also confirmed that AL-MUGHASSIL was in charge of the Khobar attack.

### The Khobar Attack

36. On the evening of June 25, 1996, AL-MUGHASSIL, AL-HOURI, AL-SAYEGH, AL-QASSAB, AL-JARASH, and AL-MUGHIS met at the farm in Qatif to review final preparations for the attack that evening. The group then executed the bombing plan.

37. Shortly before 10:00 p.m. on the evening of June 25, 1996, AL-SAYEGH drove a Datsun with AL-JARASH as his passenger. The Datsun entered the parking lot adjoining Khobar Towers building # 131 as a scout vehicle and parked in the far corner. Next to enter the parking lot was the getaway car, a white four-door Chevrolet Caprice that AL-JARASH had borrowed from an acquaintance. The Datsun containing AL-SAYEGH and AL-JARASH signaled that all was clear by blinking its lights. With that, the bomb truck, driven by AL-MUGHASSIL, with AL-HOURI as passenger, entered the lot and backed against a fence just in front of Khobar Towers building # 131. After parking the truck, AL-MUGHASSIL and AL-HOURI quickly exited and entered the back seat of the white Caprice, which drove away from the lot, followed by the Datsun from the corner. Within minutes, the truck bomb exploded, devastating the north side of building # 131, which was occupied by American military personnel. The explosion killed nineteen members of the United States Air Force and wounded 372 other Americans.

#### The Conspirators Flee and Al-Sayegh Obstructs

38. As planned, the attack leaders immediately left the Khobar area and Saudi Arabia using a variety of false passports. Only AL-JARASH and AL-MUGHIS remained behind in their hometown of Qatif. AL-SAYEGH reached Canada in August 1996, where he remained until his arrest by Canadian authorities in March 1997. In May 1997, AL-SAYEGH met with American investigators at his request. Among other things, AL-SAYEGH falsely denied knowledge of the Khobar Towers attack and falsely described a purported estrangement between Saudi Hizballah and elements of the Iranian government. After he was removed to the United

States in June 1997 on his promise to assist American investigators, AL-SAYEGH reneged on that promise and unsuccessfully sought political asylum in the United States.

#### The Charge

39. From at least 1988 until the filing of this Indictment, in Saudi Arabia, Syria, Lebanon, Iran, Jordan, and elsewhere out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, SA'ED AL-BAHAR, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, ALI AL-MARHOUN, SALEH RAMADAN, MUSTAFA AL-MU' ALEM, FADEL AL-ALAWI, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, together with other members and associates of Hizballah and others known and unknown to the Grand Jury, while outside the United States, wilfully and knowingly combined, conspired, confederated and agreed to murder nationals of the United States, unlawfully and with malice aforethought, as defined in Title 18, United States Code, Section 1111(a).

40. It was a part and an object of the conspiracy that the defendants, and others known and unknown, would and did: (i) murder United States nationals in Saudi Arabia; and (ii) kill United States nationals employed by the United States military who were serving in their official capacity on the Saudi Arabian peninsula.

#### Overt Acts

41. In furtherance of the conspiracy, and to effect its illegal objects, the following overt acts, among others, were committed:

- a. In about the late 1980s, AL-QASSAB joined Saudi Hizballah.

- b. In about 1988 or 1989, AL-BAHAR joined Saudi Hizballah.
- c. In about 1988 or 1989, AL-JARASH joined Saudi Hizballah.
- d. In about 1990, AL-MUGHIS joined Saudi Hizballah.
- e. In about 1991, AL-MARHOUN joined Saudi Hizballah.
- f. In about 1992, RAMADAN joined Saudi Hizballah.
- g. In about 1992, AL-MU'ALEM joined Saudi Hizballah.
- h. In about 1992, AL-ALAWI joined Saudi Hizballah.
- i. In about 1993, AL-MUGHASSIL instructed AL-QASSAB, AL-YACOB, and AL-HOURI to start surveillance of Americans in Saudi Arabia.
- j. In about 1993, AL-QASSAB, AL-YACOB, and AL-SAYEGH conducted surveillance of American targets in Riyadh, Saudi Arabia.
- k. In about 1993, AL-YACOB assigned AL-JARASH to conduct surveillance of the United States Embassy in Riyadh, Saudi Arabia and instructed him to determine where Americans went and where they lived.
- l. In about 1993, at AL-YACOB's direction, AL-JARASH and AL-MARHOUN conducted surveillance of a fish market frequented by Americans, located near the U.S. Embassy in Riyadh.
- m. In early 1994, AL-QASSAB began conducting surveillance focusing on American and other foreign sites in the Eastern Province of Saudi Arabia.
- n. In about the fall of 1994, AL-MARHOUN, RAMADAN, and AL-MU'ALEM, working as a group, began watching American sites in Eastern Saudi Arabia at AL-MUGHASSIL's direction.

- o. In about the fall of 1994, AL-BAHAR began conducting surveillance in Saudi Arabia at the direction of an Iranian military officer.
- p. In late 1994, following extensive surveillance in Eastern Saudi Arabia, AL-MARHOUN, RAMADAN, and AL-MU'ALEM recognized and confirmed Khobar Towers as an important American military location and communicated that fact to AL-MUGHASSIL.
- q. In late 1994 or early 1995, AL-MUGHASSIL gave RAMADAN money to find a storage site in the Eastern Province for explosives.
- r. In 1995, AL-BAHAR and HANI AL-SAYEGH conducted surveillance at the direction of an Iranian military officer of the area of Jizan, Saudi Arabia.
- s. In 1995, AL-BAHAR and HANI AL-SAYEGH conducted surveillance of American sites in the Eastern Province.
- t. In about April or May 1995, AL-MARHOUN met in Beirut with AL-MUGHASSIL, who gave AL-MARHOUN \$2000 in \$100 United States bills to support AL-MARHOUN's cell in their surveillance activity in Saudi Arabia.
- u. In about June 1995, the Hizballah cell composed of AL-MARHOUN, RAMADAN, and AL-MU'ALEM began intense surveillance of Khobar Towers at AL-MUGHASSIL's direction.
- v. In about mid-1995, RAMADAN traveled to Beirut to brief AL-MUGHASSIL, who instructed the cell to continue surveillance.
- w. In about October 1995, an unknown man visited AL-ALAWI at his home in Eastern Saudi Arabia and delivered a map of Khobar from AL-MUGHASSIL.

- x. In about the second half of 1995, AL-ALAWI met with AL-MUGHASSIL in Beirut.
- y. In about the second half of 1995, AL-ALAWI drove a car for AL-MUGHASSIL from Beirut to Saudi Arabia.
- z. In about the late fall of 1995, RAMADAN brought more surveillance reports to AL-MUGHASSIL in Beirut.
- aa. At about the end of 1995 or the beginning of 1996, RAMADAN returned to Beirut, where he and AL-MUGHASSIL met.
- bb. In about January or February 1996, AL-MUGHASSIL traveled to Qatif, in the Eastern Province, and instructed AL-MARHOUN to find places to hide explosives.
- cc. In about February 1996, at AL-MUGHASSIL's direction, RAMADAN met AL-MUGHASSIL in Beirut and drove back to Saudi Arabia with a car loaded with hidden explosives.
- dd. In March 1996, AL-ALAWI drove a car containing 38 kilograms of plastic explosives for AL-MUGHASSIL from Beirut to Saudi Arabia.
- ee. On or about May 1, 1996, AL-MUGHASSIL appeared at AL-JARASH's home in Qatif to discuss a plan to attack Khobar Towers.
- ff. On or about May 4, 1996, AL-MUGHASSIL appeared at AL-MUGHIS's home in Qatif to discuss a plan to attack Khobar Towers.
- gg. In about the first half of 1996, AL-HOURI and AL-MUGHIS hid explosives around Qatif.

hh. In early June 1996, AL-MUGHASSIL and JOHN DOE started staying at AL-MUGHIS's home in Qatif.

ii. In early June 1996, a conspirator purchased a tanker truck from a Saudi car dealer for about 75,000 Saudi riyals.

jj. In early June 1996, the tanker truck was converted into a bomb at a farm near Qatif.

kk. At some time between June 7 and June 17, 1996, AL-NASSER presided over a meeting at the Sayyeda Zeinab shrine in Damascus, Syria concerning the Khobar Towers attack.

ll. On the evening of June 25, 1996, AL-MUGHASSIL, AL-HOURI, AL-SAYEGH, AL-QASSAB, AL-JARASH, and AL-MUGHIS met to review final preparations for the attack that evening.

mm. On the evening of June 25, 1996, AL-SAYEGH drove a Datsun into the parking lot adjoining Khobar Towers building # 131.

nn. On the evening of June 25, 1996, AL-MUGHASSIL, with AL-HOURI as passenger, parked a tanker truck bomb against a fence in front of Khobar Towers building # 131.

oo. At about 10:00 p.m. on June 25, 1996, a truck bomb exploded next to Khobar Towers building #131.

pp. In or about August 1996, AL-SAYEGH arrived in Canada.

qq. In or about May 1997, AL-SAYEGH met in Ottawa, Canada with American investigators.

rr. In or about June 1997, AL-SAYEGH arrived at Dulles Airport, in the Eastern District of Virginia.

(In violation of Title 18, United States Code, Section 2332(b).)

## COUNT TWO

### Conspiracy to Murder Employees of the United States

42. The allegations contained in paragraphs 1 through 38 are repeated.

43. From at least 1988 until the date of the filing of this Indictment, in Saudi Arabia, Syria, Lebanon, Iran, Jordan, and elsewhere out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, SA'ED AL-BAHAR, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, ALI AL-MARHOUN, SALEH RAMADAN, MUSTAFA AL-MU'ALEM, FADEL AL-ALAWI, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, together with other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed unlawfully to kill officers and employees of the United States and agencies and branches thereof, while such officers and employees were engaged in, and on account of, the performance of their official duties, and persons assisting such employees in the performance of their duties, in violation of Section 1114 of Title 18, United States Code, including members of the American military stationed in Saudi Arabia.

### Overt Acts

44. In furtherance of the conspiracy, and to effect its objects, the defendants, and others known and unknown to the grand jury, committed the overt acts set forth in Count One of this Indictment, which are fully incorporated by reference.

(In violation of Title 18, United States Code, Sections 1114 and 1117.)

### COUNT THREE

#### Conspiracy to Use Weapons of Mass Destruction Against Nationals of the United States

45. The allegations contained in paragraphs 1 through 38 are repeated.

46. From at least 1988 until the date of the filing of this Indictment, in Saudi Arabia, Syria, Lebanon, Iran, Jordan, and elsewhere out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, SA'ED AL-BAHAR, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, ALI AL-MARHOUN, SALEH RAMADAN, MUSTAFA AL-MU'ALEM, FADEL AL-ALAWI, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, together with other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed to use weapons of mass destruction, namely, bombs, without lawful authority against nationals of the United States while such nationals were outside the United

District of Virginia, together with other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed unlawfully to maliciously damage and destroy, and attempt to damage and destroy, by means of fire and explosives, buildings, vehicles and other personal and real property in whole or in part owned and possessed by, and leased to, the United States and departments and agencies thereof, and as a result of such conduct directly and proximately caused the deaths of at least nineteen persons, in violation of Title 18, United States Code, Sections 844(f)(1) and (f)(3).

#### Overt Acts

51. In furtherance of the conspiracy, and to effect its objects, the defendants, and others known and unknown to the grand jury, committed the overt acts set forth in Count One of this Indictment, which are fully incorporated by reference.

(In violation of Title 18, United States Code, Sections 844(n), 844(f)(1) and 844(f)(3).)

#### COUNT FIVE

##### Conspiracy to Attack National Defense Premises

52. The allegations contained in paragraphs 1 through 38 are repeated.

53. From at least 1988 until the date of the filing of this Indictment, in Saudi Arabia, Syria, Lebanon, Iran, Jordan, and elsewhere out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, SA'ED AL-BAHAR, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, ALI AL-

MARHOUN, SALEH RAMADAN, MUSTAFA AL-MU'ALEM, FADEL AL-ALAWI, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, together with other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed to injure and destroy, and to attempt to injure and destroy, national-defense premises, with intent to injure, interfere with, and obstruct the national defense of the United States.

#### Overt Acts

54. In furtherance of the conspiracy, and to effect its objects, the defendants, and others known and unknown to the grand jury, committed the overt acts set forth in Count One of this Indictment, which are fully incorporated by reference.

(In violation of Title 18, United States Code, Sections 2155(a) and (b).)

#### COUNT SIX

##### Bombing of Khobar Towers Resulting in Death

55. The allegations contained in paragraphs 1 through 38 are repeated.

56. On or about June 25, 1996, in Saudi Arabia, and out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACOUB, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, aided and abetted by one another and by other members and associates of Hizballah and

others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did maliciously damage and destroy, by means of fire and explosives, buildings, vehicles and other personal and real property in whole and in part owned and possessed by, and leased to, the United States and departments and agencies thereof, to wit, the defendants, together with other members and associates of Hizballah, detonated an explosive device that damaged and destroyed Khobar Towers building # 131, and as a result of such conduct directly and proximately caused the deaths of at least nineteen people.

(In violation of Title 18, United States Code, Sections 844(f)(1), 844(f)(3) and 2.)

#### COUNT SEVEN

##### Use of Weapons of Mass Destruction Against Nationals of the United States in Saudi Arabia

57. The allegations contained in paragraphs 1 through 38 are repeated.

58. On or about June 25, 1996, in Saudi Arabia, and out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, aided and abetted by one another and by other members and associates of Hizballah and others known and unknown to the Grand Jury, wilfully, knowingly, and without lawful authority, did use a weapon of mass destruction against nationals of the United States while such nationals were outside of the United States, and against property that was owned, leased and used by the

United States, and by departments and agencies of the United States, to wit, the defendants attacked with a bomb the residence of American military personnel at Khobar Towers, and employees of the American Government stationed at this residence, which use of such weapon of mass destruction resulted in the deaths of at least nineteen persons.

(In violation of Title 18, United States Code, Sections 2332a(a)(1), 2332a(a)(3) and 2.)

#### COUNTS EIGHT THROUGH TWENTY-SIX

##### Murder While Using Destructive Device During Crime of Violence

59. The allegations contained in paragraphs 1 through 38 are repeated.

60. On or about June 25, 1996, in Saudi Arabia, and out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, aided and abetted by one another and by other members and associates of Hizballah and others known and unknown to the Grand Jury, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, namely, Conspiracy to Kill United States Nationals as charged in Count One of this Indictment, did knowingly use a destructive device, and in the course of such use did commit murder as defined in Title 18, United States Code, Section 1111, that is, the defendants unlawfully killed the persons listed below through the use of a destructive device with malice aforethought, such murder being willful, deliberate, malicious, and premeditated:

<u>Count</u>	<u>Victim</u>
EIGHT	Captain Christopher J. Adams
NINE	Staff Sergeant Daniel B. Cafourek
TEN	Sergeant Millard D. Campbell
ELEVEN	Senior Airman Earl F. Cartrette, Jr.
TWELVE	Technical Sergeant Patrick P. Fennig
THIRTEEN	Captain Leland T. Haun
FOURTEEN	Master Sergeant Michael G. Heiser
FIFTEEN	Staff Sergeant Kevin J. Johnson
SIXTEEN	Staff Sergeant Ronald L. King
SEVENTEEN	Airman First Class Christopher B. Lester
EIGHTEEN	Master Sergeant Kendall K. Kitson, Jr.
NINETEEN	Airman First Class Brent W. Marthaler
TWENTY	Airman First Class Brian W. McVeigh
TWENTY-ONE	Airman First Class Peter J. Morgera
TWENTY-TWO	Technical Sergeant Thanh V. Nguyen
TWENTY-THREE	Airman First Class Joseph E. Rimkus
TWENTY-FOUR	Senior Airman Jeremy A. Taylor
TWENTY-FIVE	Airman First Class Justin R. Wood
TWENTY-SIX	Airman First Class Joshua E. Woody.

(In violation of Title 18, United States Code, Sections 924(j) (formerly 924(i)), 924(c) and 2.)

COUNTS TWENTY-SEVEN THROUGH FORTY-FIVE

Murder of Employees of the United States

61. The allegations contained in paragraphs 1 through 38 are repeated.

62. On or about June 25, 1996, in Saudi Arabia, and out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, and JOHN DOE, defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, aided and abetted by one another and by other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, wilfully, deliberately, and maliciously, and with malice aforethought and premeditation, did murder officers and employees of the United States Government in violation of Title 18, United States Code, Section 1111, while such officers and employees were engaged in and on account of the performance of their official duties, namely, the defendants caused the deaths of the following persons by bombing Khobar Towers in Saudi Arabia:

<u>Count</u>	<u>Victim</u>
TWENTY-SEVEN	Captain Christopher J. Adams
TWENTY-EIGHT	Staff Sergeant Daniel B. Cafourek
TWENTY-NINE	Sergeant Millard D. Campbell
THIRTY	Senior Airman Earl F. Cartrette, Jr.
THIRTY-ONE	Technical Sergeant Patrick P. Fennig
THIRTY-TWO	Captain Leland T. Haun

THIRTY-THREE	Master Sergeant Michael G. Heiser
THIRTY-FOUR	Staff Sergeant Kevin J. Johnson
THIRTY-FIVE	Staff Sergeant Ronald L. King
THIRTY-SIX	Airman First Class Christopher B. Lester
THIRTY-SEVEN	Master Sergeant Kendall K. Kitson, Jr.
THIRTY-EIGHT	Airman First Class Brent W. Marthaler
THIRTY-NINE	Airman First Class Brian W. McVeigh
FORTY	Airman First Class Peter J. Morgera
FORTY-ONE	Technical Sergeant Thanh V. Nguyen
FORTY-TWO	Airman First Class Joseph E. Rimkus
FORTY-THREE	Senior Airman Jeremy A. Taylor
FORTY-FOUR	Airman First Class Justin R. Wood
FORTY-FIVE	Airman First Class Joshua E. Woody.

(In violation of Title 18, United States Code, Sections 1111, 1114 and 2.)

#### COUNT FORTY-SIX

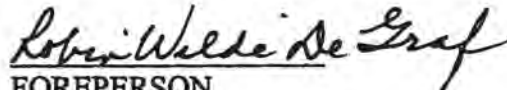
##### Attempted Murder of Employees of the United States

63. The allegations contained in paragraphs 1 through 38 are repeated.

64. On or about June 25, 1996, in Saudi Arabia, and out of the jurisdiction of any particular state or district, AHMED AL-MUGHASSIL, aka "Abu Omran," ALI AL-HOURI, HANI AL-SAYEGH, IBRAHIM AL-YACoub, ABDEL KARIM AL-NASSER, MUSTAFA AL-QASSAB, ABDALLAH AL-JARASH, HUSSEIN AL-MUGHIS, and JOHN DOE,

defendants, at least one of whom was first brought to and arrested in the Eastern District of Virginia, aided and abetted by one another and by other members and associates of Hizballah and others known and unknown to the Grand Jury, unlawfully, deliberately, and maliciously, and with malice aforethought and premeditation, did attempt to murder officers and employees of the United States Government in violation of Title 18, United States Code, Section 1111, while such officers and employees were engaged in and on account of the performance of their official duties, and persons assisting such United States Government officers and employees in the performance of such duties, and on account of that assistance, by bombing Khobar Towers in Saudi Arabia.

(In violation of Title 18, United States Code, Sections 1113, 1114 and 2.)

  
FOREPERSON

  
KENNETH E. MELSON  
UNITED STATES ATTORNEY

# ANNEX 256





FOR IMMEDIATE RELEASE

AG

THURSDAY, JUNE 21, 2001

(202) 514-2007

WWW.USDOJ.GOV

TDD (202) 514-1888

**ATTORNEY GENERAL STATEMENT**

WASHINGTON, D.C. Attorney General John Ashcroft today released the following statement regarding today's indictment in the 1996 Khobar Towers bombing:

- "Today a federal grand jury in Alexandria, Virginia returned an indictment charging fourteen individuals with murder, attempted murder of federal employees, conspiracy to commit murder, and conspiracy to use a weapon of mass destruction related to the June 25, 1996 terrorist bombing of the Khobar Towers dormitory complex in Saudi Arabia. As a result of this terrorist act, nineteen United States Airmen were killed and 372 Americans were wounded."
- "Named as defendants are the leader of the Saudi Hizballah terrorist organization, as well as several prominent members, including the head of the Saudi Hizballah's military wing, along with members of terrorist cells in Saudi Arabia who planned and carried out the Khobar attack."
- "The indictment explains that the terrorist activities leading to the 1996 Khobar blast began as early as 1993, when members of Hizballah began extensive surveillance to find American targets in Saudi Arabia."
- "In 1995, according to the indictment, the terrorists focused on Khobar Towers, which housed U.S. Air Force personnel assigned to the Gulf region. After amassing large amounts of plastic explosives, the terrorists, assisted by an as-yet unidentified member of Lebanese Hizballah - referred to in the indictment as "John Doe" - converted a tanker truck into a huge bomb. They detonated that bomb near the north face of building #131 at Khobar Towers shortly before 10 p.m. on June 25, 1996."
- "The indictment explains that elements of the Iranian government inspired, supported, and supervised members of the Saudi Hizballah. In particular, the indictment alleges that the charged defendants reported their surveillance activities to Iranian officials and were supported and directed in those activities by Iranian officials. This indictment does not name as defendants individual members of the Iranian government."
- "Let me add at this point, that as always, every decision in this case has been made under the normal standards we apply to every criminal case. The only limitation on this case -- as with any criminal case -- is what we believe we can prove in a court of law. While Federal District Court rules prohibit my commenting on the evidence available to us at the present time, I can say that this investigation is continuing and we will continue to bring

additional charges as appropriate. Today's indictment is however, an important milestone in this ongoing investigation.

- "For five years, the Department of Justice and the FBI have worked to develop the evidence necessary to bring these charges for this terrible crime. This indictment comes at a time of legal and personal significance for this case.
- "As a legal matter, important charges arising out of the Khobar attack, if not filed promptly, might have been lost under our statute of limitations on the fifth anniversary of this tragedy, which is next Monday. As a personal matter for the victims and their families, the indictment returned today means that next week's five-year anniversary of this tragedy will come with some assurance to victim family members and to the wounded that they are not forgotten.
- "I know that all of America joins me in once again offering our condolences for the terrible losses endured by the families of Americans killed or injured in this tragedy.
- "For America it is also an important reminder of the tremendous sacrifices made by those who bravely serve to protect our nation and its freedom. This indictment underscores the commitment of the Bush Administration and the Department of Justice to bringing terrorists to justice. Americans are a high priority target for terrorists. Our nation will vigorously fight to preserve justice for our citizens here at home and abroad.
- "I would like to thank the Saudi government for its assistance throughout this investigation.
- Today's charges would not have been possible without their help and we look forward to working with them as the investigation continues.
- "I would also like to thank the prosecution team and the men and women of the FBI whose hard work on this investigation has been indispensable. Finally, I would like to thank FBI Director Freeh. Since the horrific attack on Khobar Towers five years ago, the Director has not wavered in his pursuit of this investigation. His personal involvement and tireless commitment are substantial reasons why we stand here today. He has also reached out to the victims and their families, meeting with them personally to listen to their concerns, share information, answer questions, and pledge his continuing support.
- "This investigation exemplifies the leadership, integrity, and compassion that Louis Freeh delivered over the past eight years as Director of the FBI. Together with his colleagues, he has moved this institution forward into the twenty-first century, building law enforcement cooperation and investigative capacities respected across the nation and around the world."

KHOBAR INDICTMENT, 6/21/01

###

01-275

# ANNEX 257



# Lebanese Bristle Over Iran Commander's Comments Regarding Hezbollah Missile Capabilities

By Dale Gavlak

January 04, 2021 02:43 PM



AMMAN - Lebanese Sunni Muslims, Christians, and others are condemning recent remarks by Iran's Islamic Revolutionary Guard Corps Air Force Commander Amir Ali Hajizadeh, who claimed that Lebanon owed its missile capabilities to Iran and that Lebanon was in the front line in Iran's fight against Israel.

Political leaders and citizens alike say the remarks raise questions about Lebanon's sovereignty and threaten to further complicate its already-stalled Cabinet formation process.

Hussein al-Wajeh, the media adviser to Lebanon's Sunni Prime Minister-designate, Saad Hariri, lashed out at Hajizadeh, saying that Lebanon was not and would not be the front line for Iran's battles.

"The Lebanese will not pay any price on behalf of the Iranian regime. Despite this, some Iranian officials insist on considering Lebanon an Iranian province," Hussein Al-Wajeh said.

Christian politician Sami Gemayel of the Kataeb Party said, “Lebanon and the Lebanese are a hostage in Iran’s hands through Hezbollah. They are using us as human shields in their battle, which Lebanon has nothing to do with. The presidency, the government and parliament are false witnesses and are covering up controlling Lebanon.”



Earlier, Hezbollah leader Hassan Nasrallah said his Iran-backed Shi’ite militia now had twice as many precision-guided missiles as it did a year ago, adding that Israel’s efforts to prevent it from acquiring them had failed. Israel considers Hezbollah, which is backed by Iran and Lebanon, to be its most immediate terrorist threat.

Paul Salem, president of the Washington-based Middle East Institute, who is also Lebanese, said Iran uses its client Hezbollah in Lebanon and beyond to achieve its own ends.

“As far as Iran is concerned, the Lebanon and Syria space for them is their way to put pressure on Israel and the United States. And they don’t see them as separate,” he said. “The fundamental flaw in the Lebanese state is that it is a state that doesn’t have sovereignty. We don’t control our borders, our airport, the port; we cannot collect electricity tariffs. We are enthralled [meaning enslaved] to a domestic army that follows an external force.”



Beirut's *An-Nahar* daily said it was stunned by Lebanese President Michel Aoun's initial silence on Hajizadeh's remarks. But Aoun is a key ally of Hezbollah, the de facto powerbroker in the country.

Salam Yamout, who heads the secular National Bloc Party, said that putting Lebanon in battles associated with regional disputes directly threat not only Lebanese interests, but the fight to restore its sovereignty.

Walid Joumblatt, leader of the Druze community and an outspoken critic of Iran, warned against pushing Lebanon into a new military conflict on Tehran's behalf. He tweeted, asking why Lebanon should get "involved in participating [in a confrontation] where we have no decision on anything?"

Hezbollah has been criticized by its Lebanese and Arab opponents for participating in the war in Syria and other regional conflicts on behalf of Iran.



# ANNEX 258



**anonymized version**

Verdict number / registry number  
2021 / [--]

Repertory number / European  
[--]

Date of decision  
**February 4, 2021**

Name of the defendant(s)  
**S.A.**

System number Public Prosecutor's office  
**18RF666**

Docket number  
**20A003763**

Public Prosecutor's Memorandum number  
**FD/A/35/97/19/2018**

**Court of First Instance Antwerp,  
Section Antwerp  
Court AC8**

**Decision**

Handed down on  
[--]  
Not to be registered  
[--]

In the case of the Office of the Public Prosecutor

AND CIVIL PARTY/PARTIES:

- 1)     E.Z.  
      xxx  
      **civil party**
- 2)     R.T.  
      xxx  
      **civil party**
- 3)     G.T.  
      xxx  
      **civil party**
- 4)     R.G., erroneously subpoenaed as G.  
      xxx  
      **civil party**
- 5)     W.M.  
      xxx  
      **civil party**
- 6)     N.I.W  
      xxx  
      **civil party**
7.     I.B.  
      xxx  
      **civil party**
- 8)     A.G.  
      xxx  
      **civil party**
- 9)     L.C.  
      xxx  
      **civil party**
- 10)    T.K.  
      xxx  
      **civil party**
- 11)    R.B.  
      xxx  
      **civil party**
- 12)    Y.B.

xxx

**civil party**

13) T.B.

xxx

**civil party**

14) F.H.

xxx

**civil party**

15) S.A.J.

xxx

**civil party**

16) G.T.

xxx

**civil party**

17) R.J.

xxx

**civil party**

18) M.R.

xxx

**civil party**

19) R.H.

xxx

**civil party**

20) M.P.

xxx

**civil party**

21) A.T.

xxx

**civil party**

22) S.S.

xxx

**civil party**

23) J.L.

xxx

**civil party**

24) H.A.

xxx  
**civil party**

25) M.J.D.  
xxx  
**civil party**

26) P.B.  
xxx  
**civil party**

The civil parties:

\* sub 1 through 13, 15 through 26 represented by:

\* counsel sub 14

– xxx

**versus:**

A.S.  
xxx  
**currently detained in Antwerp prison**

defendant, represented by Mr. xxx, LL.M.

2) N.N.  
xxx  
**currently detained in Antwerp prison**

defendant, represented by Mr. xxx, LL.M.

3) M.A.  
xxx  
**currently detained in Mechelen prison**

defendant, represented by Mr. xxx, LL.M.

4) A.A.  
xxx  
**currently detained in Beveren prison**

defendant, represented by Mr. xxx, LL.M.

## **CHARGE(S)**

As perpetrator or co-perpetrator within the meaning of Article 66 of the Penal Code [PC];

**A. Attempted terrorist attack as referred to in Art. 137 § 2.1° PC (murder)**

By violation of Articles 51, 52, 137, §1 and §2, 1°, 138, 393 and 394 of the Belgian Penal Code, having attempted, to the harm of at least and including the civil parties listed above, attending the congress of the National Iranian Resistance Council at Villepinte (France) on June 30, 2018, to kill with the intention to kill and with premeditation, as well as with a terrorist objective within the meaning of Article 137, §1 of the Penal Code, where the intention to commit the criminal act became evident by overt acts constituting initiation of the performance of this criminal act and only ceased or failed to have effect as a consequence of circumstances outside the will of the perpetrators.

In the judicial district Antwerp and Brussels and/or elsewhere in the Realm and outside the Realm, in particular at least in Austria, Iran, Germany, the Grand Duchy of Luxembourg, and France, at least in the period from 03/01/2018 through 06/30/2018

by the first (A.S.), the second (N.N.), the third (M.A.) and the fourth (A.A.) [defendants]

**B. ....**

**C. ....**

**D. Participation in the Activities of a Terrorist Group**

Having participated in any activity of a terrorist group, being a structured association of more than two persons, which has been in existence for some time and which acts in mutual consultation to commit terrorist crimes, as referred to in Article 137 of the Penal Code, and the actual purpose of which is not exclusively political, professional, charitable, philosophical, or religious, or which does not exclusively pursue some other legitimate objective, be it only by providing information or material resources to this terrorist group or by any form of financing any activity of this terrorist group, while they:

- were aware that their participation contributes to the commission of a criminal act or offense by the terrorist group (for the period of 01/01/2015 through 12/31/2016)
  - were aware or should have been aware that their participation could contribute to the commission of a criminal act or offense by the terrorist group (for the period of 01/01/2017 through 06/30/2018).
- Art. 139 and 140 § 1 Sw)

In the judicial district Antwerp and Brussels and/or elsewhere in the Realm and outside the Realm, in particular at least in Austria, Iran, Germany, Italy, the Grand Duchy of Luxembourg and France,  
by the first (A.S.), the second (N.N.), the third (M.A.) and the fourth (A.A.) [defendants]

**PROCEDURE**

The Court notes the decision of the closed session of this Court of July 15, 2020, in which mitigating circumstances were granted.

The proceedings and arguments of the case took place in public session.

The proceedings were held in the Dutch language, except with respect to the translated part.

The Court has appointed as sworn translator Parijs D.A., in order to assist the civil party H.F. for translation of everything being said from English into Dutch and vice versa.

The Court has appointed as sworn translators S.F. and S.M.E., in order to assist the defendants S.A., N.N., and A.M. for translation of everything being said from Dutch into Farsi and vice versa.

The Court has noted the documents of the proceedings and heard all parties present.

### **PRIOR MATTERS:**

It has become evident during the consultations that:

\* The civil parties sub 3) T.G. and 16) T.G. are one and the same civil party;

\* The civil party sub 4) was identified on the summons as R. G., while this should be read as R.G.; The Court corrects this material error.

\* In the minutes of the public sessions of November 27, 2020, and December 3<sup>rd</sup>, 2020, the family name of the civil party sub 21 was given as A., while it appears from the summary findings of the civil parties that this must be read as "T.". The Court corrects this material error as well.

\* The summary findings of the civil parties also mention the [person] named: P.B., xxx. The Court determines that this civil party – for whom motions were promptly received – was by material error not mentioned in the minutes of the public sessions of November 27, 2020, and December 3<sup>rd</sup>, 2020. The Court directs that this civil party be entered into the records (sub 26) and determines that this civil party was in effect represented by his attorneys and was heard as a civil party at the public sessions of November 27, 2020, and December 3, 2020.

### **WITH RESPECT TO CRIMINAL LAW**

#### **PROCEDURE**

##### **I. SPECIAL INVESTIGATION METHODS CHECK**

By judgment of June 4<sup>th</sup>, 2020, of the Indictments Chamber, a Special Investigation Methods check was performed and no irregularities were found.

## **II. Exclusion of the finding of the Public Prosecutor**

[The] second defendant requested at the public session of November 27, 2020, that the findings of the Public Prosecutor be excluded, as they had not been imparted to the defense of [the] second defendant.

The attorneys of the civil parties as well as the other defendants received the decisions of the Office of the Public Prosecutor in good time, but apparently a mistake was made with respect to sending the decisions to the defense of [the] second defendant.

As the decisions of the Office of the Public Prosecutor were timely indeed, the Court, in agreement with all parties, granted the defense of [the] second defendant the opportunity to respond to the decisions as yet by the public session of December 3<sup>rd</sup>, 2020.

Therefore, the Court will not exclude the decisions of the Office of the Public Prosecutor.

## **III. Inadmissibility of the criminal indictment for reason of *obscuri libelli* [obscure pamphlets] and violation of the right to [a] defense.**

The defense of the third defendant raises this in the decisions. At the public session, the third defendant states that he no longer insists on this exception and abandons it.

For completeness' sake, the Court ascertains this for all defendants.

The acts of the charges must be described in such manner that their object appears from them with adequate clarity for the defendants and that their right to defend themselves is preserved.

There is no question of *obscuri libelli*. The defendants can clearly gather from the charges what they are being prosecuted for. The defendants can defend themselves with respect to the criminal acts described in the charges.

There is no provision in the Law stipulating that the defendants should exclusively be informed by the summons or by the referral order.

The defendants may also be informed by reading the summons together with the documents from the criminal file which have been shared with them and on which they have been able to claim their right to a defense before the Court on the merits. Moreover, the Office of the Public Prosecutor first submitted a comprehensive statement which explained everyone's part in detail. Therefore, the defendants were sufficiently informed.

Moreover, the closing statement of the Office of the Public Prosecutor was sufficiently clear and the defense of the defendants was perfectly able to counter this, which in fact they did.

Therefore, the Court cannot find any violation.

#### **IV. The invocation of personal immunity and immunity as diplomatic officer.**

The fourth defendant asserts that he is a diplomatic officer and enjoys immunity pursuant to the Vienna Convention on diplomatic relations of April 18, 1961. Moreover, he argues that he could not be arrested in Germany and subsequently extradited to Belgium in view of his personal immunity, to which he is entitled pursuant to the aforesaid convention.

In view of his immunity, he cannot be prosecuted before the Belgian Courts either.

There is no question that at the time of his arrest, the fourth defendant was a member of the diplomatic personnel (third Counsel since June 23, 2014 – diplomatic passport D9016657 of April 26, 2014) and that he was accredited in Austria for the State of Iran. He had a diplomatic passport. He can be considered a diplomatic officer (Article 1.e Vienna Convention), and this until July 2, 2018 (date of revocation of immunity by the Austrian government.)

Pursuant to the Belgian Penal Code, anyone who commits a criminal act on Belgian soil is punishable, regardless of the citizenship of the perpetrator(s). The Belgian Courts are competent to take cognizance of all elements and circumstances of the criminal act which are inextricably bound up with this criminal act on Belgian soil. This means that physical criminal acts committed partly in Belgium and partly abroad can be prosecuted in Belgium. Perpetrators who participate abroad in a criminal act in Belgium can be prosecuted in Belgium.

International Law assumes the sovereignty of independent states, which are all treated equally. The Vienna Convention is a special arrangement with respect to this sovereignty and determines the way in which states treat diplomatic personnel.

From the manner in which the convention was arrived at and later interpretation of the convention, it is evident that the Vienna Convention codified customary law regarding diplomatic personnel and that all (important) rules are contained in this convention.

The provisions regarding diplomatic relations are bilateral agreements between the state of origin and the receiving state and are based on the principle of reciprocity. In that sense,

the Vienna Convention must be interpreted restrictively, and this does not create obligations toward other states which are not part of the bilateral agreements between the state of origin and the receiving state, with the exception of Art. 40 of the Vienna Convention.

In Article 31, the Vienna Convention provides that:

*“The diplomatic officer enjoys immunity with regard to the judiciary in criminal cases of the receiving state.”*

The immunity obtained by a diplomatic officer is only an immunity with respect to criminal prosecution in the receiving state, being an immunity of enforcement.

A diplomat can indeed commit punishable acts in another country and can be prosecuted for these in any other country than the receiving state (in this case Austria). The acts he committed as an accessory from Austria can perfectly well be prosecuted in Belgium.

Precisely because of the sovereignty of the independent states, Austria cannot provide immunity to criminal prosecution in another country.

Austria revoked the immunity (mandate immunity) of the fourth defendant on July 2, 2018 (application of Art. 9 Vienna Convention), but this exclusively applies to any criminal prosecution in Austria for punishable acts for which the Austrian judiciary is competent.

The diplomat involved is then declared “persona non grata” and is given the opportunity to leave the country within a well-described limited period.

However, this is entirely irrelevant to the case, as it involves Belgian criminal acts which were partly committed in Belgium and partly in other EU countries, such as Luxembourg and Italy, and this has nothing to do with the immunity which the fourth defendant enjoyed in Austria.

All in all, the fourth defendant does not enjoy any immunity whatsoever with regard to criminal prosecution for punishable (accessory) acts in Belgium.

The fourth defendant argues that he was unjustly arrested in Germany and invokes Art. 40 of the Vienna Convention. Because of his unjust arrest in Germany, he was unjustly extradited to Belgium and unjustly stands trial before this Court.

In this matter, the Court refers to the decision of the Antwerp Chamber of Indictment [CoI] and the subsequent judgment of the Court of Cassation in the context of the pre-trial detention.

In a judgment of December 18, 2018, the CoI determined: *“It appears from the factual information in the criminal record that the defendant was on vacation in Belgium and Germany. He was arrested in Germany*

*on July 1, 2018, when he was on the way to his diplomatic station in Austria..., the suspect did not use his diplomatic immunity. He was arrested and detained regularly. The arrest warrant is regular.”.*

In its judgment of January 2, 2019, the Court of Cassation decided:

*“It follows from these provisions that the inviolability and the immunities are granted by the receiving state of the diplomat and by a third State, when the diplomat is passing through the territory of a third State to accept his duties at his posting or to return to his posting or when he returns to his own country.*

*“Passing through” as described in Art. 40.1, first sentence [of the] Vienna Convention, to be strictly interpreted, is understood to mean solely the passage related to the exercise of the diplomatic assignment of the diplomat, in particular the journey from the country of origin to reach the diplomatic station or to return to the home country, or the journey from the station to the country where the diplomat is to fulfill a diplomatic mission or, after fulfillment of this mission, to return from said country to the diplomatic station.*

*A return from a third country where the diplomat is staying on vacation, is alien to the exercise of the diplomatic assignment and, therefore, is not a passage as described in Art. 40, first sentence, Vienna Convention.”*

The German judiciary as well came to the conclusion, with the detention/arrest as with the subsequent procedure which led to his extradition, that the defendant was on vacation, did, moreover, not have a diplomatic function in Germany and, therefore, could not invoke his diplomatic status.

Because it is raised again by the fourth defendant, the Court concurs completely with the judgment of the Court of Cassation in the context of the pre-trial detention.

The diplomatic relations and all rights (for the diplomat) and obligations for the receiving state ensuing from this are bilateral agreements between the sending state and the receiving state, as provided by the Vienna Convention.

The Convention does not require direct passage between the sending and the receiving state. One can pass through a third country to go to one's diplomatic posting in the receiving state or to return to the sending state. This is, therefore, an exception to the rule of the bilateral agreement between the sending state and the receiving state. The Vienna Convention provides that third countries, who are foreign to the diplomatic relation between the sending state and the receiving state, must grant passage to diplomatic officers and, therefore, must respect the immunity/personal inviolability of the diplomatic officer in a certain sense. This exception must, therefore, be interpreted restrictively. The passage is, therefore, strictly limited to this specific relocation or a relocation to a country other than the receiving state for the sake of a specific diplomatic mission.

One does not enjoy immunity when one is in a third country for purely personal reasons.

From the findings during the observation, the road checks, rental of the vehicle (from June 25 through July 2<sup>nd</sup>, 2018) and their itinerary (Germany, Luxembourg, Netherlands, Liège,...), it appears irrefutably that the fourth defendant was vacationing with his family and, therefore, was not on a diplomatic mission or diplomatic trip.

The argumentation attempted by the fourth defendant that his immunity as a diplomat is comparable to the total immunity of foreign heads of state and ministers in all countries does not fly and cannot be deduced from any international legal provision, case law, or custom. It is not provided anywhere that diplomatic immunity has such a wide scope.

Finally, one may refer to Art. 38 [of the] Vienna Convention: *“Except to the extent a receiving state grants supplemental rights and immunities, a diplomatic officer who is a citizen of that state or resides there permanently, only enjoys immunity from the rule of law and inviolability with regard to official activities carried out in the discharge of his function.”*

It appears from the statement of the Public Prosecutor that the fourth defendant is suspected not to be a diplomat in reality. He is alleged to be an Iranian intelligence officer, who functioned as a runner for his European informers. His stature as a diplomat was possibly misused to allow the commission of punishable acts elsewhere in Europe and even [to] smuggle an explosive device from Iran to Europe under diplomatic cover.

He is suspected to be the (co-)organizer of a potential foiled deadly attack in France. These actions cannot possibly be considered as (normal) diplomatic activities performed in the context of his function.

The actual activities of which the defendant is suspected, if proven, even contravene Art. 3 of the Convention.

This Article provides that the functions of a diplomatic mission include: *“....protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law.”* His unofficial activities, of which he is suspected, do not fit at all within the limits permitted by international law and the intention of the participants in the treaty cannot be to cover by some diplomatic immunity the actions of which the fourth defendant is suspected.

## **V. The invoked state immunity and the Court’s lack of jurisdiction**

The fourth defendant states more precisely that he does not invoke immunity as a government official, because according to him he enjoys immunity as a diplomat.

However, he does argue that the Court is not competent to make judgment on the involvement of the State of Iran or one of its agencies (such as the intelligence service MOIS or department 312), and this, based on the international-law principle of state immunity.

As already set forth above, international law is based on the sovereignty of states. All states are equal and states are not to judge each other and this is supported in international law by state immunity.

Said state immunity does not only apply to the national state, but also to its agencies and even, possibly, its officials. Initially said state immunity was interpreted quite absolutely in international law, but because of, among other things, the expanding trade relations in which states participated, exceptions to this principle have arisen.

The Court finds that neither the State of Iran, nor the intelligence service MOIS, nor department 312 of the Iranian intelligence service are on trial here as defendants, so that the principle of state immunity has not been violated.

The Court does not agree that it would be a violation of state immunity if the Court would find on the basis of a criminal record that there is a certain involvement of a foreign state, its agencies or officials. Obviously, the Court cannot convict the State of Iran or its agencies, but then, they are not on trial here as defendants. Any other view would result in a restriction on the sovereignty of the Belgian constitutional state, which in itself would already contravene state immunity.

The Court notes that the fourth defendant does not invoke his immunity as a state official for himself. He invokes his diplomatic immunity, but as already stated above, this immunity does not apply in the criminal case at hand.

For completeness' sake, he cannot invoke his immunity as a state official either.

The fourth defendant is on trial for his personal criminal involvement. This involvement may be personal, but may also fit within a certain illegal task assigned to him by his principals, for instance people in the intelligence services.

Obviously, the immunity of state officials of a foreign state in the area of criminal law could only apply to the punishable actions performed by a state official in the context of the performance of his official government duties (functional immunity).

The fourth defendant is suspected of having organized an attack or at least of having taken the lead in planning a terrorist attack in

France with potential fatalities. We may assume that this activity does not belong among the official activities of an official of the State of Iran in general and an intelligence service in particular. Certainly it will not belong to the duties of a diplomatic official, but neither to the official duties of intelligence services, which in principle should only gather, analyze and process intelligence.

Moreover, neither the State of Iran nor any other agency in the Iranian administration has claimed the activities of which the fourth defendant is suspected. Not at any time has the State of Iran recognized that these activities took place in the context of the official function of the defendant. The State of Iran has never recognized that it wanted to make an attack on a conference of the Iranian opposition on June 30, 2018.

One can also wonder whether state immunity can be invoked for terrorist activities. The right to life is an absolute basic right of a citizen, wherever in the world. Infringing this universal basic right by terrorist activities can hardly be covered by state immunity. International terrorist crimes must be considered as “crimes belonging to the *ius cogens*” and the fight against it, which in every country belongs to the priority in crime fighting, is an exception to the principle of state immunity. It would hardly be acceptable that exceptions to state immunity would be permitted for commercial reasons, but that this does not apply to crimes which harm humanity in its absolute right to life.

Finally, the fourth defendant mentions in his defense that the civil party NCRI is a terrorist organization itself or is at least responsible for various attacks through its sister organization.

This is not included in the Court’s finding. The Court only has to determine whether any punishable acts were committed and whether there is a causal correlation between the potential damage suffered by the civil party and the punishable acts.

The Court should not make a determination of the moral compass of said civil party. Neither the civil party nor her sister organization is on trial here.

**VI. Violation of the right to a fair trial and the right to a defense.**

**a) Initial interrogations of the fourth defendant without counsel**

The fourth defendant argues that in his first interrogation in Germany and his interrogation with respect to his arrest, was not aided by an attorney, which violated his right to a defense and at least his right to a fair trial. The fourth defendant refers for this to the European directive and the case law of the European Court of Human Rights.

At the start of his first interrogation, the fourth defendant was advised time and time again that he had the right to assistance from an attorney. The fourth defendant was offered an attorney, to wit an attorney from Würzburg, who was also prepared to assume the defense, but the fourth defendant did not want this mediation, because he wanted to engage an attorney appointed by his own embassy. Indeed, he was ultimately questioned without (prior) legal assistance. Moreover, it appears from the documents from the German Courts that the arresting officers tried to reach the Iranian consulate in Germany on Sunday (day of his arrest) and on Monday, but that they could not make contact. It appears from the remaining documents that one was able to reach the consulate a few days after his arrest and that from then on the consulate had the opportunity to get into contact with the fourth defendant.

The fourth defendant also argues in his defense that he did not get the assistance of a Farsi interpreter. It appears from the implementation documents that only a single Farsi interpreter was present and that this person was assigned to the interrogation of the wife and children of the fourth defendant. The fourth defendant was questioned in English and there is no information to show that he objected to this at that time. On the contrary, it was expressly reported that he was prepared to conduct his interrogation in English. He expressly asked that the Iranian consulate be informed. The arresting officers reported that they contacted the consulate on Sunday and Monday, but without result.

The evidence shows that he'd been receiving assistance from members of the Iranian Embassy since Tuesday, July 3, 2018.

The fourth defendant does not show that the rules of German criminal law were violated in the case at hand by failing to note expressly that he waived legal assistance.

The information present does not show that, taking the concrete circumstances into consideration, the right to a defense or the right to a fair trial were violated in the case of the fourth defendant. Moreover, one should look at the procedure in its entirety and the Court does not find any irreparable violation of the rights [*sic*] to a defense and, therefore, no violation of the right to a fair trial either.

**b) First interrogation of the spouse and the children of the fourth defendant without legal counsel.**

The spouse and the children of the fourth defendant were deprived of their freedom, because the police dog reacted positively to the potential presence of explosives in the vehicle of the fourth defendant.

At the start of their first interrogation, the spouse and the adult son of

the fourth defendant were advised time and time again that they had the right to legal counsel. Although the evidence does not show that they did so expressly, but the [record of the] interrogation shows implicitly that they waived [that right]. Also, they were questioned with the assistance of a Farsi interpreter. The interrogation of the son shows that his rights were explained to him in English, notwithstanding the presence of an interpreter.

Moreover, the fourth defendant objects strenuously against the way the interrogation of his 17-year old son was conducted and argues that this is not in compliance with the European directives. At the start of the interrogation, the minor son of the fourth defendant (17 years) was advised that he had the right to the assistance of an attorney and that, prior to the interrogation and during the interrogation, he could demand the presence of his “guardians/legal representatives.” The report shows that the fourth defendant and his spouse were invited to attend the interrogation, but that they refused. This son was questioned with the assistance of a Farsi interpreter as well.

Ultimately it became clear that they could not be charged and they were released.

To determine whether a defendant’s right to a defense or his right to a fair trial were violated, one has to consider the procedure in its entirety.

The Court finds that the wife and children of the fourth defendant were initially questioned as suspects, but [are] currently not prosecuted as defendants. At the present state of the procedure, therefore, they can be considered as witnesses only. The Office of the Public Prosecutor did not hold back any elements of the charges against the fourth defendant on the basis of these statements. Similarly, the Court will not base its determination of guilt on these statements either.

Under those circumstances, the Court finds that, to the extent there would be any question of irregularities at all, there is no question of a violation of the rights [*sic*] to a defense with respect to the fourth defendant, nor of a violation of the right to a fair trial.

**c) No confidential interview with consular officials at the time of his arrest**

Here as well, the fourth defendant invokes a European directive providing a right to consular assistance.

The records of the German judiciary show that attempts were made to contact the Iranian consulate on Sunday (day of his arrest), July 1, 2018, and Monday, July 2, 2018, but that this failed.

From July 3, 2018, the fourth defended received assistance from the Iranian consulate. The evidence shows that an unsupervised interview was conducted on July 3, 2018. Later contact was always allowed, but under strict security measures. Considering the

status of the file and its content, as known to the German judiciary, it was evident that the fourth defendant was suspected of involvement in a foiled attack in France and that he committed these potentially punishable acts under a diplomatic cover and possibly with knowledge of the State of Iran. The visit of members of the Iranian consulate was allowed, but under specific security measures, and this, to prevent the exchange of documents or objects.

The fourth defendant did not show concretely in what way German Law was violated. The European directive was respected as well. Neither the European directive nor the 1963 Vienna Convention on Consular Relations prescribes that these interviews be held confidentially.

Of course, such interviews should really be confidential, but in view of the specific nature of this case and the potential involvement of the State of Iran or one of its agencies, the extra security measure was appropriate and necessary.

The rights [*sic*] to a defense or the right to a fair trial were not violated with respect to the fourth defendant. The evidence shows that he had contact with the Iranian consular services multiple times.

#### **d) Detention conditions in Germany**

The fourth defendant condemns the detention conditions in Germany.

In the various interviews with the consular official the fourth defendant complained about his detention in the German prison.

A report was always drawn up of this and attached to the criminal file, so that there is complete transparency.

The fourth defendant was under a special detention regimen, considering the acts of which he was suspected.

These specific security conditions appear appropriate and necessary. It is understandable that the fourth defendant does not find his imprisonment agreeable and that the security measures certainly are not agreeable [to him].

The reports also show that he is particularly upset that his diplomatic immunity, on which he mistakenly tried to build his defense, was not accepted.

Neither the fourth defendant nor the consulate have initiated a civil/administrative procedure against the German government with respect to the implementation of his detention, which is perfectly feasible in the German constitutional state.

The Court does not find any violation of the rights [*sic*] to a defense or the right to a fair trial.

**e) The detention conditions in Belgium**

The fourth defendant is dissatisfied with the detention conditions in Belgium as well.

The fourth defendant is under a special security regimen, considering the acts of which he is suspected.

These specific security conditions appear appropriate and necessary. It is understandable that the fourth defendant does not find his imprisonment agreeable and that the security measures certainly are not agreeable [to him].

The reports also show that he is particularly upset that his diplomatic immunity, on which he mistakenly tried to build his defense, was not accepted.

There is a law in Belgium with respect to the legal position of detainees, which the fourth defendant can invoke. Neither the fourth defendant nor the consulate have initiated a civil/administrative procedure against the Belgian government with respect to the implementation of his detention, which is perfectly feasible in our constitutional state.

The Court does not find any violation of the rights [*sic*] to a defense or the right to a fair trial.

**f) Freeze of the financial assets of the fourth defendant**

The fourth defendant argues that his rights were violated, because he was included on the European list of terrorists, resulting in a freeze on all his financial assets.

According to the defense, this is a violation of his right to a fair trial, a violation of the presumption of innocence, a violation of the ban on torture and a violation of the right to property.

The fourth defendant instituted proceedings before the Council of State specifically with respect to the Belgian consequences, but this was dismissed for lack of urgency and because this is a European decision.

The fourth defendant alleges that this European decision is based on this criminal file.

Such a decision is not taken lightly by the European Council and is a temporary precaution.

The Court is not competent to give judgment on this listing and the consequences of this listing and this is not the forum where this view should be tested.

There are other forums where the fourth defendant can test this for legality or appropriateness.

All in all this inclusion on the European list of terrorists will not affect the decision in any way. The Court always maintains the presumption of innocence and this right was respected in the criminal investigation as well.

**g) No accurate description of the search of the car of the fourth defendant**

The fourth defendant argues that no accurate description was provided of the search of the car.

All sorts of objects were retrieved either during the body search or during the search of the car and these objects were indeed described in detail.

The fourth defendant argues that it is important to know which objects were found where, the location in the vehicle being of particular interest.

The Court remarks that the fourth defendant was given the opportunity to make objections to this and to show to what extent the evidential value was prejudiced by the lack of this description.

The determination whether this is significant or not is part of the assessment of merits with respect to the potential guilty verdict by the Court. If this constitutes a problem, the Court will rule as necessary with respect to the evidential value and possibly the ensuing guilty verdict.

**VII. Information provided by the Security of the State**

The defendants argue that the criminal file is largely based on information from the Security of the State and that this cannot be considered as [an] evidential basis, the more so because the way this information was obtained cannot be established.

Information from the Security of the State must be regarded as intelligence. This can be perfectly well regarded as a crime report, and when this information is concrete and

detailed, far-reaching investigative measures may be ordered on the basis of this information.

The culpability of the defendants must always be judged on the basis of objective and tested evidence and cannot be solely based on this information. However, this information from the Security of the State can be a significant supplement to the body of evidence as a whole.

The defendants were given the opportunity to submit objections to all information originating from the Security of the State.

It is the Court's province to determine to what extent this information is reliable, certainly when the information comes from the gathering of intelligence only. With respect to information from foreign intelligence services, the Court must assume that this information was gathered in compliance with the customary legislation abroad unless there are indications to the contrary.

### **VIII. The consequences of the decision of the [EU] Court of Justice**

The defense of the third defendant argues that all evidence against the third defendant is directly or indirectly based on phone records obtained in contravention of Union Law, including the right to respect for privacy (Art. 7 of the EU Charter). Consequently, the defense argues, the third defendant should be acquitted of all charges, [or] at least all parties should have the opportunity to review the evidence to be excluded and the associated consequences.

On this matter the defense refers to the recent judgment of the Court of Justice of October 6, 2020 (case C-511/18, C-512/18 and C-520/18) comprising the decision that the undifferentiated and general retention of traffic and location information, even with a view to serious crimes, transgresses the limits of the strictly necessary. The Court of Justice states that undifferentiated general retention of traffic and location data of all users of electronic means of communication may be imposed by order of a judicial authority in case of a serious, actual, current or foreseeable threat to national security, providing that this retention order is temporally limited to what is strictly necessary (without prejudice to the possibility of extending the period), is foreseeable and constitutes the object of an actual review by a judge or independent administrative agency with decisive authority. As regards the fight against serious crime and the prevention of serious threats against public safety, a specific retention obligation of traffic and location data may be imposed on condition that this retention is limited to what is strictly necessary with respect to the categories of the information to be retained, the targeted means of communication, the persons involved and the retention period. On the basis of

objective and non-discriminatory factors, certain groups of persons or geographic zones may be identified for that purpose and there must always be a strict limitation on the period.

But even if the national statute on which retention of telecommunication data is based, in the case at hand Article 126 of the Act of June 13, 2005, on electronic communication, should contravene the fundamental rights provided in Articles 7, 8 and 52, 1<sup>st</sup> paragraph, of the EU Charter, this would not automatically entail that such data should be considered as illegitimately obtained evidence which would be void or should be excluded.

The Court of Justice holds that in criminal proceedings against persons suspected of the commission of serious crimes, it is first and foremost the province of the national legislator to determine the rules regarding the admissibility and the assessment of information and evidence obtained on the basis of data retention legislation in contravention of Union Law.

Therefore, it falls to the national legal systems to provide procedural rules so that the fundamental rights enjoyed by the citizens are guaranteed in compliance with Union Law, with the understanding that this rules should not be more disadvantageous than the rules with respect to evidence obtained in contravention of national law (equivalence principle) and that the exercise of the European fundamental rights should not be impossible or extremely difficult (efficiency principle). The rules with respect to using data retained in contravention of Union Law as evidence may, thus, not be more disadvantageous than the rules with respect to the use of evidence obtained in contravention of national law.

The Court of Justice states, moreover, that Article 15, paragraph 1 of the EU Privacy Directive, when interpreted in the light of the efficiency principle, requires concretely that, in the context of criminal proceedings against persons suspected of the commission of punishable acts, national criminal Courts exclude information and evidence obtained by means of the general and arbitrary retention of traffic and location data in contravention of EU Law, when these persons are not able to effectively formulate comments on the matter and the information and the evidence concern an area of which the Courts have no knowledge and are likely to have a decisive effect with regard to the factual findings.

The Court finds concretely that the traffic and location data in the file at hand were requested by the Examining Magistrate on the basis of substantiated rulings pursuant to Article 88bis Sv. and taking the principles of subsidiarity and proportionality into account.

As regards the admissibility as evidence of these requested data, which were retained in contravention of the fundamental rights guaranteed by Union Law, Article 32 V.T.Sv. applies. After all, as regards illegitimately obtained evidence, our Belgian rule of law requires testing [this] always in accordance with Article 32 V.T.Sv., regardless of the nature of the statute (national, European or international) which was

violated (Refer in that sense to Cass. 19 April 2016, nr. P.15.1639.N). It is incorrect, therefore, to assume that retention of telecommunication data in contravention of fundamental basic rights always weighs so heavily that it automatically constitutes a violation of the right to a defense and by extension the right to a fair trial.

The Court finds that in the light of the criteria of Article 32 V.T.Sv., there is no reason to proceed to exclude evidence. The use of telecommunication data is admissible, as the retention obligation does not violate a formal condition prescribed under penalty of nullification, as the irregularity involved has not prejudiced the reliability of the evidence, and as its use does not contravene the right to a fair trial. After all, the rights *[sic]* to a defense were not irrevocably violated.

The Court finds that retention of traffic and location data in contravention of the right to protection of privacy and personal information in itself do not cast doubt on the reliability of such retained data. The defense does not contest the quality and correctness of these retained and requested telephone records either. As regards the right to a fair trial, the Court finds that there is no question of an (intentional) irregularity committed by the prosecuting or investigating authority.

As stated previously, the Examining Magistrate had a legal basis for retrieving the records. The retrieval of telecommunication records took place, therefore, by court order and under strict supervision of an independent judicial agency, which has laid down the reasons and motives on which the decision was based in a clear and substantiated warrant, in accordance with the statutory regulations. Neither did the telecom operator who retained the records intentionally violate the right to protection of privacy and of personal information, but acted in accordance with the statutory obligations prevailing in Belgium at the time. The statutory provisions on which the Examining Magistrate as well as the operators relied were recently amended by the Act of May 29, 2016 (*BS* July 18, 2016) after the Constitutional Court by a ruling of June 11, 2015, had nullified the Act of June 30, 2013, which included amendment of, among others, Article 126 WEC for violation of the respect of privacy and protection of personal information.

Moreover, the seriousness of the acts with which the defendants are charged, attempted terrorist murder and participation in a terrorist group, amply outweighs the seriousness of the alleged irregularities. After all, the fight against serious crime and the prevention of substantial threats against public safety are of such nature that they can justify limitation of the right to privacy and the right to protection of personal information.

Finally, the defendants have had the opportunity during the preliminary investigation as well as during the assessment of the merits to contest the correctness, the reliability and the credibility of the data with respect to telecommunication, as well as the findings of the investigators and the Office of the Public Prosecutor on the basis of these data. They had the opportunity to ask questions, formulate remarks and introduce elements and arguments themselves that they deem useful in the assessment of the acts with which they are charged. One should also note that telecommunication records

can yield not only evidence for the prosecution, but also for the defense. Therefore, performance of a telephone investigation is in many cases a necessary component of an independently conducted judicial investigation, in which elements are gathered for both the prosecution and the defense.

Moreover, the criminal file contains several other evidentiary elements in addition to those obtained from (retroactive) telephone investigations. The Court always includes the telecommunication records when testing all elements in the file and the arguments put forward by the defense.

In the light of the criminal file as a whole, therefore, the “evidentiary weight” of these telecommunication records is limited.

The defense of the third defendant, parenthetically, does not concretely contest the telephone records, but only argues that the retention of telephone records is so technical that essentially the defendant cannot effectively and usefully defend himself against it and that the Court is not knowledgeable about it. However, for there to be an effective contestation with respect to technical and scientific research, it is not necessary that the defense and the Court possess the same technical and scientific knowledge as the experts in the matter. By the introduction of the technical results of such research and by the account and analysis of this by the investigators in [their] reports, as well as the possibility for the defense to formulate remarks in this regard and/or introduce dissenting elements or documents during the judicial inquiry as well as during the assessment of the merits, effective contestation is guaranteed.

The fact that the retrieved records were retained in contravention of the respect for privacy and the protection of personal information, therefore, has not been an obstruction to the right to a defense with respect to the defendants. The Court does not find a violation of the right to a fair trial and, therefore, no evidentiary elements should be excluded from the discussion.

#### **IX.     Addition of reports**

The second defendant also requests that the interrogations of the German friend of the second defendant be added. The Office of the Public Prosecutor has done so in the public session of December 3, 2020.

#### **X.     The petition to hear witnesses**

The second defendant requests the Court to hear witnesses, more particularly about the explosive nature of the device used. It will become evident below that the lack of clarity which could possibly arise with respect to the explosive device was created by the defense of the second defendant itself by an incomplete perusal of the file.

An incomplete perusal of the criminal file by the defense of any of the parties cannot be a reason to hear additional witnesses.

The Court has enough information available from, among others, DOVO [the EOD Service] and the German expert to arrive at an opinion with respect to the explosive nature of the device.

It is not necessary for the remaining assessment that more witnesses should be heard on this issue and the defense had the opportunity to contest the findings of these experts and to supply expert counter-opinions as appropriate.

Additionally, the second defendant requests hearing of her German friend as well, but considering the extensive interrogation, the Court will not grant this request, because the second defendant also does not show why a hearing under oath as a witness is concretely necessary for her defense. The Court will not take the statement of her German friend in consideration in case the Court finds against the defendant and will only touch upon the statement if it is to the benefit of the defendant.

#### **XI. Unlawful telephone taps pursuant to Art. 8 ECHR**

The second defendant argues that the information from the Security of the State was insufficient to start up tapping operations, which violated Article 8 ECHR [European Convention on Human Rights]

The Court disagrees. The information of the Security of the State is sufficiently concrete and precise to order this extreme method of investigation.

#### **XII. The violation of the right to a fair trial because of the media attention**

The second defendant argues that her right to a fair trial was violated by the extensive media coverage before the trial, where the reporters evidently had possession of part of the criminal file.

It is not clear who is behind these leaks to the media.

In assessing the acts and the sentence, the Court only takes into account the information contained in the criminal file, the findings and the evidence produced, the Public Prosecutor's oral closing speech, the oral arguments of the civil parties and the defense and, finally, the oral statements of the parties in person themselves.

The Court does not take the information appearing in the media into account, nor the views of public opinion.

Therefore, the Court does not find any violation of the right to a fair trial with respect to the second defendant.

### **XIII. The inadmissibility of the criminal procedure**

Considering the position of the Court with respect to the procedural arguments described above, the Court cannot determine that the criminal procedure is inadmissible.

The Court, taking the content of the criminal file into account, does not find a violation of the rights *[sic]* to a defense, the right to a fair trial, the presumption of innocence, or any other provision under national or international law since, globally speaking, the start of the investigation or in the court proceedings.

The criminal procedure is in all ways admissible.

### **MERITS**

The defendants are on trial for attempted terrorist murder (charge A) and membership in a terrorist group (charge D).

The defendants are prosecuted because they were allegedly involved in an attempt to make an attack on June 30, 2018, on a busy conference organized by the *Organisation des Moujahidines du Peuple Iranien/Mujahedin-e Khalq/Conseil National de la Résistance Iranienne* in Villepinte (near Paris).

### **The organizations: Organisation des Moujahidines du Peuple Iranien (OMPI)/Mujahedin-e Khalq and Conseil national de la Résistance iranienne**

The “Organisation des Moujahidines du Peuple Iranien (OMPI)/Mujahedin-e Khalq (MEK)”, “MEK” hereinafter, is an Iranian opposition party, established in 1965 in Iran. Initially this organization conducted opposition against the Iranian Shah, but after the fall of this regime, this organization quickly turned against the new Islamic regime led by Ayatollah Khomeini. After a series of large demonstrations and their possible involvement in a serious attack in Tehran in 1981, MEK was outlawed and the members went into exile.

MEK had a military wing, which fought at the side of Saddam Hussein from 1986 through 1988 during the Iran/Iraq war (1980-1988). Thousands of MEK members lived in camps in Iraq (Camp Ashraf and Camp Liberty) well into 2016. Since 2016, these members relocated to European countries, including a camp in Albania. MEK was included on the European Union’s list of terrorist organizations between 2002 and 2009 and until 2012 on the American list of terrorist organizations. Allegedly, MEK officially abandoned armed combat since 2000.

The political wing of MEK is the Conseil National de la Résistance Iranienne, “CNRI” hereinafter. They have their headquarters in France (Auvers-sur-Oise).

Iran considers these opposition parties to be terrorist organizations and according to the State of Iran, these organizations are responsible for several (deadly) attacks and rioting in Iran.

In the past, the (executive) members of MEK and CNRI were frequent targets of several assassinations or attempts thereto. On March 22, 2018, an attempted attack on the MEK camp in Albania was thwarted. MEK and CNRI ascribed this attack and all other (attempted) attacks to the State of Iran or one of its security services, such as MOIS.

**As regards the intelligence service [of the] Iranian Ministry of intelligence and Security and department 312**

Information provided by the Security of the State in the criminal file shows that the “Iranian Ministry of Intelligence and Security”, MOIS hereinafter, was established in 1983 and comes under the authority of the Minister of intelligence since 2013. MOIS is supposed to have its roots in the Shah’s old secret political police (the infamous Savak). MOIS occupies a central position among the Iranian security services and is thought to have substantial funds. Department 312 is thought to be a directorate focusing on the Iranian opposition abroad. There may be other government agencies in Iran so engaged.

**As regards the start of the investigation**

The criminal file [*sic*] started with an urgent report from the Security of the State on June 25, 2018, to the Office of the Federal Prosecutor. Security of the State received information through a partner agency that a Belgo-Iranian couple could be involved in an act of violence or an attempt thereto in France. The info also gave the concrete identity of the couple, to wit the first and second defendants.

On June 27, 2018, additional information was received from the Security of the State, based on [its] own investigation.

They could give a little more information about the persons potentially involved.

The first defendant was of Iranian origin and had resided in Belgium since June 27, 2003. He has applied for asylum five times, but was refused every time. He also tried to apply for asylum in Sweden.

He applied for political asylum because he fled Iran for political reasons, as he claimed. It is not clear what the true course of events was surrounding his departure from Iran, because he stated several causes as the reason for his political asylum. For instance, the initial reason he gave in 2004 was that he had gotten into trouble with the Iranian security services/ religious police, because he had helped a wounded student during a student demonstration he happened to pass by. Because this was insufficiently concrete, he indicated in his subsequent applications for asylum that he had been active in MEK since his arrival in Belgium, but this was not considered sufficient either. Ultimately he was able to profit from the humanitarian regularization in 2010 and

received his Belgian citizenship in 2016.

His spouse, the second defendant, came to Belgium in 2007. She travelled from Turkey to the Netherlands, where she was picked up because she allegedly had a counterfeit Swedish Schengen visa.

She applied for political asylum in Belgium because she had problems with the Iranian security services because of her husband's activities for MEK in Belgium. She claimed she had lost her job because of this as well. She allegedly sympathizes with MEK, but was not deeply involved in the organization. Her asylum was denied for reason of being insufficiently credible, opportunistic, and disingenuous. Ultimately, the second defendant also profited from the humanitarian regularization in 2010 and obtained Belgian citizenship subsequently.

The Security of the State also found it remarkable that the first and second defendants returned to Iran, even though they had problems with the Iranian security services.

On the basis of further investigation, the Security of the State suspected that the violent action might involve the busy conference of MEK/CNRI in Villepinte (near Paris) on June 30, 2018. This congress was to be attended by internationally prominent (political) VIPs sympathetic to the Iranian opposition.

### **The investigation**

On June 28, 2018, the Office of the Federal Prosecutor requested an Examining Magistrate, ordering, among other things, immediate surveillance of the first and second defendants, as well as a tap on the known telephone numbers.

On June 28, 2018, it was established during the internationally conducted surveillance that the first and second defendants were moving to the Grand Duchy of Luxembourg, where they had contact with an unidentified person. After the contact, this person was identified during a traffic check as the fourth defendant who was in possession of an Austrian identity card. At the time he was accompanied by his spouse and his two sons.

On June 29, 2018, additional information was received from the Security of the State alleging that the first defendant had contacts with an unidentified person using coded language.

These contacts would evidence that first defendant was focused on his assignment and was convinced that they will succeed. There was a discussion about a meeting in Luxembourg and about a Playstation 4, which could be code words for a device that could be used to commit a violent act. Allegedly, the second defendant had disposal of a large sum of money, in the amount of 15,000 Euros in cash, and an advance of 2,500 Euros was paid out for the purchase of a new Mercedes coupe.

The third defendant was mentioned for the first time in this information as well, as possibly involved in the events about to take place.

The first and second defendants were still under surveillance on June 30, 2018.

Review of the telephone records shows that the first defendant was called on 11 h 07. About seven minutes later, the first and second defendants departed with their vehicle in the direction of Brussels.

On the way, the first and second defendants received several suspicious text messages in their vehicle from an Austrian number, using coded language. They mentioned a “tool” which was to be installed. They mentioned “advancing from 20 hours to 17 h 30.” The first defendant also mentioned “2 o’clock until 17 h 30” and “regular cleaning.” The latter could be a code word for potential contra-surveillance techniques.

When following the vehicle, it was indeed determined that the first defendant was performing contra-surveillance techniques by switching his speed regularly from 130 km/h to 180 km/h, which made the vehicle hard to follow.

Around 12 h 24 the vehicle of the first and second defendants got stuck in a traffic jam on the Brussels beltway, upon which they took an exit to Sint-Pieters-Woluwe. The vehicle was stopped a few minutes later and the first and second defendants were intercepted and arrested.

A perimeter of 200 meters was established immediately and the DOVO explosives disposal service arrived at the site.

At 14 h 49 DOVO found in the trunk of the vehicle a suspicious toilet bag from which wires protruded. DOVO made an X-ray of the toilet bag.

Around 15 h 15, the explosives disposal service reported that it might possibly be a detonator and that they were going to open the pack and examine it.

Around 16 h 25 DOVO reported a suspicious white powder, the weight of which was estimated at ca. 500 grams. During manipulation and dismantling of the device involved, the white powder had exploded. The DOVO robot was heavily damaged. In spite of the wide perimeter, a member of the special units became unwell (headache, flushed face and auditory damage) after he was hit by the pressure wave.

A yellow/gold notebook was retrieved from the vehicle, as well as a mobile phone with only a single contact, an Austrian number stored under “Daniaaal.”

At the same time several house searches were performed, including of the address in Wilrijk in the residence of the first and second defendants, where three wrappers were found in a travel suitcase containing a total of 35,690 Euros in cash.

A house search in Ukkel at the address of the third defendant produced numerous CDs, video equipment, photo cameras, and video cassettes and spyware.

The third defendant was arrested by the French police on June 30, 2018, in the parking lot of the congress in Villepinte and was immediately extradited to Belgium.

The fourth defendant was apprehended on July 1, 2018, on the German Autobahn at Weibersbrunn, when he returned from Austria with his family. They were redirected to a roadside restaurant, where they were further inspected. Because the police dog responded to the potential presence of explosives in the vehicle, the entire family was arrested.

No explosives were found in the vehicle and after preliminary questioning, the family members of the fourth defendant were released.

The fourth defendant was ultimately extradited to Belgium by the German judiciary.

The first and second defendants stated during preliminary questioning that they were afraid of the fourth defendant, whom they know as “Daniël.” The fourth defendant would wait for a text message after completion of the assignment. After their assignment they were to go to Cologne, where they would have another meeting with the fourth defendant.

The first as well as the second defendant claimed that they were not aware that the device was a bomb. According to them it was a device to produce a lot of noise.

In her initial statement, the second defendant claimed that the device was to be thrown at the concession stands. The first defendant claimed that he was to put it in the parking lot in the vicinity of the buses.

### **The bomb**

Information from DOVO shows that it was an operational improvised explosive device (“improvised explosive device”-IED) that was concealed in a toilet bag.

DOVO:

*“Technical evaluation: The IED was composed of components freely available commercially. However, a good basic knowledge of electronics is required to make this kind of IED. The general construction of the device can be considered highly professional and attests to an awareness with respect to subsequent forensic investigation. For instance, all components of the IED were placed in direct contact with the explosive charge. This ensure maximum damage and uselessness of the evidentiary material subsequently.”*

It had two electric detonators to insure correct operation of the device with certainty.

It had an explosive charge estimated not to exceed ca. 500 gr. TATP (triacetone triperoxide). TATP is a “Home Made Explosive” made from acetone, hydrogen peroxide, and an acid. A firing mechanism triggered by a remotely controlled transmitter was provided. This transmitter was sufficiently powerful to work at a distance of hundreds of meters and it could not be ruled out that there were multiple remote controls.

A remote control was found in a toilet bag belonging to the second defendant

for said device. The remote control was in a protective cover in order to prevent it from engaging by an accidental push on the button.

### **Subsequent investigation**

The investigation was continued subsequently, predominantly network research with the intention to retrieve the emails exchanged by the first and second defendants with the fourth defendant. There were more tapping operations and a warrant for direct monitoring of conversations between the second and third defendants and between the first and second defendants while awaiting questioning. Several witnesses were questioned and reconstruction of the correct course of events was predominantly attempted through telephone research (retro-active investigation) and analysis of the recovered digital devices.

The first and second defendants made extensive statements in which they admitted the acts to a certain extent. The intention was to detonate the device, which they described as “fireworks.”

This then would cause chaos, which would disrupt the congress and would scare the Iranian participants out of participation in later editions.

In this and subsequent statements, the first and second defendants claimed that they were pressured by the Iranian intelligence service MOIS to gather information about the activities of MEK and its members.

The first and second defendants claim that, in order to ensure their cooperation, the Iranian intelligence service MOIS used threats against their Iranian family, particularly the father of the second defendant, on one hand and on the other the defendants were remunerated for the information they provided which enticed them to do more work for the intelligence service.

According to the statements of the first and second defendants, it all started in 2007, when an Iranian agent “Jawad” asked them for information by telephone. Their statements and the information with respect to their flight data show that the first and second defendants departed for Iran together in February of 2010, where they allegedly had a meeting with several MOIS agents during which they were again put under pressure.

The stamps in their passports show that they flew to Tehran in December of 2010 as well.

Back in Belgium they were contacted by telephone by a new Iranian “runner.” This [person] always operated from Iran. In 2012 they were summoned back to Iran.

There the pressure on them was increased to provide more information about the organization MEK/CNRI. The first defendant claims that he flew to Tehran in December of 2013 as well. During this encounter he noticed that the Iranian agents also knew when the first defendant was present at the MEK/CNRI, from which he inferred that there were other informants in the MEK/CNRI. From 2013 on they were remunerated more systematically for the information they provided. For instance, the first defendant received sums of money in the amount of 6,000 Euros.

The first and second defendants claim that they were contacted in 2015 by an Iranian agent in Europe, who called himself “Daniël.” This was the fourth defendant. The couple met him for the first time in Munich in the summer of 2015. The fourth defendant had mentioned that he worked for the Iranian embassy in Vienna. They then received the sum of 4,000 Euros for expenses. They were to contact each other by email. At the end of November of 2015, another meeting took place at MOIS in Iran, which was also attended by the fourth defendant. They were asked to gather more information about the MEK/CNRI headquarters in Auvers-sur-Oise (France). From that time the meetings took place all over Europe, including Munich, Milan, Luxembourg, and Vienna.

Subsequent investigation, including the exploitation of the confiscated mobile phones and computer, analysis of the recovered email messages and the statements of the first and second defendants, shows that most communications involved the fourth defendant by email, forwarding or handing over movies or audio fragments about the activities of the MEK members. The first defendant used the email address “mishoo\_bounty84@yahoo.com” and the fourth defendant “jagerurban2016@yahoo.com.” The emails were in code, but it is clear that the first and second defendants gave information about the activities of the MEK/CNRI members. Additionally there were operational mobile phones which only served to exchange short messages or to meet each other. This took place in several European locations, often outside Austria, where one always made certain that there were no surveillance cameras and not too many people. At a certain moment a meeting was arranged on a train as well. Information was exchanged by Telegram as well. They themselves state that they were now paid more regularly. The first defendant mentioned 3,500 to 4,000 Euros every other three or four months, in another interrogation he mentioned 1,500-1,700 Euros monthly.

Exploitation of a yellow notebook shows several amounts, which the first defendant claims were expenses (usually travel costs) which were partly reimbursed by the fourth defendant.

Analysis of the email messages shows that the first and second defendants negotiated with the fourth defendant about their remuneration, especially when they received this specific assignment. It was clear that the first and second defendants were after a large financial recompense. Analysis of the bank accounts of both defendants showed that both defendants made cash deposits of enormous amounts. A large sum of money was also recovered from their residence.

In the course of the investigation the first and second defendants maintain their claim that they were abused, because they thought the device involved was only going to produce noise and that it was not their intention to maim or kill people. They always

call it fireworks.

The first defendant states that the information he provided to the reporting officers during his interrogation was 100% reliable, but monitoring of the conversations between the first and second defendants evidences clearly that they matched their statements and that second defendant also gave instructions about the way in which the first defendant should make his statements, which he had to keep her out of as much as possible.

The third defendant denied in all his interrogations that he had anything to do with the attempted attack or with espionage for the Iranian security services. He is an Iranian political refugee, who has already resided in Belgium for years. He supposedly is a poet/writer and living on a limited allowance and does some black-market renovation work here and there.

He had regular contact (almost daily) with the Belgian branch of MEK, including via the VZW Iran Ref., and did all sorts of assignments for them, such as, among other things, movie recordings and poster design. He also performed tasks sometimes at the annual MEK conference in Villepinte. A search of the residence of the third defendant produced all sorts of spyware, including USB-sticks with the capability to make recordings, as well as a pair of glasses with a hidden camera. He made several recordings of the MEK demonstrations, but just as much of the various participants. Photographs were found as well, which were made in sequence in such a way that they can be regarded as directions to a building used by MEK members. One witness did not understand why he was filming all the people participating in MEK demonstrations. Another witness tried to keep him at a distance, having mistrusted the third defendant for some time already. For instance, the third defendant wanted to attend MEK demonstrations in the Netherlands, but this was refused by the person in charge in Belgium. Several managerial persons also found it strange that he visited the MEK camp in Albania in 2017, which apparently was unusual.

The third defendant used to help out with the security of the MEK congress which was organized annually, and supposedly assisted in the protection of the leader of CNRI.

However, this year he was barred from security work of the congress. He was only allowed to accompany the Belgian delegation with the bus. However, it attracted attention that he had said that he was not going to return to Belgium with the bus. One witness also found it curious that the third defendant was not sitting with the Belgian delegation during the congress, but that he hung around the exit the entire time.

At the time of his arrest in the parking lot he was in possession of a mobile phone with an Austrian number and with only a single contact. This contact turned out to be the fourth defendant and the SIM card cover of the SIM card of this “operational mobile phone” of the third defendant was recovered from the vehicle of the fourth defendant as well.

The fourth defendant did not really collaborate with the investigation and denied any involvement. He complained that he was not treated as his diplomatic status required. He did not have anything to do with the acts.

In his last interrogation, at his own request, he warned that armed groups were thought to be ready to undertake something in Belgium, in case he would be convicted.

His defense minimalizes this statement as an emotional aberration caused by the special and heavy prison regimen he is undergoing.

### **As regards the charge of attempted murder**

In order to discuss attempted murder, an intent to kill must be proven and that there was premeditation.

### **As regards the intent to kill**

The defense of the second defendant tries to convince the Court that a “bomb” was not really involved. They say that it had insufficient explosive force, that it would assumedly not have harmed anyone or that the damage would at most have been quite limited. The defense claims that the first and second defendants would not be far off the mark when they constantly talk about “fireworks.” They say it would only produce a loud bang to cause chaos. In order to support this position, the defense submits pictures of the vehicle immediately after the explosion. There was no damage to the vehicle, nor to the toilet bag containing the explosive, nor to the road surface. The defense examined the impounded vehicle right before the public session and concluded once again that there was no damage to the rear of the vehicle. However, the argument that the explosion occurred at the rear of the vehicle is not justified.

The defense of the second defendant completely rejects the content of the criminal file here and in particular the DOVO technical report. The criminal file shows that a perimeter of (at least) 200 meters was established. The device was removed from the toilet bag by the DOVO robot. At about 6 meters from the vehicle, the bomb accidentally exploded, while the robot held the explosive at a height of more than 1 meter. That was the reason no crater was formed in the road surface. This occurred, moreover, at the front of the vehicle and not at the rear of the vehicle. The toilet bag did not get damaged indeed, because it had been removed from the trunk by the robot and placed behind the vehicle. The robot removed the explosive from the toilet bag after an X-ray scan had been made first, and then moved to about 6 meters in front of the vehicle.

The defense of several defendants also states that it is not known how many grams of explosive material was actually present. DOVO mentions 500 gr. at most. In their estimate of the explosive material, the DOVO experts take into account the size of the toilet bag in which the explosive device was housed.

It is indeed not known how much explosive material was present.

However, it is an objective fact that, despite the controlled condition in which the bomb was

dismantled, it damaged the DOVO robot to such an extent that the robot was put out of action.

It has also been established that someone from the special units of the police, in spite of the established perimeter, incurred physical damage as a consequence of the pressure wave caused by the explosion.

Of course, DOVO cannot establish how much explosive material was present, but estimated this on the basis of its knowledge and the specific factual situation at ca. 500 grams.

It is also known that TATP is an explosive which has 88% of the explosive force of TNT. This means that 1 gram of TATP equals 0.88 grams of TNT.

According to a report from a German expert, TATP is an explosive highly sensitive to shocks and friction which only is produced by home laboratories. When detonating a quantity of 500 grams, one should allow for a detonation conversion. This means that in an enclosed space, this can possibly result in fatal injuries to persons in the immediate vicinity.

It has been established, therefore, that detonation of this device at a congress attended by thousands of people would result in fatalities. Not only because of the explosion itself, but also because of the ensuing chaos.

Analysis of the messages of the first and second defendants shows that the “bomb” was made in Iran. It was fine-tuned there and tested multiple times. According to information from the Security of the State, the device was brought in in a diplomatic suitcase on a regular scheduled flight between Tehran and Vienna.

It has been established that the fourth defendant had the intention to commit a deadly attack on a busy congress, by giving orders to have this device, taking into account its specific content and function, detonated. He gave clear instructions to the first and second defendants about the way in which the device should be charged, how the device had to be wrapped in plastic wrap and how the antenna should be aimed during transport so that the device would not receive a WiFi signal. Moreover, the note book recovered from the vehicle of the fourth defendant not only contained notes on the operation of the device, but also on a potential attack with acid or other toxic pathogenic substances. This unequivocally show the intent to kill.

The first and second defendants are co-perpetrators in this attempted homicide, considering the factual acts they committed: taking custody of the device, its transport to Belgium, charging the device pursuant to the instructions, and then, upon command, departure for Villepinte with the explosive material.

The first and second defendants cannot be prosecuted [because] the intention was not to inflict fatalities and they only thought that it was some sort of fireworks that would produce a loud bang.

As yet the first and second defendants are not truthful in their statements where they were supposed to place the device.

The first and second defendants make varying statements, and they contradict each other as well.

For instance, they discussed detonating the device near the concession stands (original statement of the second defendant immediately after arrest) or near the book stands. These two locations are inside a small room next to the auditorium. The first defendant said in his first statement that the device was supposed to explode near the buses, on a lawn near the buses. In a later statement he spoke about the outside tent, before one had to pass through security, where the visitors had to leave their bags. There was also security personnel present in this tent, however, to keep watch on the baggage.

It appears from the investigation, from the interrogations among other things, that the device was supposed to be detonated at a time when many visitors would be entering the auditorium.

The defendants sometime speak of “placing” and sometimes of “throwing” the device between the chairs. In any case it was impressed upon them to keep sufficient distance (up to 300 meters) themselves. According to a certain statement, the first defendant was to place the device outside first and then go in through security.

The recovered chat messages exchanged between the first and second defendants and a certain “Negar” are noteworthy. The first defendant thinks that “Negar” is an Iranian woman in Iran, with whom he chats in a loving way and has an amorous (platonic) relationship. The relationship between the first defendant also arose by chat (according to what the first and second defendants say). The first defendant is very open toward “Negar” and she is clearly aware of the plans.

From the results of the search of the residence of the first and second defendants, which produced a certain smartphone belonging to the second defendant, from an overheard conversation (from the prison) between the second defendant and her sister and finally from the statements of the second defendant, it appears that she conducted chat conversation with first defendant in secret, in which she presented herself as “Negar.” The first defendant had no notion of this at all.

These conversations are of importance for determining where the attack was to occur, but these conversations will also be of importance in assessing the personalities of the first and second defendants:

- Chat conversations on June 28, 2018:
  - First defendant: *“If it happens inside, he himself personally goes to his man. He said that I will request his calls for you guys.”*
  - First defendant: *“I just wanted to ask, give me your final decision what we should do. Are we going inside or outside?”*
- Chat conversations on June 29, 2018:
  - Negar (second defendant): *“Amir, first check out the situation and the surroundings thoroughly there.”*
  - Negar (second defendant): *“If it succeeds inside, with stress from below, ok.” “If you see that is difficult, outside, ok my dear?”*
  - First defendant: *“Ok dear.”*
- Chat conversations on June 29, 2018 (a little later):
  - Negar (second defendant): *“Go very easy with Nasim.” “Tomorrow if you see that’s going to work, do it inside.”*  
*“If not. Outside. Ok? Go very easy”*
  - First defendant: *“Ok.”*
  - Negar (second defendant): *“Go very easy.”*
  - First defendant: *“ok”*
  - Negar (second defendant): *“And don’t worry. Be very good mentally as well. Don’t make each other nervous.”*

These messages show that they had orders to detonate it inside and that the second defendant also urges the first defendant to try it inside first.

This shows clearly that the defendants were to detonate the device in the vicinity of human presence, regardless whether this was to happen inside the auditorium or by the buses on the parking lot or in the luggage tent.

They knew, moreover, that they had to get out of range before detonating the device, so that they could not see whether there were people in the vicinity of the device when [the button] on the remote control was pushed.

It does not appear at all that the first and second defendants were misled and really assumed that it was just “fireworks.” The Court refers to the results of the direct monitoring, which show that they matched their statements in this respect:

- Second defendant: *“Say that you were misled, that you were deceived by a diplomat from Etekaa’at.. We must prove that. We must prove. They must understand that neither did we know it was something dangerous and neither that we intended to murder anyone.”*
- First defendant: *“Aslo say that there is a lot of security there that you can’t even go in there with a camera. Say it as truth. That they are going to check that out.”*
- First defendant: *“I’ve never even stolen anything, how could I murder people? It is not a joke, isn’t it? We should tell the truth. Nasim, why would we lie?”*
- Second defendant: *“Yes, I know, but alas, alas that thing has indeed been in our car. And you and I, like two fools, accepted that from him.”*
- First defendant: *“I know.”*
- Second defendant: *How gullible we are. How come you did not even check inside that bag?”*

*Say it too, when I went to Luxembourg, I was only thinking of a map. I was even in shock when he gave me a bag, but when he said that it is the same thing and is a cracker I accepted it just like a simple stupid person.”*

Quite noteworthy is the following result of direct monitoring:

- First defendant: *“Say, why did he not tell us the truth, actually?”*
- Second defendant: *“Amir, do you remember? I asked him: “it is not something dangerous, is it? He replied: “no, no, perhaps it will damage the underside of the car a little.”*
- First defendant: *“Nasim never tell this. I have already told things about it. I said it was to give the Iranians who came there this year a little shock so that they won’t return next year. That’s it!”*

This exchange shows clearly that they knew it would do more than just give a bang, but that this should not by any means be told to the police services.

Moreover, even if the Court would accept that they thought that it would be some sort of fireworks, that would only produce a bang, the first and second defendants should have asked themselves some serious questions at any rate.

For instance, according to their statements, the fourth defendant took a charge card and a key from the second defendant with them to Iran. It is not clear that the intention was to put the “fireworks” in there or that this would be used as spyware, because the statements diverge here as well.

They even talk at a certain moment of the possibility of special make-up. They were surprised that all the same they were given a rather large device, which they were to handle with great caution, that they were to charge the night before it was to be used and the antenna of which

they were to manipulate in such a way that it would not make contact with another signal.

They also discuss this during direct monitoring:

- Second defendant: *“It is our own fault. He told you: “between the makeup stuff.” Why did we accept that anyway Thursday when we saw that it is a bag?”*
- First defendant: *“We made a mistake.”*
- Second defendant: *“And also. Why [did we] not take a peek inside what it is when we took it home?”*
- First defendant: *“Precisely.”*
- Second defendant: *“And that we don’t consider the fact that it is something dangerous.”*

The first and second defendants carry out orders knowingly and of their own volition, don’t even check out the device they were transporting. The way in which they were to manipulate the device shows irrefutably that they should know that it was more than just “fireworks.”

Moreover, continuing on the implausible arguments of the first and second defendants, that considering the bang it would produce (according to the first defendant, it would have been heard inside the conference hall), the distance they should maintain from the device (so that one had insufficient view of the human presence) and the moment that the device was supposed to produce a bang, this could even in that hypothesis result in human victims, at least as a result of the panic and the chaos.

For completeness’ sake, the Court refers to the overheard conversation from the prison of the second defendant with her sister:

- *“How stupid you guys were that you did not see that it had a detonating mechanism? A firecracker does not have a detonating mechanism, does it?”*

The issue here is not “stupidity” but “unwillingness to know.” One is a co-perpetrator when one directly collaborates with a criminal act and one is aware that one is participating in an illicit act, without further specification or detailed knowledge.

The defendants have knowingly and of their own volition agreed to detonate a device, of which they knew very well that it would inflict damage to the underside of a vehicle in case of accidental detonation and that it was not ordinary “fireworks” considering the way in which the device was to be manipulated, at a location with substantial human presence. Fatalities would be a normal and foreseeable consequence of the violence applied.

As regards premeditation

There can be no dispute that there was premeditation in the case of the first, second, and fourth defendants. Allegedly, there were two encounters in Austria, one in Vienna and one in the train between Vienna and Salzburg.

Analysis of the email traffic of the first and second defendants with the fourth defendant shows that the first and second defendants negotiated about the remuneration. For instance, the email traffic of March 25, 2018, shows that they even imposed conditions such as an increased monthly compensation of 2,000 EUR and a supplementary compensation for their share in placing the bomb and finally the comment that the compensation should be preserved because they wanted to buy a house. They brought in the extra argument that they had great stress with regard to their family and that the first defendant feared for his position as an informant at MEK. They also extolled their own specific position as informants at MEK.

On April 26, 2018, the fourth defendant replied that there had been internal consultations with a certain “Mohsen”, but that those conditions were not feasible. They were to: *“continue cooking as before.”*

Further analysis of the email traffic shows that in the meantime the first and second defendants continued to provide information about MEK, including about the annual congress on June 30, 2018.

A new encounter took place abroad on May 12, 2018. Perusal of the messages shows that preparation of everything for the attack continued.

On May 25, 2018, the first defendant reconfirmed their agreement to the fourth defendant: *“Saeid [sic] and Monshi have thought a lot about the card game for the wedding party and they have decided that it must be very professional, in order to be able to win the match!”*, but they imposed new conditions indeed: *“Both of them agree, but if Mohsen were to promise that he can arrange a big surprise then Saied [sic] will be delivered from his fatigue of those past years.”*

With a view to this compensation they searched for a new apartment in that period and ordered a new Mercedes coupe, for which they made a down-payment. This appears on one hand from a recovered note, for an appointment to visit two apartments; they were in possession of a business card of a real estate agency and there was a

telephone conversation on June 25, 2018, which shows that the second defendant expected payment of a large sum of money when the work was completed and that they wanted to buy a residence with it.

On June 20, 2018, the first defendant participated in a meeting of the Belgian division of MEK in preparation for the congress. His duties included renting a refrigerator truck and transport rolls and beverages of the Belgian participants. He was also assigned to transport people to Paris.

It appears from the international observation and the interrogation of the first and second defendants that they met the fourth defendant in the City of Luxembourg, where in a Pizza Hut a USB-drive with the latest information was handed over, a wrapper with 18,000 EUR, a new operational mobile phone and the “bomb”. The explosive was in a blue ladies’ toilet bag and the second defendant put this together with the remote control in her handbag.

The fourth defendant gave clear instructions how the bomb was to be charged and made operational. It was to be packaged in a black plastic wrap and there was a safety perimeter to be observed. For activation, the remote control needed to be pressed for 3 minutes. The antenna had to be pushed down during transport, so that it would not pick up any wifi signals.

On June 29, 2018, several messages were exchanged between the two operational mobile phones of the first and fourth defendant. It appears from those that the explosive was charged pursuant to the instructions and wrapped in plastic wrap.

Right before their departure on June 30, 2018, the fourth defendant sent a text message with the latest instructions. They were to leave the operational mobile phone in the parking lot in Villepinte in their vehicle. They agreed to make contact again at 17 h 30 and were to see each other again in Cologne after the attack. The investigation has shown that the fourth defendant stayed in the vicinity of Cologne with his family.

The first defendant charged the device at their home pursuant to the instructions of the fourth defendant and made the device operational for use.

The first and second defendants put the explosive in a small travel suitcase in their vehicle and the remote control went into the handbag of the second defendant.

The Court refers here as well to the noteworthy chat conversations which the second defendant, posing as “Negar” conducted with the first defendant:

- Chat conversations on June 11, 2018:
  - Negar (second defendant): *“You guys must accept the thing. You will get so much cash money for it. We must act correctly.”*
- Chat conversations on June 27, 2018:

- Negar (second defendant): *“You guys must be very relaxed for Saturday. Even during the performance of the assignment. So that you are caught nowhere.”*

This account of the acts shows unequivocally the premeditation of the first, second, and fourth defendant.

The Court finds that the second defendant tried to minimize her involvement after her arrest and manipulated the first defendant in this respect.

The Court refers to the direct monitoring and to the chat conversations of the so-called “Negar”, in which she really encouraged the first defendant to take action.

As regards the terrorist criminal offense

Article 137 PC provides: *“Defined as a terrorist criminal offense is the criminal offense described in §§ 2 and 3, which by its nature or context can cause serious harm to a country or an international organization and is intentionally committed with the objective to instill serious fear in a population or to force the government or an international organization in an illegitimate manner to perform or refrain from an act, or to seriously disrupt or destroy basic political, constitutional, economic, or social structures of a country or an international organization.”*

From the reading of Article 137 § 2, 1° and Article 51 PC, the criminal offense is an offense that can be regarded as a terrorist criminal offense.

To make an attack from Belgium in France on a conference where more than thousands of people are present and which would have caused casualties is indisputably a crime which by its nature and context would seriously harm France and Belgium. Moreover, this attack was planned in a period when France was suffering under multiple terrorist attacks. The attack would instill serious fear in the population and certainly the Iranian political refugees who are residing in the European countries and who feel protected by our democratic constitutional state.

The Court has not been able to determine whether this attack was directed at the VIP visitors or the regular visitors of the convention.

As regards the role of the third defendant on this charge

The judicial inquiry, including the results of the house search (where spyware was recovered), the analysis of digital carriers and various testimonies about the behavior of the third defendant show that he as well gathered information for the fourth

defendant about MEK/CNRI.

The Court refers to the information which was provided via the Security of the State and in which the third defendant was mentioned as involved in the attack about to be carried out.

In previous editions, the third defendant was always involved in the organization and specifically the security of the congress. Allegedly, he even used to be among those responsible for the safety of the leader of the CNRI.

This year he was not allowed to participate in the organization. The only assignment given to him was to accompany the bus with Belgian participants to the congress and back.

On the day itself it attracted attention, according to several witnesses, that the third defendant behaved differently. He was nervous and was said to be absent-minded. It also drew attention that he stated that he would not go back with the bus with Belgian participants.

One witness noticed that the third defendant did not join the Belgian delegation in the auditorium, but that he stayed apart at the back of the auditorium near the exit.

The third defendant was, at the time of his arrest, in possession of an operational mobile phone with an Austrian number with only a single contact, to wit with the operational mobile phone of the fourth defendant. This mobile phone was used exclusively for his contacts with the fourth defendant.

Moreover, the SIM card cover of the SIM of the operational mobile phone of the third defendant was recovered from the vehicle of the fourth defendant at the time of his arrest.

The inquiry was able to recover some text messages which were exchanged between the third and the fourth defendant on June 17, 2018.

Messages originating from the third defendant on June 17, 2018, to the fourth defendant:

- *“I am your humble”*
- *“The new one, no not yet”*
- *“I forwarded the new one”*
- *“Ok.”*

Messages originating from the fourth defendant on June 17, 2018, to the third defendant:

- *“At 18’: the store is closed. Can you come Monday and get groceries? At 18 hours.”*
- *“Send a text message to the number 6700, so that 10 eu becomes charge [sic]”*
- *“Notice, if it succeeds, I will tell you, is that new?”*
- *“Then when I get OK again, I will send you something or I will go Monday at this time to the*

*store.”*

In the exchange of these messages in code, the fourth defendant inquired whether there was any news.

The inquiry clearly shows that this timing of these messages is significant, as the fourth defendant left for Iran a few days later to pick up the explosive. The fourth defendant also notified the first and second defendants by email on June 18, 2018, that he was going to Iran in order to finalize the preparations with respect to the attack.

Moreover, a witness statement shows that the third defendant took the initiative around June 17, 2018, with the person in charge of the Belgian branch of MEK to be involved again in the organization of the security of the event.

On June 30, 2018, the third defendant was at least the eyes and ears of the fourth defendant on site during the attack that was to be carried out. He was also assigned to take care of other matters for the fourth defendant at the moment the attack took place. At least he was on watch, but his task must have been more extensive. His role was crucial in the preparations as well, as he, because of his role in previous editions, had concrete information with respect to the organization and the security of the congress.

From all these facts the Court deduces unequivocally that the third defendant was aware and actively involved in the attack which was to occur on June 30, 2018, and is in that manner complicit in the attempted terrorist murder.

It is not out of the question, even, that still more people were involved in or were prepared for this attack.

**As regards the charge participation in a terrorist group (charge D)**

Art. 139, paragraph 1, PC, provides: “A terrorist group is any structured association of more than two persons which has been in existence for some time and which acts in mutual consultations to commit terrorist crimes.”

The first and second defendants constantly try to hide behind the pressure exercised by the Iranian regime, including on their family and specifically the father of the second defendant.

The Court is unable to adequately assess this heavy pressure. There may have been some pressure indeed, but the pressure was certainly not as great as the defendants try to make it appear, and was certainly not so great that the first and second defendants could not refuse to cooperate. This pressure was only mentioned in their interrogations and is hardly evidenced by the file for the rest. No pressure at all can be inferred from the email messages exchanged with the fourth defendant, on the contrary. The interrogation of the sister of the second defendant, but also the content of the monitored conversations between the second defendant (from

prison) and her sister do not really show that pressure was exercised on the Iranian family, but that, rather, there was pressure with respect to their Belgian residence situation which was inconsistent with their trips to Iran. In the end, it appears that there was only a limited pressure and the financial earnings were actually the dominant motive to offer their information-gathering services.

Moreover, the analysis of the internet browser shows the first defendant looked on his own initiative for information about spyware on the internet. Moreover, reference may be made to the analysis of the email messages, in which the first and second defendants expressly stated financial conditions with respect to the attack which was to be mounted, which is hard to reconcile with the pressure from the Iranian authorities.

The Court also refers to the chat conversations between the alleged “Negar” (second defendant) and the first defendant, in which money was mentioned and how important this was to them.

The third defendant provided his services for purely monetary gain as well, without any ideological conviction.

According to the Office of the Public Prosecutor and the civil parties, the attack was organized by the Iranian intelligence service MOIS and specifically department 312. These constitute, according to the Office of the Public Prosecutor and the civil parties, the terrorist group which was responsible for the foiled attack.

The Office of the Public Prosecutor, which refers to the information from the Security of the State and OCAD and the civil parties which refer additionally to their own sources of information, claim that MOIS and specifically department 312 are responsible for several fatal attacks or attempts at these in Europe on leaders or prominent members of the Iranian opposition.

The Court is unable to objectively assess this information adequately about attacks all over Europe on the basis of the elements brought in to the criminal file. From the summary of these suspicions, which point in the direction of the Iranian state or MOIS, the Court cannot conclude that MOIS is a terrorist group. Fatal attacks can just as well be mounted by other intelligence services or by rival opposition parties.

The Court finds the various reports and articles are insufficiently objectifiable as well.

The only objective information is the verdict of the German Court in 1997, which associates MOIS with a fatal attack in Germany on the basis of a German criminal file.

It has certainly been established that the first, second, third, and fourth defendants formed a terrorist group. They collected information about the organizations and the members of these organizations. On the basis of the information so obtained, they organized in order to mount an attack on one of the most important annual gatherings of these Iranian opposition parties.

However, it can be inferred unequivocally from the criminal file that there was a more extensive

involvement than these four defendants.

The Court refers, among other things, to the remarks included below.

- The statements of the first and second defendants show clearly that initially they were recruited and run by agents operating from Iran. Both stated that they worked for the intelligence service MOIS. They regularly returned to Iran, where they had meetings with various individuals from MOIS.
- Their statements also show that the fourth defendant was also employed by the intelligence service MOIS and that they had to go to Iran under him as well for consultations. In Iran they not only met the fourth defendant, but other MOIS agents as well.
- The fourth defendant operated from an Iranian political cover. He did not perform any diplomatic activities, but ran informants in Europe. Working under diplomatic status without in fact performing these duties is only possible with the consensus of those responsible with the Iranian state.
- The statements for the first and second defendants and the analysis of the email messages and the audio recordings made by the first, second, and third defendant show that initially the original runners and later the fourth defendant gathered information about MEK.
- Neither Iran nor MOIS have distanced themselves from the activities of the fourth defendant.
- Analysis of the email messages between the first/second and the fourth defendant and the statements of the first and second defendants show sufficiently that the explosive device was manufactured and certainly tested in Iran. On the basis of the classified memorandum from the Security of the State of September 7, 2020, it may be deduced with objective certainty that the fourth defendant brought the explosive in diplomatic luggage on a commercial flight from Iran to Austria.
- The fourth defendant had disposal of substantial sums of money to pay the first, second and third defendants and these monies were, considering their magnitude, not personal funds of the fourth defendant.
- Analysis of the email messages shows that, with respect to the financial demands made by the first and second defendants to take action, the fourth defendant himself had to obtain approval from his principals.
- According to information from the Security of the State, which the Court deems reliable, the fourth defendant is thought to be a MOIS intelligence officer and running sources in Europe as an intelligence officer for department 312.

On the basis of these elements, the Court concludes that there is a group within department 312 of the intelligence service MOIS, which engaged in information gathering about the MEK/CNRI and used this information to select targets

and ultimately proceed to organize an attack on a convention of these Iranian opposition parties.

This group, of which the first, second, third, and fourth defendants were part, together with an indeterminable number of Iranian MOIS agents, is a terrorist group pursuant to Art. 139, first paragraph, PC. Certainly the first, second, third, and fourth defendants have made an active contribution to this terrorist group.

The Court cannot deduce on the basis of the information available from the criminal file how large this group is and how this group is supported within the Iranian political structure and who was the ultimate (highest) principal of the foiled attack.

**As regards declaring the charges A and D proven**

Therefore, the attempted terrorist murder (charge A) and membership [in a] terrorist group (charge D) has been sufficiently proven with respect to the first, second, and fourth defendant on the basis of the determinations of the reporting officers:

- the initial info from the Security of the State,
- the apprehension in the act,
- the results of the surveillance in Luxembourg on June 28, 2018,
- the analysis of the email messages exchanged between the first and second defendants on one hand and the fourth defendant on the other,
- the results of the search of the residence of the first and second defendants,
- the results of the search of the vehicle of the fourth defendant,
- the communication in code and the deletion of messages,
- the finding regarding the mobile phone contacts between the first and fourth defendant around the time of the acts,
- the large amounts of cash at the disposal of the first and second defendants,
- the analysis of the chat messages between “Negar” (second defendant) and the first defendant,
- the result of the direct monitoring between the first and second defendants,
- the technical and expert report about the IED,
- the manner in which the defendants were to manipulate and arm the IED,
- the statements of the first and second defendants about their own role, about each other’s role, and about the role of the fourth defendant.

As regards the fourth defendant, additional reference can be made to:

- his contacts with the third defendant as unique contact,

- the text messages exchanged on 6/17/2018,
- and the communication in coded language.

Therefore, participation in attempted terrorist murder (charge A) and membership [in a] terrorist group (charge D) has been sufficiently proven with respect to the third defendant on the basis of the findings of the reporting officers:

- the initial info from the Security of the State and the specific info about the involvement of the third defendant,
- his presence at the scene and his behavior there,
- the recovery of an operational mobile phone with the fourth defendant as only contact,
- the analysis of the text messages which were exchanged between the third and fourth defendants on June 17, 2018,
- the use of coded language,
- the results of the search of the residence of the third defendant, where spyware was found,
- the large amounts of cash at the disposal of the third defendant,
- the regular trips to Austria and the deposit of funds, immediately after his return from abroad,
- the recordings and messages which the third defendant made of the activities of the members of MEK/CNRI,
- and finally his implausible statements.

### **As regards the sentence**

The acts of the charges A and D intermingle with respect to the first, second, third, and fourth defendants as having been committed with a single punishable intention, so that only a single sentence must be pronounced.

The acts of the charges are extremely grave. Attempted terrorist murder is among the most serious crimes in the Belgian Penal Code.

The defendants not only violated the sovereignty of the Belgian and French States. By mounting an attack on a busy conference of Iranian opposition parties, they undermine not only the freedom of expression, but they erode the sense of security of Iranian refugees who sought safe haven in various European countries.

The first, second, and third defendants should realize that on the basis of the information they provided certain people were and still are in physical danger.

Moreover, the first, second, and third defendants considered human life secondary to their financial motives. In determining the penalty and sentence for each defendant individually, the Court will consider the nature and the gravity of the acts, the circumstances in which the acts took place, [and] the respective contribution, personality, age, and criminal record of each.

*The sentence with respect to the first defendant*

The first defendant made statements immediately and cooperated with the legal inquiry.

The first defendant makes a naïve and gullible impression on the Court. He declares that he has a genuine sense of guilt.

However, considering the nature and gravity of the acts, a substantial effective prison sentence is called for.

*The sentence with respect to the second defendant*

The second defendant also made statements.

The second defendant makes a highly manipulative impression on the Court. In that sense, the Court refers to the direct monitoring between the first and second defendants and to the following chat conversations of “Negar” (second defendant):

- that the second defendant influences her husband to participate in the acts, and to detonate the explosive device inside.
- that the financial rewards are important to the second defendant and are even a more serious motive to collaborate with the secret service than for the first defendant.

Therefore, her role is certainly not limited. She also forwarded information to the fourth defendant. Moreover, the direct monitoring shows that the second defendant made another trip to Iran herself, without the first defendant, and met with MOIS agents there. The criminal file shows that the fourth defendant sometimes wanted to speak with the second defendant alone.

In the opinion of the Court, the second defendant has more ties to MOIS than she allows. This is shown by the chat conversations, in which she pretended to be “Negar”, by her trip to Iran without the first defendant, and by the subtle pressure on and influencing of the first

defendant by the second defendant. Therefore, her role in and contribution to the acts is larger than those of the first defendant.

Considering the nature and gravity of the acts and her concrete role in them a substantial effective prison sentence is called for.

*The sentence with respect to the third defendant*

The third defendant worked for the Iranian intelligence services for years, and this only from purely financial motives. He was at the scene and considering the findings regarding his operational mobile phone, it is evident that he was the ears and eyes of the fourth defendant on site. There is no doubt, considering his key position, that he was completely informed about the plans to be carried out and that at least he was on the lookout to keep the operational leader of the attack meticulously informed and if necessary steer him on site. His important role can be seen from the amounts of money he received from his principals as well.

Considering the nature and gravity of the acts a substantial effective prison sentence is called for.

*The sentence with respect to the fourth defendant*

The fourth defendant is the operational brain behind the attack. It did not weigh on his conscience at all that there would be fatalities.

He abused his diplomatic status to commit terrorist crimes and eroded in that way the confidence one may have in the exchange of official government emissaries.

A substantial effective prison sentence is the only suitable penalty.

**As regards the revocation of citizenship**

The Office of the Public Prosecutor requests revocation of citizenship with respect to the first, second, and third defendants.

When handing down an effective prison sentence of at least 5 years for terrorist crimes, the Court can pronounce revocation of citizenship.

The Court is not under obligation to do so.

The first, second, and third defendants have Belgian citizenship. Additionally, they have Iranian citizenship. That Iran does not accept the double citizenship means that the Iranian authorities refuse to recognize the other citizenship of their citizens. It does not mean at all, therefore, that the defendants would no longer be Iranian citizens by acquiring Belgian citizenship.

The first, second, and third defendants will not become stateless if they lose their Belgian citizenship.

The first, second, and third defendants ask that the revocation not be pronounced, for humanitarian reasons. Their lives would be in danger if they are sent back to Iran. Certainly the first and second defendants, considering the statements they have made accusing MOIS in general and the fourth defendant in particular.

Revocation of citizenship does not mean that the defendants will actually be sent back to Iran. The loss of Belgian citizenship does not automatically lead to revocation of the permit to reside in Belgium. In that area there are separate procedures under the authority of the Alien Residents Service, where in the context of a potential deportation the presence or absence of respect for human rights in the country of origin may be an element in the assessment. When making a decision about the revocation of citizenship, the Court should not consider this. The defendants, therefore, will still be able to contest a potential deportation to Iran in a later phase. They also still have the option to request asylum in another country.

The first, second, and third defendants each have abused the hospitality of our country to mount an attack in a friendly nation. By their respective contributions to this foiled terrorist act, they truly intended to harm Belgium and France in their values. It would have been an attack on the democratic constitutional state and on freedom of expression. They wanted to upset the sense of security of Iranian refugees who have found a safe haven in the European Union.

Participation in the activities of a terrorist group can be interpreted as a form of rejection of the values and institutions of our Belgian and of French society.

The Court finds that the conditions of Article 23/2 [of the] Belgian Citizenship Code are fulfilled.

Therefore, the Court pronounces the revocation of the citizenship of the first, second, and third defendants.

**As regards confiscation**

*As regards the first defendant and the second defendant*

The first defendant and the second defendant deposited substantial amounts in cash in their bank accounts. A search of their residence produced a large sum of money as well. The first and second defendants are entirely unable to justify these cash deposits by their own income. Their combined legal income is just sufficient to pay recurring expenses and live in a normal way.

Several witness statements show that the first and second defendants maintained a life style which puzzled everyone.

The criminal file, to wit their own statements and the analysis of the recovered notebook and the analysis of the email traffic between the first defendant and second defendant with fourth defendant show that money was indeed paid out and that they even negotiated to get more money. The analysis of, among other things, the chat messages between “Negar” (second defendant) and the first defendant mentioned previously also show that they were about to receive a lot of money, that they wanted to buy a house and that money was an important motive for both defendants. They also intended to buy a new vehicle.

They are trying to find some justification by referring to funds they allegedly received from Iran and they refer especially to the father of the second defendant. There is not a single objective element that attests to this. On the contrary, the monitored conversations between the second defendant (from prison) and her sister show that their parents in Iran are not well off. Other statements about this cannot provide a justification for these large cash deposits either.

These funds were always paid out in cash and deposited in their [bank] accounts. It can also not be from unreported work on the side, because there are no indications of this, but, moreover, also because they were gathering information for the fourth defendant on such a regular schedule that no time was left to perform other activities.

The Court refers here explicitly to the findings of report 504284-2020, on which the confiscation is based, and, therefore, grants it entirely.

*As regards the third defendant*

The third defendant deposited considerable cash amounts in his bank accounts. The third defendant cannot justify these cash deposits at all by his own income. The legal global family income cannot explain these deposits.

The third defendant stated that he did a lot of unreported jobs in construction and also did paid jobs for MEK. The recovered messages show that for months he refused

a construction job, because his arm was bothering him too much. The assignments for MEK were limited in number and in the compensation as well.

The third defendant was almost daily gathering information for the fourth defendant at MEK. There can hardly be any doubt that he was richly paid for this, just like the first and second defendants. It is also noteworthy that the money deposits often occurred after he returned from a trip to Austria (meeting with the fourth defendant).

The third defendant cannot substantiate the story that the money came from his father or a good [female] friend either.

The Court expressly refers here to the findings in report 501185-2020, on which the confiscation is based, and therefore grants it entirely.

*As regards the fourth defendant*

The confiscation of the seized funds of the fourth defendant is essential as well, considering the content of the criminal file and his involvement.

#### **FROM A CIVIL PERSPECTIVE**

Each of the civil parties requests compensation of court costs. All civil parties which enjoy compensation of court costs from the defendants within the same legal context, are counseled by the same attorneys who through a joint action submit the same request for each of them. It is therefore suitable to provide a single compensation of court costs for all civil parties and distribute it among them.

##### **1) As regards the position of civil party E.Z.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

##### **2) As regards the position of civil party R.T.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**3 - 16) As regards the position of civil party G.T.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**4) As regards the position of civil party R.G.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**5) As regards the position of civil party W.M.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**6) As regards the position of civil party N.I.W.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**7) As regards the position of civil party I.B.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**8) As regards the position of civil party A.G.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**9) As regards the position of civil party L.C.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**10) As regards the position of civil party T.K.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**11) As regards the position of civil party R.B.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**12) As regards the position of civil party Y.B.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**13) As regards the position of civil party T.B.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**14) As regards the position of civil party F.H.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**15) As regards the position of civil party S.A.J**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**17) As regards the position of civil party R.J.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**18) As regards the position of civil party M.R.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**19) As regards the position of civil party R.H.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**20) As regards the position of civil party M.P.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**21) As regards the position of civil party A.T.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**22) As regards the position of civil party S.S.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**23) As regards the position of civil party J.L.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**24) As regards the position of civil party H.A.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**25) As regards the position of civil party M.J.D.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**26) As regards the position of civil party P.B.**

This civil party suffered moral harm as a consequence of the acts of charge A declared proven.

The requested amount of 1 Euro provisional has been sufficiently proven on the basis of the criminal file and the evidence submitted and is granted.

**STATUTES APPLIED**

The Court takes into account the following articles which determine the components of the criminal offenses and the sentence, and regulate the linguistic usage in legal cases:

Art. 1, 2, 11, 12, 14, 16, 31, 32, 34, 35, 37, 41 Act of Jun5 15, 1935; □

Art. 1, 2, 3, 25, 31, 32, 42, 43, 43bis, 44, 45, 50, 65, 66, 79, 80 Penal Code

Art. 4 V.T.Sv [PC] □

Article 162bis of the Code of Criminal Procedure,

article 1382 of the Civil Code,

as well as the statutory provisions mentioned in the introductory act and in the verdict.

Articles 152bis, 182, 189 PC

**The Court:**

[Judging] in a defended action with regard to A.S., N.N., M.A., A.A., E.Z., R.T., G.T., R.G., W.M., N.I.W., I.B., A.G., L.C., T.K., R.B., Y.B., T.B., F.H., S.A.J., G.T., R.J., M.R. R.H. M.P., A.T., S.S., J.L., H.A., M.J.D., P.B..

Finds that the civil parties sub 3) T.G. and 16) T.G. refer to one and the same civil party;

Corrects the material errors mentioned above.

Directs that civil party sub 26 P.B. be entered into the record and finds that this civil party was heard as a civil party.

**With respect to Criminal Law**

As regards A.S., first defendant

Sentences **A.S.** for the combined acts of the charges A and D:

to a **term of imprisonment of 15 years.**

Pronounces with regard to A.S. the revocation of Belgian citizenship, pursuant to Article 23/2 § 1 of the Code of Belgian Citizenship.

Deprives A.S. **FOR LIFE** of the rights as described in Article 31 of the Penal Code;

Pronounces forfeiture pursuant to Articles 42, 3° and 43bis PC as criminal proceeds:

- of a monetary amount of 17,896.90 Euros, being half of the amount of 35,793.80 Euros (found during a search of the premises) (managed by the COIV [Central Agency for Seizure and Confiscation])

- of a monetary amount of 120,167.00 Euros, which includes the balance on his accounts in the amount of 9,277.36 Euros, in possession of and managed by the COIV (Protocol 504284-2020).

Sentences A.S. to payment of:

- a contribution of 1 times 200.00 EUR, being the sum of 1 times 25.00 EUR increased by 70 indexed surcharges for funding of the Fund for aid to the victims of intentional acts of violence and the occasional responders [Good Samaritans]
- a fixed compensation for administrative costs in criminal cases. This compensation is in the amount of 50.00 EUR.
- The costs of the criminal proceedings, estimated to date at **1/4x 21464.23 = 5366.06 EUR.**

As regards N.N., second defendant

Sentences N.N. for the combined acts of the charges A and D:

to a **term of imprisonment of 18 years.**

Pronounces with regard to N.N. the revocation of Belgian citizenship, pursuant to Article 23/2 § 1 of the Code of Belgian Citizenship.

Deprives N.N. **FOR LIFE** of the rights as described in Article 31 of the Penal Code;

Pronounces forfeiture pursuant to Articles 42, 1°, and 43 PC:

–of the vehicle Mercedes CLC200 CDI with license number 1EGZ339, stored at Depannage 2000 (impoundment record 2000 D2018/01238/C) as having served to commit the criminal offense and being her property.

Pronounces forfeiture pursuant to Articles 42, 3° and 43bis PC as criminal proceeds:

- an amount of 2,500 Euros (down payment [for] purchase [of a] new vehicle) (managed by the COIV).
- a monetary amount of 17,896.90 Euros, being half of the amount of 35,793.80 Euros (found during a search of the premises) (managed by the COIV)
- an amount of 106,498.57 Euros, which includes the balance on her accounts in the amount of 26,135.87 Euros, in possession and managed by the COIV (Protocol 504284-2020).

Sentences N.N. to payment of:

- a contribution of 1 times 200.00 EUR, being the sum of 1 times 25.00 EUR increased by 70 indexed surcharges for funding of the Fund for aid to the victims of intentional acts of violence and the occasional responders [Good Samaritans]
- a contribution of 20.00 EUR to the Budget Fund for second-tier legal aid
- a fixed compensation for administrative costs in criminal cases. This compensation is in the amount of 50.00 EUR.

- The costs of the criminal proceedings, estimated to date at **1/4x 21464.23 = 5366.06 EUR.**

As regards M.A., third defendant

Sentences **M.A.** for the combined acts of the charges A and D:

to a **term of imprisonment of 17 years.**

Pronounces with regard to M.A. the revocation of Belgian citizenship, pursuant to Article 23/2 § 1 of the Code of Belgian Citizenship.

Deprives M.A. **FOR LIFE** of the rights as described in Article 31 of the Penal Code;

Pronounces forfeiture pursuant to Articles 42, 3° and 43bis PC as criminal proceeds:

- of 1,500 Euros found during the house search (managed by the COIV)
- of 226,084.50 Euros, which includes all the seized monies (also via accounts) which are managed by the COIV (Protocol 501185-2020).

Sentences M.A. to payment of:

- a contribution of 1 times 200.00 EUR, being the sum of 1 times 25.00 EUR increased by 70 indexed surcharges for funding of the Fund for aid to the victims of intentional acts of violence and the occasional responders [Good Samaritans]
- a contribution of 20.00 EUR to the Budget Fund for second-tier legal aid
- a fixed compensation for administrative costs in criminal cases. This compensation is in the amount of 50.00 EUR.
- The costs of the criminal proceedings, estimated to date at **1/4x 21464.23 = 5366.06 EUR.**

As regards A.A., fourth defendant

Sentences **A.A.** for the combined acts of the charges A and D:

to a **term of imprisonment of 20 years.**

Deprives A.A. **FOR LIFE** of the rights as described in Article 31 of the Penal Code;

Pronounces forfeiture pursuant to Articles 42, 1° and 43 PC, property of the defendant and used for the commitment of the acts:

- of 10,463.22 Euros, managed by the COIV.

Sentences A.S. to payment of:

- a contribution of 1 times 200.00 EUR, being the sum of 1 times 25.00 EUR increased by 70 indexed surcharges for funding of the Fund for aid to the victims of intentional acts of violence and the occasional responders [Good Samaritans]

- a contribution of 20.00 EUR to the Budget Fund for second-tier legal aid
- a fixed compensation for administrative costs in criminal cases. This compensation is in the amount of 50.00 EUR.
- The costs of the criminal proceedings, estimated to date at **1/4x 21464.23 = 5366.06 EUR.**

**With respect to Civil Law**

**1) As regards the position of civil party E.Z.**

Declares the request of the civil party Z.E.betta *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party Z.E.betta *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**2) As regards the position of civil party R.T.**

Declares the request of the civil party T.R.. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party T.R.. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**3 – 16) As regards the position of civil party G.T.**

Declares the request of the civil party T.G. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party T.G. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**4) As regards the position of civil party R.G.**

Declares the request of the civil party G.R. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party G.R. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**5) As regards the position of civil party W.M.**

Declares the request of the civil party M.W. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party M.W. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**6) As regards the position of civil party N.I.W.**

Declares the request of the civil party N.I.W. sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party N.I.W. the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**7) As regards the position of civil party I.B.**

Declares the request of the civil party B.I. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party B.I. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**8) As regards the position of civil party A.G.**

Declares the request of the civil party GHOZALI Ahmed sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party GHOZALI Ahmed the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**9) As regards the position of civil party L.C.**

Declares the request of the civil party CHAVEZ Linda sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party CHAVEZ Linda the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**10) As regards the position of civil party T.K.**

Declares the request of the civil party K.T. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party K.T. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**11) As regards the position of civil party R.B.**

Declares the request of the civil party B.R. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party B.R. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**12) As regards the position of civil party Y.B.**

Declares the request of the civil party B.Y. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party B.Y. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**13) As regards the position of civil party T.B.**

Declares the request of the civil party B.T. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party B.T. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**14) As regards the position of civil party F.H.**

Declares the request of the civil party H.F. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party H.F. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**15) As regards the position of civil party S.A.J.**

Declares the request of the civil party A.J. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party A.J. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**17) As regards the position of civil party R.J.**

Declares the request of the civil party J.R. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party J.R. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**18) As regards the position of civil party M.R.**

Declares the request of the civil party R.M. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party R.M. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**19) As regards the position of civil party R.H.**

Declares the request of the civil party H.R. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party H.R. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**20) As regards the position of civil party M.P.**

Declares the request of the civil party P.M. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party P.M. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**21) As regards the position of civil party A.T.**

Declares the request of the civil party T.A. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party T.A. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**22) As regards the position of civil party S.S.**

Declares the request of the civil party S.S. sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party S.S. the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**23) As regards the position of civil party J.L.**

Declares the request of the civil party L.J. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party L.J. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**24) As regards the position of civil party H.A.**

Declares the request of the civil party A.H. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party A.H. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**25) As regards the position of civil party M.J.D.**

Declares the request of the civil party J.M. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party J.M. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

**26) As regards the position of civil party P.B.**

Declares the request of the civil party B.P. *[sic]* sustainable and partly well-founded.

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay compensation to the civil party B.P. *[sic]* the amount of: **one Euro and zero cents (1.00 EUR) provisionally.**

Sentences S.A. – N.N. – A.M. – A.A. *collectively* to pay jointly as compensation of court costs to the civil parties sub 1 through 26 the amount of 180.00 EUR (Art. 1022 Civil Code – Art 1 through 13 Act of 4/21/2007 – Art 162 bis – 194, Code of Criminal Procedure).

Dismisses any additional and different requests.

OooO

This verdict has been handed down by the Court of First Instance of Antwerp, section Antwerp, chamber AC8:

xxx

and pronounced in public session on February 4, 2021, by the Presiding Judge, in the presence of a magistrate from the Office of the Public Prosecutor,  
with assistance of the Clerk of the Court xxx





Vonnisnummer / Griffienummer
2021 /
Repertoriumnummer / Europees
Datum van uitspraak
4 februari 2021
Naam van de beklaagde(n)
S.A.
Systeemnummer parket
18RF666
Rolnummer
20A003763
Notitienummer parket
FD/A/35/97/19/2018

Rechtbank van eerste  
aanleg Antwerpen,  
afdeling Antwerpen  
Kamer AC8

Vonnis

Aangeboden op
Niet te registreren

Inzake het Openbaar Ministerie

EN BURGERLIJKE PARTIJ(EN) :

- 1) E.Z.  
xxx  
**burgerlijke partij**
- 2) R.T.  
xxx  
**burgerlijke partij**
- 3) G.T.  
xxx  
**burgerlijke partij**
- 4) R.G., verkeerdelijk gedagvaard als G.  
xxx  
**burgerlijke partij**
- 5) W.M.  
xxx  
**burgerlijke partij**
- 6) N.I.W.  
xxx  
**burgerlijke partij**
- 7) I.B.  
xxx  
**burgerlijke partij**
- 8) A.G.  
xxx  
**burgerlijke partij**
- 9) L.C.  
xxx  
**burgerlijke partij**
- 10) T.K.  
xxx  
**burgerlijke partij**
- 11) R.B.  
xxx  
**burgerlijke partij**
- 12) Y.B.

XXX

**burgerlijke partij**

13)

T.B.

XXX

**burgerlijke partij**

14)

F.H.

XXX

**burgerlijke partij**

15)

S.A.J.

XXX

**burgerlijke partij**

16)

G.T.

XXX

**burgerlijke partij**

17)

R.J.

XXX

**burgerlijke partij**

18)

M.R.

XXX

**burgerlijke partij**

19)

R.H.

XXX

**burgerlijke partij**

20)

M.P.

XXX

**burgerlijke partij**

21)

A.T.

XXX

**burgerlijke partij**

22)

S.S.

XXX

**burgerlijke partij**

23)

J.L.

XXX

**burgerlijke partij**

24)

H.A.

xxx

**burgerlijke partij**

25) M.J.D.

xxx

**burgerlijke partij**

26) P.B.

xxx

**burgerlijke partij**

De burgerlijke partijen :

\* sub 1 tot en met 13, 15 tot en met 26 vertegenwoordigd door :

\* sub 14 bijgestaan door :

— xxx

**tegen :**

A.S.

xxx

**thans aangehouden in de gevangenis te Antwerpen**

beklaagde, bijgestaan door Meester xxx

2) N.N.

xxx

**thans aangehouden in de gevangenis te Antwerpen**

beklaagde, bijgestaan door Meester xxx

3) M.A.

xxx

**thans aangehouden in de gevangenis te Mechelen**

beklaagde, bijgestaan door Meester xxx

4) A.A.

xxx

**thans aangehouden in de gevangenis te Beveren**

beklaagde, vertegenwoordigd door Meester xxx

**TENLASTELEGGING(EN)**

Als dader of mededader in de zin van artikel 66 van het strafwetboek;

**A. Poging terroristische aanslag bedoeld in art. 137 § 2. 1° Sw (moord)**

Bij inbreuk op de artikelen 51, 52, 137, §1 en §2, 1°, 138, 393 en 394 van het Belgisch Strafwetboek, gepoogd te hebben ten nadele van minstens en onder meer hierboven vermelde burgerlijke partijen, aanwezig op het congres van de Nationale Iraanse Weerstandsrade te Villepinte (Frankrijk) op 30 juni 2018, te doden met het oogmerk om te doden en met voorbedachten rade, alsook met een terroristisch oogmerk in de zin van artikel 137, §1 van het Strafwetboek, waarbij het voornemen om het misdrijf te plegen zich geopenbaard heeft door uitwendige daden die een begin van uitvoering van dat misdrijf uitmaken en alleen ten gevolge van omstandigheden, van de wil van de daders onafhankelijk zijn gestaakt of hun uitwerking hebben gemist.

In het gerechtelijk arrondissement Antwerpen en Brussel en/of elders in het Rijk en buiten het Rijk, met name minstens in Oostenrijk, Iran, Duitsland, Groothertogdom Luxemburg en Frankrijk, minstens in de periode vanaf 01/03/2018 tot en met 30/06/2018  
door de eerste (A.S.), de tweede (N.N.), de derde (M.A.) en de vierde (A.A.)

B. ....

C. ....

#### **D. Deelname aan de activiteiten van een terroristische groep**

Deelgenomen te hebben aan enige activiteit van een terroristische groep, zijnde een gestructureerde vereniging van meer dan twee personen die sinds enige tijd bestaat en die in onderling overleg optreedt om terroristische misdrijven te plegen, als bedoeld in artikel 137 van het Strafwetboek, en waarvan het feitelijk oogmerk niet uitsluitend politiek, vakorganisatorisch, menslievend, levensbeschouwelijk of godsdienstig is of die niet uitsluitend enig ander rechtmatig oogmerk nastreeft, zij het ook door het verstrekken van gegevens of materiële middelen aan die terroristische groep of door het in enigerlei vorm financieren van enige activiteit van die terroristische groep, terwijl zij :

- wisten dat hun deelname bijdraagt tot het plegen van een misdaad of wanbedrijf door de terroristische groep (voor de periode van 01/01/2015 tot en met 31/12/2016)
  - wisten of moesten weten dat hun deelname zou kunnen bijdragen tot het plegen van een misdaad of wanbedrijf door de terroristische groep (voor de periode van 01/01/2017 tot en met 30/06/2018).
- art. 139 en 140 § 1 Sw)

In het gerechtelijk arrondissement Antwerpen en Brussel en/of elders in het Rijk en buiten het Rijk, met name minstens in Oostenrijk, Iran, Duitsland, Italië, Groothertogdom Luxemburg en Frankrijk,  
door de eerste (A.S.), de tweede (N.N.), de derde (M.A.) en de vierde (A.A.)

#### **PROCEDURE**

De rechtbank neemt kennis van de beschikking van de raadkamer van deze rechtbank van 15 juli 2020 waarin verzachtende omstandigheden werden aangenomen.

De behandeling en de debatten van de zaak hadden plaats in openbare terechtzitting.

De rechtspleging verliep in de Nederlandse taal, behalve wat het vertaald gedeelte betreft.

De rechtbank heeft als beëdigd tolk aangesteld Parijs D.A., teneinde de burgerlijke partij H.F. bij te staan voor vertaling van alles wat gezegd wordt van het Engels naar het Nederlands en omgekeerd.

De rechtbank heeft als beëdigde tolken aangesteld S.F. en S.M.E., teneinde de beklaagden S.A., N.N. en A.M. bij te staan voor vertaling van alles wat gezegd wordt van het Nederlands naar het Farsi en omgekeerd.

De rechtbank nam kennis van de stukken van de rechtspleging en hoorde alle aanwezige partijen.

### **VOORAF :**

Tijdens het beraad is gebleken dat :

- \* De burgerlijke partijen sub 3) T.G. en 16) T.G. , één en dezelfde burgerlijke partij betreft;
- \* De burgerlijke partij sub 4) op de dagvaarding werd vermeld als R. G., terwijl dit gelezen dient te worden als R.G.; De rechtbank herstelt deze materiële vergissing.
- \* Op de processen-verbaal van de openbare terechtzitting van 27 november 2020 en 3 december 2020 als familienaam van de burgerlijke partij sub 21) A. werd vermeld, terwijl uit de syntheseconclusies van de burgerlijke partijen blijkt dat dit dient te worden gelezen als "T.". De rechtbank herstelt ook deze materiële vergissing.
- \* De syntheseconclusies van de burgerlijke partijen tevens de genaamde : P.B., xxx vermelden. De rechtbank stelt vast dat deze burgerlijke partij - voor wie tijdig conclusies werden neergelegd - bij materiële vergissing niet werd vermeld op de processen-verbaal van de openbare terechtzitting van 27 november 2020 en 3 december 2020. De rechtbank verleent akte van deze burgerlijke partijstelling (sub 26) en stelt vast dat deze burgerlijke partij wel degelijk vertegenwoordigd werd door zijn raadslieden en werd gehoord als burgerlijke partij op de openbare terechtzittingen van 27 november 2020 en 3 december 2020.

### **OP STRAFGEBIED**

#### **PROCEDURE**

##### **I. BOM-controle**

Bij arrest van 4 juni 2020 van de Kamer van Inbeschuldigingstelling werd een BOM-controle uitgevoerd en werden er geen onregelmatigheden vastgesteld.

## **II. Het weren van de conclusie van het openbaar ministerie**

Tweede beklaagde vroeg op de openbare terechtzitting van 27 november 2020 dat de conclusies van het openbaar ministerie zouden geweerd worden, aangezien zij niet meegedeeld waren aan de verdediging van tweede beklaagde.

De raadslieden van zowel de burgerlijke partijen als de overige beklaagden hebben tijdig de besluiten van het openbaar ministerie gehad, maar er was blijkbaar een vergissing gebeurd met betrekking tot het verzenden van de besluiten naar de verdediging van tweede beklaagde.

Omdat de besluiten van het openbaar ministerie wel degelijk tijdig waren, gaf de rechtbank, met instemming van alle partijen, de verdediging van tweede beklaagde de mogelijkheid om nog te antwoorden op de besluiten tegen de openbare terechtzitting van 3 december 2020.

De rechtbank gaat dan ook niet over tot wering van de besluiten van het openbaar ministerie.

## **III. Onontvankelijkheid van de strafvordering wegens obscuri libelli en schending van recht op verdediging.**

De verdediging van derde beklaagde werpt dit op in de besluiten. Op de openbare terechtzitting geeft derde beklaagde aan niet meer aan te dringen op deze exceptie en er afstand van te doen.

Volledigheidshalve gaat de rechtbank dit na voor alle beklaagden.

De feiten van de tenlasteleggingen moeten op een zodanige wijze zijn omschreven dat het voorwerp ervan voldoende duidelijk blijkt voor de beklaagden en dat hun rechten van verdediging gewaarborgd worden.

Er is geen sprake van obscuri libelli. Uit de tenlasteleggingen kunnen beklaagden duidelijk afleiden waarvoor ze vervolgd worden. Beklaagden kunnen zich verdedigen met betrekking tot de in de tenlasteleggingen voorziene misdrijven.

Er is geen enkele wetsbepaling die bepaalt dat de beklaagden uitsluitend moeten ingelicht worden door de dagvaarding of door de beschikking tot verwijzing.

Het inlichten van beklaagden kan ook gebeuren door samenlezing van de dagvaarding met de stukken uit het strafdossier, waarin zij inzage kregen en waarop zij hun rechten van verdediging hebben kunnen laten gelden ten opzichte van de rechter ten gronde. Bovendien werd door het openbaar ministerie een uitgebreide conclusie neergelegd, met ieders aandeel gedetailleerd uiteengezet. Beklaagden waren dan ook voldoende ingelicht.

Bovendien was ook het rekwisitoor van het openbaar ministerie voldoende duidelijk en was de verdediging van beklaagden perfect in staat om zich hierop te verdedigen, wat ze in concreto ook hebben gedaan.

De rechtbank kan dan ook geen schending vaststellen.

#### **IV. De ingeroepen persoonlijke onschendbaarheid en immuniteit als diplomatiek ambtenaar.**

Vierde beklaagde werpt op dat hij een diplomatiek ambtenaar is en immuniteit geniet overeenkomstig het Verdrag van Wenen inzake diplomatiek verkeer van 18 april 1961. Bovendien argumenteert hij dat hij niet kon aangehouden worden in Duitsland en vervolgens uitgeleverd worden aan België, gelet op zijn persoonlijke onschendbaarheid, waarop hij recht heeft volgens het hogervermeld verdrag.

Gelet op zijn immuniteit, kan hij dus ook niet vervolgd worden voor de Belgische rechtbanken.

Er bestaat geen discussie over dat vierde beklaagde op het ogenblik van zijn aanhouding deel uitmaakte van het diplomatiek personeel (derde raadgever sedert 23 juni 2014-diplomatiek paspoort D9016657 van 26 april 2014) en dat hij geaccrediteerd was voor de Iraanse staat in Oostenrijk. Hij beschikte over een diplomatiek paspoort. Hij kan als diplomatiek ambtenaar beschouwd worden (artikel 1.e Verdrag van Wenen) en dit tot 2 juli 2018 (datum intrekking immuniteit door de Oostenrijkse overheid).

Volgens het Belgisch strafrecht is al wie op Belgisch grondgebied een misdrijf pleegt strafbaar, ongeacht de nationaliteit van de dader(s). De Belgische rechtbanken zijn bevoegd om kennis te nemen van alle elementen en omstandigheden van het misdrijf die een ondeelbaar geheel vormen van dat misdrijf op Belgisch grondgebied. Dit betekent dat feitelijke gedragingen van een misdrijf die deels gepleegd worden in België en deels in het buitenland, in België kunnen vervolgd worden. Daders die deelnemen in het buitenland aan een misdrijf in België, kunnen in België vervolgd worden.

Het internationaal recht gaat uit van de soevereiniteit van onafhankelijke staten, die allemaal op het gelijke voet worden behandeld. Het Verdrag van Wenen is een bijzondere regeling met betrekking tot deze soevereiniteit en bepaalt de wijze waarop staten omgaan met het diplomatiek personeel.

Uit de wijze waarop het verdrag tot stand is gekomen en de latere interpretatie van het verdrag, blijkt duidelijk dat het Verdrag van Wenen het gewoonterecht inzake het diplomatiek personeel codificeerde en dat alle (belangrijke) regels in dit verdrag vervat zijn.

De bepalingen aangaande de diplomatieke uitwisseling zijn bilaterale afspraken tussen de zendstaat en de ontvangende staat en berusten op het principe van wederkerigheid. In die zin

moet het Verdrag van Wenen ook beperkend worden geïnterpreteerd en schept dit geen verplichtingen naar andere staten, die vreemd zijn aan de bilaterale afspraken tussen de zendstaat en de ontvangende staat, met uitzondering van art. 40 van het Verdrag van Wenen.

Het verdrag van Wenen bepaalt in haar artikel 31 :

*“De diplomatieke ambtenaar geniet immuniteit ten aanzien van de rechtsmacht in strafzaken van de ontvangende staat.”*

De immuniteit die een diplomatieke ambtenaar verkrijgt, is slechts een immuniteit naar de strafvervolgning in de ontvangende staat, zijnde een uitvoeringsimmuniteit.

Een diplomaat kan wel degelijk strafbare feiten plegen in een ander land en kan hiervoor vervolgd worden in een ander land dan de ontvangende staat (hier Oostenrijk). Ook de feiten die hij als mededader pleegde vanuit Oostenrijk, kunnen perfect vervolgd worden in België.

Oostenrijk kan juist omwille van de soevereiniteit van de onafhankelijke staten, geen immuniteit van strafvervolgning aanbieden in een ander land.

Oostenrijk heeft op 2 juli 2018 de immuniteit van vierde beklaagde ingetrokken (machtigingsimmuniteit) (toepassing van art. 9 Verdrag van Wenen), maar dit heeft uitsluitend betrekking op eventuele strafvervolgning in Oostenrijk voor strafbare feiten, waarvoor de Oostenrijkse justitie bevoegd is.

De betrokken diplomaat wordt dan “persona non grata” verklaard en wordt in de mogelijkheid gesteld om het land te verlaten binnen een welbepaalde beperkte periode.

Dit is echter totaal niet ter zake dienend, aangezien het hier gaat om Belgische misdrijven die deels gepleegd werden in België en deels in andere landen van de EU, zoals Luxemburg en Italië, en dit volkomen los staat van de immuniteit die vierde beklaagde genoot in Oostenrijk.

Alleszins geniet vierde beklaagde geen enkele immuniteit ten aanzien van strafvervolgning voor strafbare (deelnemings-) feiten in België.

Vierde beklaagde werpt op dat hij ten onrechte werd aangehouden in Duitsland en hij beroept zich op art. 40 Verdrag van Wenen. Door zijn onterechte aanhouding in Duitsland, werd hij onterecht uitgeleverd aan België en staat hij onterecht terecht voor deze rechtbank.

De rechtbank verwijst hiervoor naar het arrest van de Kamer van Inbeschuldigingstelling van Antwerpen en het daaropvolgend arrest van het Hof van Cassatie in het kader van de voorlopige hechtenis.

Bij arrest van 18 december 2018 besliste de K.I. : *“Uit de feitelijke gegevens van het strafdossier blijkt dat verdachte op vakantie was in België en Duitsland. Op 1 juli 2018 werd hij in Duitsland*

*gearresteerd toen hij op weg was naar zijn diplomatische standplaats in Oostenrijk..., genoot verdachte niet van zijn diplomatieke onschendbaarheid. Hij werd regelmatig gearresteerd en aangehouden. Het bevel tot aanhouding is regelmatig”.*

In haar arrest van 2 januari 2019 besliste het Hof van Cassatie :

*“Uit deze bepalingen volgt dat de onschendbaarheid en de immuniteiten door de ontvangststaat van de diplomaat en door een derde Staat wordt verleend, wanneer de diplomaat op het grondgebied van een derde Staat op doorreis is om zijn werkzaamheden op zijn post te aanvaarden of om naar zijn post terug te keren of wanneer hij naar zijn eigen land terugkeert.*

*Onder doorreis als bedoeld in het strikt uit te leggen art. 40.1, eerste zin Verdrag van Wenen, wordt enkel verstaan de doorreis die verband houdt met de uitoefeningen van de diplomatieke opdracht van diplomaat, met name de reis vanuit het land van herkomst om de diplomatieke standplaats te vervoegen of om naar het thuisland terug te keren, ofwel de reis vanuit de standplaats naar het land waar de diplomaat een diplomatieke missie dient te vervullen of om, na de vervulling van die missie, vanuit dit land naar de diplomatieke standplaats terug te keren. Een terugkeer uit een derde land waar de diplomaat op vakantie verblijft naar de standplaats, is vreemd aan de uitoefening van de diplomatieke opdracht en is bijgevolg geen doorreis als bedoeld in art. 40, eerste zin, Verdrag van Wenen.”*

Ook de Duitse justitie kwam zowel bij de vrijheidsberoving/aanhouding, als bij de verdere procedure die leidde tot zijn uitlevering, tot de conclusie dat beklaagde op vakantie was, bovendien geen diplomatieke functie had in Duitsland en dus ook geen aanspraak kon maken op zijn diplomatieke status.

Omdat het opnieuw opgeworpen wordt door vierde beklaagde, sluit de rechtbank zich volledig aan bij het arrest van het Hof van Cassatie in het kader van de voorlopige hechtenis.

Het diplomatiek verkeer en alle rechten (voor de diplomaat) en verplichtingen voor de ontvangende staat die hieruit voortvloeien zijn bilaterale afspraken tussen de zendstaat en de ontvangende staat, zoals bepaald in het Verdrag van Wenen.

Het verdrag vereist geen rechtstreekse doorvoer tussen de verzendende en de ontvangende staat. Men kan via een derde land passeren om naar zijn diplomatieke post in de ontvangende staat te gaan of om terug te keren naar de zendstaat. Hier is dus een uitzondering op de regel van de bilaterale overeenkomst tussen de zendstaat en de ontvangende staat. Het verdrag van Wenen bepaalt dat derde landen, die vreemd zijn aan de diplomatieke relatie tussen de zendstaat en de ontvangende staat, doorgang moeten verlenen aan diplomatieke ambtenaren en dus in zekere zin de immuniteit/persoonlijke onschendbaarheid van de diplomatieke ambtenaar moeten respecteren. Deze uitzondering moet dan ook beperkend geïnterpreteerd worden. De doorgang is dus strikt beperkt tot deze specifieke verplaatsing of een verplaatsing naar een ander land dan de ontvangende staat omwille van een specifieke diplomatieke

missie.

Men geniet geen immuniteit wanneer men in zich in een derde land bevindt louter om persoonlijk redenen.

Uit de vaststellingen tijdens de observatie, de wegcontrole, het huren van het voertuig (van 25 juni 2018 tot en met 2 juli 2018) en hun reisweg (Duitsland, Luxemburg, Nederland, Luik,...), blijkt ontegensprekelijk dat vierde beklaagde met zijn familie op vakantie was en dus niet op diplomatieke missie of diplomatieke reis was.

De argumentatie die vierde beklaagde tracht te maken dat zijn immuniteit als diplomaat vergelijkbaar is met de totale immuniteit van vreemde staatshoofden en ministers in alle landen gaat niet op en kan uit geen enkele internationale rechtsregel, rechtspraak of gewoonterecht worden afgeleid. Nergens wordt bepaald dat de diplomatieke immuniteit zo'n ruime draagwijdte heeft.

Tenslotte kan er nog verwezen worden naar art. 38 Verdrag van Wenen : *“Behalve voor zover een ontvangende staat aanvullende rechten en immuniteiten verleent, geniet een diplomatiek ambtenaar die onderdaan is van, of duurzaam verblijf houdt in, die staat slechts immuniteit van rechtsmacht en onschendbaarheid ten aanzien van officiële handelingen verricht in de uitoefening van zijn functie”*.

Uit de vordering blijkt dat vierde beklaagde er van verdacht wordt in werkelijkheid geen diplomaat te zijn. Hij zou een Iraans inlichtingenofficier zijn, die als runner fungeerde voor zijn Europese informanten. Zijn statuut als diplomaat werd mogelijk misbruikt om elders in Europa strafbare feiten te kunnen plegen en zelfs een explosief toestel te smokkelen van Iran naar Europa onder de diplomatieke dekking.

Hij wordt verdacht de (mede-) organisator te zijn van een mogelijke vrijdelde dodelijke aanslag in Frankrijk. Deze handelingen kunnen onmogelijk als (normale) diplomatieke activiteiten beschouwd worden, die verricht worden in het kader van zijn functie.

De daadwerkelijke activiteiten waarvan beklaagde wordt verdacht, indien bewezen, zijn zelfs strijdig met art. 3 van het verdrag.

Dit artikel bepaalt dat de functies van een diplomatieke zending o.a. omvatten: *“....het behartigen van de belangen van de zendstaat en zijn onderdanen, binnen de door het volkenrecht toegestane grenzen in de ontvangende staat”*. Zijn onofficiële activiteiten, waarvan hij verdacht wordt, passen totaal niet in de volkenrechtelijke toegestane grenzen en het kan niet de bedoeling zijn van de verdragsluitende partijen de handelingen waarvan vierde beklaagde verdacht wordt, te laten dekken door een diplomatieke immuniteit.

## **V. De ingeroepen staatsimmuniteit en de onbevoegdheid van de rechtbank**

Vierde beklaagde preciseert dat hij zich niet beroept op de immuniteit als staatsambtenaar, omdat volgens hem hij een immuniteit geniet als diplomaat.

Hij argumenteert echter wel dat de rechtbank niet bevoegd is om te oordelen over de betrokkenheid van de Iraanse staat of één van haar organen (zoals de inlichtingendienst MOIS of het departement 312) en dit op basis van het volkenrechtelijk principe van de staatsimmunititeit.

Zoals hierboven reeds uiteengezet gaat men in het internationaal recht uit van de soevereiniteit van staten. Alle staten zijn gelijk en staten hebben niet over elkaar te oordelen en men steunt zich hierbij in het internationaal recht op de staatsimmunititeit.

Deze staatsimmunititeit heeft niet alleen betrekking op de nationale staat, maar ook op haar organen en zelfs eventueel haar ambtenaren. Oorspronkelijk werd deze staatsimmunititeit in het internationaal recht heel absoluut geïnterpreteerd, maar onder meer door het toenemend handelsverkeer waaraan staten deelnamen, zijn er uitzonderingen ontstaan op dit principe.

De rechtbank stelt vast dat noch de Iraanse staat, noch de inlichtingendienst MOIS, noch departement 312 van de Iraanse inlichtingendienst hier terecht staan als beklaagde, zodat het principe van de staatsimmunititeit niet geschonden werd.

De rechtbank is het er niet mee eens, dat er een schending van een staatsimmunititeit zou zijn, wanneer de rechtbank op basis van een strafdossier zou vaststellen dat er een bepaalde betrokkenheid is van een buitenlandse staat, haar organen of ambtenaren. De rechtbank kan uiteraard de Iraanse staat of haar organen niet veroordelen, maar zij staan hier ook niet terecht als beklaagden. Er anders over oordelen zou leiden tot een beperking van de soevereiniteit van de Belgische rechtsstaat, wat op zich al zou ingaan tegen de staatsimmunititeit.

De rechtbank neemt er akte van dat vierde beklaagde voor zichzelf niet zijn immuniteit als staatsambtenaar inroept. Hij beroept zich op zijn diplomatieke immuniteit, maar zoals hierboven reeds aangegeven, geldt deze immuniteit in onderhavige strafzaak niet.

Volledigheidshalve kan hij ook geen beroep doen op de immuniteit als staatsambtenaar.

Vierde beklaagde staat terecht voor zijn persoonlijke strafrechtelijke betrokkenheid. Deze betrokkenheid kan persoonlijk zijn, maar kan ook passen binnen een bepaalde illegale taak die hij gekregen heeft van zijn opdrachtgevers, bijvoorbeeld mensen binnen de inlichtingendiensten.

De immuniteit van staatsambtenaren van een vreemde staat op strafgebied zou uiteraard alleen maar kunnen gelden voor de strafbare feiten die een staatsambtenaar verricht in het kader van de uitoefening van zijn officiële overheidstaken (functionele immuniteit).

Vierde beklaagde wordt verdacht van een aanslag te hebben georganiseerd of minstens de operationele leiding te hebben genomen van het plannen van een terroristische aanslag in

Frankrijk met mogelijk dodelijke slachtoffers. We mogen er van uitgaan dat deze activiteit niet behoort tot de officiële activiteiten van een ambtenaar van de Iraanse staat in het algemeen en een inlichtingendienst in het bijzonder. Het zal zeker niet behoren tot de taak van een diplomatiek ambtenaar, maar ook niet tot de officiële taken van inlichtingendiensten, die in principe alleen maar inlichtingen dienen te verzamelen, te analyseren en te verwerken.

Bovendien heeft de Iraanse staat, noch enig ander orgaan in het Iraanse overheidsapparaat de activiteiten waarvan vierde beklaagde verdacht wordt, zich toegerekend. Op geen enkel ogenblik heeft de Iraanse staat erkend dat deze activiteiten kaderden in de officiële functie van vierde beklaagde. De Iraanse staat heeft nooit erkend een aanslag te hebben willen plegen op een conferentie van de Iraanse oppositie op 30 juni 2018.

Men kan zich ook de vraag stellen of de staatsimmunititeit kan ingeroepen worden voor terrorisme-activiteiten. Het recht op leven is een absoluut basisrecht van een burger, waar ook ter wereld. Dit universeel basisrecht aantasten door terroristische activiteiten, kan moeilijk afgeschermd worden door de staatsimmunititeit. Internationaal terroristische misdrijven dienen beschouwd te worden als “misdaden die behoren tot het ius cogens” en het bestrijden hiervan, wat in elk land behoort tot de prioriteit in misdaadbestrijding, vormt een uitzondering op het principe van de staatsimmunititeit. Het zou moeilijk aanvaardbaar zijn dat er omwille van commerciële redenen, uitzonderingen worden toegestaan op de staatsimmunititeit, maar dat dit niet geldt voor misdaden die de mensheid in haar absoluut recht op leven schaadt.

Tenslotte haalt vierde beklaagde in zijn verdediging aan dat de burgerlijke partij NCRI zelf een terroristische organisatie is of minstens verantwoordelijk is voor diverse aanslagen via haar zusterorganisatie.

Dit maakt geen onderdeel uit van de beoordeling van de rechtbank. De rechtbank dient alleen te oordelen of er strafbare feiten zijn begaan en of er een oorzakelijk verband is tussen de mogelijke schade die de burgerlijke partij heeft geleden en de strafbare feiten.

De rechtbank moet geen beoordeling maken van de morele ingesteldheid van deze burgerlijke partij. Noch de burgerlijke partij, noch haar zusterorganisatie staan hier terecht.

## **VI. Schending van het recht op een eerlijk proces en het recht van verdediging.**

### **a) Eerste verhoren van vierde beklaagde zonder bijstand van een raadsman**

Vierde beklaagde werpt op dat hij bij zijn eerste verhoor in Duitsland en zijn verhoor omtrent zijn aanhouding, geen bijstand heeft gekregen van een raadsman, waardoor zijn recht van verdediging is geschonden en minstens zijn recht op een eerlijk proces. Vierde beklaagde verwijst hiervoor naar de Europese richtlijn en de rechtspraak van het Europees Hof voor de Rechten van de Mens.

Bij aanvang van zijn eerste verhoren werd vierde beklaagde er telkens op gewezen dat hij het recht had zich te laten bijstaan door een raadsman. Vierde beklaagde heeft een raadsman aangeboden gekregen, namelijk een advocaat uit Würzburg, die ook bereid was de verdediging op zich te nemen, maar vierde beklaagde wenste deze tussenkomst niet, omdat hij een advocaat wilde krijgen, aangesteld door zijn eigen ambassade. Hij werd inderdaad uiteindelijk verhoord zonder (voorafgaandelijke) bijstand. Uit de stukken van de Duitse justitie blijkt bovendien dat de verbalisanten op zondag (dag van zijn aanhouding) en op maandag getracht hebben het Iraans consulaat te bereiken in Duitsland, maar dat ze geen contact kregen. Uit de verdere stukken blijkt dat men enkele dagen na zijn aanhouding het consulaat heeft kunnen bereiken en dat het consulaat vanaf dan ook contact heeft kunnen krijgen met vierde beklaagde.

In zijn verdediging werpt vierde beklaagde ook op dat hij geen bijstand heeft gekregen van een tolk Farsi. Uit de uitvoeringsstukken, blijkt dat er slechts één tolk Farsi aanwezig was en dat deze aangesteld werd in het verhoor van de vrouw en de kinderen van vierde beklaagde. Vierde beklaagde werd verhoord in het Engels en uit geen enkel gegeven blijkt dat hij op dat ogenblik zich hiertegen verzet heeft. Integendeel, er werd uitdrukkelijk geacteerd dat hij bereid was zijn verhoor in het Engels te voeren. Hij vroeg ook uitdrukkelijk om het Iraanse consulaat te verwittigen. De verbalisanten acteerden dat het consulaat zondag en maandag gecontacteerd werd door hen, maar zonder resultaat.

Uit de stukken blijkt dat hij sedert dinsdag 3 juli 2018 bijstand kreeg van leden van de Iraanse ambassade.

Vierde beklaagde toont niet aan dat de regels van het Duitse strafprocesrecht in onderhavig geval geschonden werden door niet uitdrukkelijk te noteren dat hij afstand deed van de bijstand van een advocaat.

Uit de voorliggende gegevens blijkt niet dat rekening houdend met de concrete omstandigheden het recht op verdediging of het recht op een eerlijk proces in hoofde van vierde beklaagde werd geschonden. Bovendien moet men kijken naar het geheel van de procedure en stelt de rechtbank daarbij geen onherstelbare schending van de rechten van verdediging vast en dus ook geen schending van het recht op een eerlijk proces.

#### **b) Eerste verhoor van de echtgenote en de kinderen van vierde beklaagde zonder bijstand van een raadsman**

De echtgenote en de kinderen van vierde beklaagde werden van hun vrijheid beroofd, omdat de politiehond positief reageerde op de mogelijke aanwezigheid van explosieven in het voertuig van vierde beklaagde.

Bij aanvang van hun eerste verhoor werden de echtgenote en de meerderjarige zoon van

vierde beklaagde er telkens op gewezen dat zij het recht hadden zich te laten bijstaan door een raadsman. Weliswaar blijkt niet uit de stukken dat zij dit uitdrukkelijk deden, maar uit het verhoor blijkt impliciet dat ze afstand deden. Ze werden ook beiden verhoord met bijstand van een tolk Farsi. Uit het verhoor van de zoon blijkt dat hij zijn rechten in het Engels kreeg uitgelegd, ondanks dat er een tolk aanwezig was.

Vierde beklaagde maakt bovendien heel veel bezwaar over de wijze waarop het verhoor van zijn 17-jarige zoon gebeurde en stelt dat dit niet conform de Europese richtlijnen is. Bij aanvang van het verhoor werd de minderjarige zoon van vierde beklaagde (17 jaar) erop gewezen dat hij recht had op de bijstand van een raadsman en dat hij voorafgaand aan het verhoor en tijdens het verhoor de aanwezigheid kon eisen van zijn “opvoeders/wettelijke vertegenwoordigers”. Uit het proces-verbaal blijkt dat vierde beklaagde en zijn echtgenote uitgenodigd werden om bij het verhoor aanwezig te zijn, maar dat ze hiervan afstand hebben gedaan. Ook deze zoon werd verhoord met bijstand van een tolk Farsi.

Uiteindelijk bleek dat hun niets ten laste kon gelegd worden en werden ze in vrijheid gesteld.

Om te kijken of een beklaagde zijn recht op verdediging of zijn recht op een eerlijk proces geschonden werd, moet men kijken naar het geheel van de procedure.

De rechtbank stelt vast dat de vrouw en kinderen van vierde beklaagde aanvankelijk verhoord werden als verdachten, maar thans niet vervolgd worden als beklaagden. Zij kunnen in de huidige stand van de procedure aldus beschouwd worden als loutere getuigen. Door het openbaar ministerie werden geen elementen à charge lastens vierde beklaagde op basis van deze verklaringen weerhouden. De rechtbank baseert zich bij de beoordeling van de schuld evenmin op deze verklaringen.

In die omstandigheden stelt de rechtbank vast dat er, voor zover er al sprake zou zijn van enige onregelmatigheid, geen sprake is van een schending van de rechten van verdediging in hoofde van vierde beklaagde, noch van een schending van het recht op een eerlijk proces.

### **c) Geen vertrouwelijk gesprek met consulaire ambtenaren op het moment van zijn aanhouding**

Ook hier beroept vierde beklaagde zich op een Europese richtlijn, die voorziet in een recht op consulaire bijstand.

Uit de stukken van de Duitse justitie blijkt dat zondag (dag van zijn aanhouding) 1 juli 2018 en maandag 2 juli 2018 getracht werd het Iraans consulaat te contacteren, maar dat dit niet lukte.

Vanaf 3 juli 2018 kreeg vierde beklaagde bijstand van het Iraanse consulaat. Uit de stukken blijkt dat op 3 juli 2018 een onderhoud heeft plaats gevonden zonder toezicht. De latere contacten werden steeds toegestaan, maar onder strikte veiligheidsmaatregelen. Gelet op de

stand van het dossier en de inhoud ervan, zoals het bekend was voor de Duitse justitie, bleek duidelijk dat vierde beklaagde ervan verdacht werd betrokken te zijn bij een vrijdelde aanslag in Frankrijk en dat hij deze mogelijke strafbare feiten pleegde onder een diplomatieke cover en mogelijk met medeweten van de Iraanse staat. Het bezoek van leden van het Iraans consulaat was toegelaten maar onder specifieke veiligheidsmaatregelen, en dit om te vermijden dat er stukken of voorwerpen zouden worden uitgewisseld.

Vierde beklaagde toont niet concreet aan op welke manier de Duitse wetgeving werd geschonden. Ook de Europese richtlijn werd gerespecteerd. Noch de Europese richtlijn, noch het Verdrag van Wenen inzake consulaire betrekkingen van 1963, schrijven voor dat deze gesprekken vertrouwelijk dienen te geschieden.

Uiteraard zouden deze gesprekken best vertrouwelijk dienen te gebeuren, maar gelet op de specifieke aard van deze zaak en de mogelijke betrokkenheid van de Iraanse staat of één van haar organen, was de extra beveiligingsmaatregel opportuun en noodzakelijk.

De rechten van verdediging of het recht op een eerlijk proces werden in hoofde van vierde beklaagde niet geschonden. Uit de stukken blijkt dat hij meermaals contact gehad heeft met de Iraanse consulaire diensten.

#### **d) Detentieomstandigheden in Duitsland**

Vierde beklaagde klaagt de detentieomstandigheden in Duitsland aan.

Bij de verschillende gesprekken met de consulaire ambtenaar, kloeg vierde beklaagde over zijn detentie in de Duitse gevangenis.

Hiervan werd telkens een proces-verbaal gemaakt en gevoegd aan het strafdossier, waardoor er volledige transparantie is.

Vierde beklaagde bevond zich in een speciaal detentieregime, gelet op de feiten waarvan hij verdacht werd.

Deze specifieke veiligheidsomstandigheden lijken opportuun en noodzakelijk. Het is begrijpelijk dat vierde beklaagde het niet aangenaam vindt om in een gevangenis te zitten en dat zeker de extra veiligheidsmaatregelen niet aangenaam zijn.

Uit de proces-verbalen blijkt bovendien dat hij vooral boos is dat zijn diplomatieke immuniteit, waarop hij zich juridisch ten onrechte trachtte te steunen, niet aanvaard werd.

Noch vierde beklaagde, noch het consulaat hebben een burgerlijke/administratieve procedure ingespannen tegen de Duitse overheid met betrekking tot de uitvoering van zijn detentie, wat perfect mogelijk is in de Duitse rechtsstaat.

De rechtbank stelt geen schending van de rechten van verdediging of het recht op een eerlijk proces vast.

#### **e) De detentieomstandigheden in België**

Ook over de detentievoorwaarden in België is vierde beklaagde ontevreden.

Vierde beklaagde bevindt zich in een speciaal detentieregime, gelet op de feiten waarvan hij verdacht wordt.

Deze specifieke veiligheidsomstandigheden lijken opportuun en noodzakelijk. Het is begrijpelijk dat vierde beklaagde het niet aangenaam vindt om in een gevangenis te zitten en dat zeker de extra veiligheidsmaatregelen niet aangenaam zijn.

Uit het strafdossier blijkt bovendien dat hij vooral boos is dat zijn diplomatieke immuniteit, waarop hij zich juridisch ten onrechte trachtte te steunen, niet aanvaard werd.

In België bestaat er een wet met betrekking tot de rechtspositie van gedetineerden, waarop vierde beklaagde zich kan steunen. Noch vierde beklaagde, noch het consulaat hebben een burgerlijke/administratieve procedure ingespannen tegen de Belgische overheid met betrekking tot de wijze waarop zijn detentie wordt uitgevoerd, wat perfect mogelijk is in de onze rechtsstaat.

De rechtbank stelt geen schending van de rechten van verdediging of het recht op een eerlijk proces vast.

#### **f) Bevriezing van de financiële middelen van vierde beklaagde**

Vierde beklaagde werpt op dat zijn rechten geschonden werden, omdat hij opgenomen werd op de Europese lijst van terroristen, waardoor ook al zijn financiële middelen bevroren zijn. Dit is volgens de verdediging een schending van zijn recht op een eerlijk proces, een schending van het vermoeden van onschuld, een schending van het verbod op foltering en een schending van het recht op eigendom.

Vierde beklaagde had een procedure aangespannen voor de Raad van State, specifiek met betrekking tot de Belgische gevolgen, maar dit werd afgewezen bij gebrek aan hoogdringendheid en omdat dit een Europese beslissing is.

Deze Europese beslissing zou volgens vierde beklaagde gebaseerd zijn op dit strafdossier.

Zo'n beslissing wordt niet lichtzinnig door de Europese Raad genomen en is een voorlopige voorzorgsmaatregel.

De rechtbank is niet bevoegd om te oordelen over deze opname en de gevolgen van deze opname en dit is niet het forum waar de toetsing van deze opname dient te gebeuren.

Er zijn andere fora waar vierde beklaagde dit kan toetsen op wettelijkheid of opportuniteit.

Alleszins zal deze opname op de Europese terreurlijst de rechtbank geenszins beïnvloeden bij de beoordeling. De rechtbank gaat steeds uit van het vermoeden van onschuld en ook tijdens het strafonderzoek werd dit recht steeds gerespecteerd.

**g) Geen nauwkeurige beschrijving van het doorzoeken van de wagen van vierde beklaagde**

Vierde beklaagde werpt op dat er geen nauwkeurige beschrijving is gegeven van het doorzoeken van de wagen.

Allerlei voorwerpen werden ofwel bij fouillering ofwel bij doorzoeking van de wagen teruggevonden en deze voorwerpen werden wel van naderbij beschreven.

Vierde beklaagde werpt op dat het van belang is om te weten welke voorwerpen waar werden aangetroffen, vooral de plaats in het voertuig is van belang.

De rechtbank merkt op dat vierde beklaagde in de gelegenheid werd gesteld om hierover tegenspraak te voeren en aan te voeren in welke mate de bewijswaarde werd aangetast door het gebrek aan deze beschrijving.

De beoordeling of dit al dan niet van belang is maakt deel uit van de beoordeling ten gronde met betrekking tot de eventuele schuldigverklaring door de rechtbank. Indien dit een probleem vormt, zal de rechtbank desgevallend de nodige juridische besluiten met betrekking tot de bewijswaarde en de daaropvolgende eventuele schuldigverklaring trekken.

**VII. Informatie verstrekt door de Veiligheid van de Staat**

Beklaagden werpen op dat het strafdossier grotendeels gebouwd is op informatie van de Veiligheid van de Staat en dat dit niet als basis van bewijs kan beschouwd worden, te meer er niet kan gecontroleerd worden op welke wijze deze informatie werd bekomen.

Informatie van de Veiligheid van de Staat dient beschouwd te worden als inlichtingen. Dit kan perfect als een aangifte beschouwd worden en wanneer deze informatie concreet is en

gedetailleerd kunnen op basis van deze informatie verregaande onderzoeksmaatregelen bevolen worden.

De schuld van beklaagden dient steeds beoordeeld te worden op grond van objectieve en getoetste bewijzen en kan niet uitsluitend gebaseerd zijn op deze informatie. In het geheel van de bewijsvoering kan deze informatie van de Veiligheid van de Staat wel een belangrijke aanvulling zijn.

Beklaagden werden in de mogelijkheid gesteld om tegenspraak te voeren over alle informatie afkomstig van de Veiligheid van de Staat.

Het is aan de rechtbank om te bepalen in welke mate deze informatie betrouwbaar is, zeker wanneer deze informatie afkomstig is van het louter verzamelen van inlichtingen. De rechtbank dient met betrekking tot informatie van buitenlandse inlichtingendiensten, behoudens tegenindicaties, ervan uit te gaan dat deze informatie werd verzameld conform de gebruikelijke buitenlandse wetgeving.

#### **VIII. De gevolgen van de rechtspraak van het Hof van Justitie**

De verdediging van derde beklaagde stelt dat al het bewijs lastens derde beklaagde rechtstreeks of onrechtstreeks is gesteund op telefoniegegevens die werden verkregen in strijd met het Unierecht, onder meer het recht op de eerbiediging van het privéleven (artikel 7 EU-Handvest). Bijgevolg dient derde beklaagde volgens de verdediging te worden vrijgesproken van alle hem ten laste gelegde feiten, minstens dienen alle partijen de mogelijkheid te krijgen om standpunt in te nemen over de stukken die dienen geweerd te worden en de gevolgen die daaraan verbonden moeten worden.

De verdediging verwijst hiervoor naar het recent arrest van het Hof van Justitie van 6 oktober 2020 (zaak C-511/18, C-512/18 en C-520/18) waarin geoordeeld werd dat de ongedifferentieerde en algemene bewaring van verkeers- en locatiegegevens, zelfs met het oog op de strijd tegen de zware criminaliteit, de limieten van het strikt noodzakelijke overschrijdt. Een ongedifferentieerde algemene bewaring van verkeers- en locatiedata van alle gebruikers van elektronische communicatiemiddelen kan volgens het Hof van Justitie opgelegd worden bij bevel van een gerechtelijke autoriteit in het geval van een ernstige, daadwerkelijke, actuele of voorzienbare bedreiging van de nationale veiligheid, mits dit bevel tot bewaring temporeel beperkt is tot het strikt noodzakelijke (onverminderd een mogelijke verlenging van de termijn), voorzienbaar is en het voorwerp uitmaakt van een daadwerkelijke controle door een rechter of onafhankelijk administratief orgaan met beslissingsrecht. Wat betreft de strijd tegen de zware criminaliteit en de preventie van zware dreigingen tegen de publieke veiligheid kan een gerichte bewaarplicht van verkeers- en locatiedata worden opgelegd op voorwaarde dat dergelijke bewaring beperkt is tot het strikt noodzakelijke voor wat betreft de categorieën van te bewaren gegevens, de beoogde elektronische communicatiemiddelen, de betrokken personen en de duur van de bewaring. Op basis van

objectieve en non-discriminatoire elementen dienen bepaalde groepen van personen of geografische zones daartoe geïdentificeerd te worden en er dient steeds een strikte beperking in tijd te zijn.

Maar zelfs als de nationale wetsbepaling waarop het bewaren van telecommunicatiegegevens gesteund is, in voorliggend geval artikel 126 van de Wet van 13 juni 2005 betreffende de elektronische communicatie, in strijd zou zijn met de grondrechten zoals voorzien in de artikelen 7, 8 en 52, 1<sup>e</sup> lid van het EU-Handvest, heeft dit niet automatisch tot gevolg dat deze gegevens dienen te worden beschouwd als onrechtmatig verkregen bewijs dat nietig zou zijn of geweerd zou moeten worden.

Volgens het Hof van Justitie komt het in de eerste plaats toe aan de nationale wetgever om in strafprocedures tegen personen die verdacht worden van het plegen van ernstige misdrijven, de regels te bepalen inzake de toelaatbaarheid en de beoordeling van informatie en bewijzen verkregen op basis van dataretentiewetgeving in strijd met het Unierecht.

Het komt dus aan de nationale rechtsordes toe om procedureregels te voorzien zodat de grondrechten die de burgers genieten overeenkomstig het Unierecht gegarandeerd worden, met dien verstande dat deze regels niet nadeliger mogen zijn dan de regels inzake bewijs verkregen in strijd met het nationale recht (equivalentieprincipe) en dat de uitoefening van de Europese grondrechten in de praktijk niet onmogelijk of uiterst moeilijk mag zijn (effectiviteitsprincipe). De regels inzake het gebruik als bewijs van data bewaard in strijd met het Unierecht mogen aldus niet nadeliger zijn dan deze inzake het gebruik van bewijs verkregen in strijd met het nationale recht.

Verder stelt het Hof van Justitie dat artikel 15, lid 1 van de E-Privacyrichtlijn geïnterpreteerd in het licht van het effectiviteitsprincipe concreet vereist dat nationale strafrechters in de context van strafrechtelijke procedures tegen personen die ervan worden verdacht strafbare feiten te hebben gepleegd, informatie en bewijzen die zijn verkregen door middel van de algemene en willekeurige bewaring van verkeers- en locatiegegevens in strijd met het EU-recht, uitsluiten wanneer die personen niet in staat zijn om effectief opmerkingen hieromtrent te formuleren en de informatie en de bewijzen betrekking hebben op een gebied waarvan de rechters geen kennis hebben en die waarschijnlijk een doorslaggevende invloed zullen hebben wat betreft de feitelijke vaststellingen.

Concreet stelt de rechtbank vast dat de verkeers- en locatiegegevens in voorliggend dossier werden opgevraagd door de onderzoeksrechter op basis van gemotiveerde beschikkingen conform artikel 88bis Sv. en rekening houdend met de principes van subsidiariteit en proportionaliteit.

Wat betreft de toelaatbaarheid als bewijs van deze opgevraagde gegevens die werden bewaard in strijd met de door het Unierecht gewaarborgde grondrechten, dient toepassing gemaakt te worden van artikel 32 V.T.Sv. Wat betreft onrechtmatig verkregen bewijs dient in onze Belgische rechtsorde immers steeds de toets overeenkomstig artikel 32 V.T.Sv. te worden gemaakt, ongeacht de aard van de bepaling (nationaal, Europees of internationaal) die werd

geschonden (zie in die zin Cass. 19 april 2016, nr. P.15.1639.N). Ervan uitgaan dat de bewaring van telecommunicatiegegevens in strijd met fundamentele grondrechten steeds dermate zwaarwichtig is dat dit automatisch een schending uitmaakt van het recht van verdediging en bij uitbreiding het recht op een eerlijk proces, is dan ook onjuist.

De rechtbank stelt vast dat er in het licht van de criteria van artikel 32 V.T.Sv. geen reden is om tot bewijsuitsluiting over te gaan. Het gebruik van de telecommunicatiegegevens is toelaatbaar gezien de bewaarplicht geen op straffe van nietigheid voorgeschreven vormvoorwaarde schendt, gezien de begane onregelmatigheid de betrouwbaarheid van het bewijs niet heeft aangetast en gezien het gebruik ervan niet in strijd is met het recht op een eerlijk proces. De rechten van verdediging zijn immers niet onherroepelijk geschonden.

De rechtbank stelt vast dat een bewaring van verkeers- en locatiegegevens in strijd met het recht op de bescherming van het privé-leven en de persoonsgegevens op zich niet doen twifelen aan de betrouwbaarheid van deze bewaarde gegevens. De verdediging betwist ook de kwaliteit en de juistheid van deze bewaarde en opgevraagde telefoniegegevens niet. Wat betreft het recht op een eerlijk proces stelt de rechtbank vast dat er geen sprake is van een (opzettelijke) onregelmatigheid begaan door de vervolgende of onderzoekende overheid. Zoals hoger gesteld was er voor de onderzoeksrechter een wettelijke basis voor het opvragen van de gegevens. De opvraging van de telecommunicatiegegevens gebeurde dus op vordering en onder strikt toezicht van een onafhankelijke gerechtelijke instantie, die conform de wettelijke voorschriften bij een duidelijk en gemotiveerd bevelschrift uiting heeft gegeven aan de redenen en motieven die aan de grondslag lagen van de beslissing. Ook de telecomoperator die de gegevens bewaarde, schond niet doelbewust het recht op bescherming van het privéleven en van de persoonsgegevens, maar handelde conform de op dat ogenblik geldende wettelijke verplichtingen in België. De wetbepalingen waarop zowel de onderzoeksrechter als de operatoren zich steunden werden net gewijzigd door de wet van 29 mei 2016 (*BS* 18 juli 2016) nadat het Grondwettelijk Hof bij arrest van 11 juni 2015 de wet van 30 juli 2013 tot wijziging van onder meer artikel 126 WEC had vernietigd wegens de schending van de eerbiediging van het privéleven en de bescherming van de persoonsgegevens.

Bovendien overstijgt de ernst van de aan de beklaagden ten laste gelegde feiten, poging terroristische moord en deelname aan een terroristische groep, ruimschoots de ernst van de beweerde onregelmatigheden. De strijd tegen de zware criminaliteit en de preventie van zware dreigingen tegen de publieke veiligheid zijn immers van die aard dat ze inperkingen van het recht op privéleven en van het recht van bescherming van de persoonsgegevens kunnen rechtvaardigen.

Beklaagden hebben tenslotte zowel tijdens het vooronderzoek als bij de behandeling ten gronde de mogelijkheid gehad om betwisting te voeren wat betreft de juistheid, de betrouwbaarheid en de geloofwaardigheid van de data inzake telecommunicatie, alsook wat betreft de gevolgtrekkingen van de onderzoekers en het openbaar ministerie op basis van deze gegevens. Ze waren in de mogelijkheid vragen te stellen, opmerkingen te formuleren en zelf elementen en argumenten aan te voeren die ze nuttig achten bij de beoordeling van de hen ten laste gelegde feiten. Hierbij kan ook worden opgemerkt dat telecommunicatiegegevens

niet alleen bewijzen à charge kunnen opleveren, maar uiteraard ook à décharge. Het uitvoeren van een telefonieonderzoek vormt in vele gevallen dan ook een noodzakelijk onderdeel van een onafhankelijk gevoerd gerechtelijk onderzoek waarbij zowel elementen à charge als à décharge worden vergaard.

Bovendien bevat het strafdossier ook verschillende andere bewijselementen naast deze verkregen uit (retroactief) telefonieonderzoek. De rechtbank toetst de telecommunicatiegegevens ook steeds mee af aan alle elementen in het dossier en de door de verdediging opgeworpen verweermiddelen.

Het “bewijsgewicht” van deze telecommunicatiegegevens is in het licht van het volledige strafdossier dan ook beperkt.

De verdediging van derde beklaagde voert overigens ook geen concreet verweer inzake de telefoniegegevens maar stelt enkel dat de retentie van telefoniegegevens dermate technisch is dat beklaagde zich daar in wezen niet effectief en nuttig kan tegen verdedigen en dat de rechtbank daar geen kennis van heeft. Opdat sprake is van effectieve tegenspraak wat betreft technisch en wetenschappelijk onderzoek is echter niet vereist dat de verdediging en de rechtbank de technische en wetenschappelijke kennis hebben zoals de experts ter zake. Door het voorleggen van de technische resultaten van dergelijk onderzoek en door de weergave en analyse ervan door de onderzoekers in pv's, alsook door de mogelijkheid voor de verdediging om hieromtrent opmerkingen te formuleren en/of andersluidende elementen of stukken bij te brengen, zowel tijdens het gerechtelijk onderzoek als tijdens de behandeling ten gronde, is effectieve tegenspraak gegarandeerd.

Het feit dat de opgevraagde telefoniegegevens werden bewaard in strijd met het recht op de eerbiediging van het privéleven en de bescherming van de persoonsgegevens, heeft het recht op verdediging in hoofde van beklaagden dan ook niet in de weg gestaan. De rechtbank stelt geen schending van het recht op een eerlijk proces vast en er dienen dan ook geen bewijselementen uit het debat te worden geweerd.

#### **IX. Voegen van proces-verbalen**

Tweede beklaagde verzoekt ook om de verhoren van de Duitse vriend van tweede beklaagde te voegen. Het openbaar ministerie heeft dit gedaan op de openbare terechtzitting van 3 december 2020.

#### **X. Het verzoek tot horen van getuigen**

Tweede beklaagde verzoekt de rechtbank om getuigen te horen, meer bepaald over het explosief karakter van de het gebruikte toestel. Hieronder zal blijken dat de onduidelijkheid die mogelijk zou ontstaan met betrekking tot het explosief toestel door de verdediging van tweede beklaagde zelf gecreëerd werd door een onvolledige lezing van het dossier. Een

onvolledige lezing van het strafdossier, door de verdediging van één van de partijen, kan geen reden zijn om getuigen extra te horen.

De rechtbank beschikt over voldoende informatie, onder meer van DOVO en de Duitse expert, om met betrekking tot het explosief karakter van het toestel een standpunt in te nemen.

Het is niet noodzakelijk voor de verdere beoordeling dat hieromtrent nog getuigen dienen gehoord te worden en de verdediging werd in de mogelijkheid gesteld om tegenspraak te voeren over de besluiten van deze experts en desgevallend tegenexpertises aan te leveren.

Daarnaast verzoekt tweede beklaagde om ook haar Duitse vriend te horen, maar gelet op het uitgebreide verhoor, gaat de rechtbank niet in op dit verzoek, aangezien tweede beklaagde ook niet aantoont waarom een verhoor onder eed als getuige, concreet noodzakelijk is voor haar verdediging. De rechtbank steunt zich bij een eventuele beoordeling ten laste ook niet op de verklaring van haar Duitse vriend en raakt alleen de verklaring aan wanneer deze ten ontlaste is.

#### **XI. Onrechtmatige telefoontaps overeenkomstig art. 8 EVRM**

Tweede beklaagde werpt op dat de informatie van de Veiligheid van de Staat onvoldoende was om tapmaatregelen op te starten, waardoor artikel 8 EVRM geschonden werd.

De rechtbank is het hiermee niet eens. De informatie van de Veiligheid van de Staat is concreet en precies genoeg om deze verregaande onderzoeksmaatregel te bevelen.

#### **XII. De schending van het recht op een eerlijk proces omwille van de media-aandacht**

Tweede beklaagde werpt op dat haar recht op een eerlijk proces geschonden werd door de uitgebreide verslaggeving voor het proces, waarbij de journalisten blijkbaar beschikten over een gedeelte van het strafdossier.

Het is niet duidelijk wie achter deze lekken naar de media toe zit.

De rechtbank houdt bij de beoordeling van de feiten en straftoemeting, alleen rekening met de gegevens die voorkomen in het strafdossier, de besluiten en neergelegde stukken, het mondelinge rekwisitoor, de mondelinge pleidooien van de burgerlijke partijen en de verdediging en ten slotte met de mondelinge verklaringen van partijen in persoon zelf.

De rechtbank houdt geen rekening met de informatie die verschijnt in de media of met de standpunten van de publieke opinie.

De rechtbank stelt dan ook geen schending van het recht op een eerlijk proces in hoofde van tweede beklaagde vast.

### **XIII. De onontvankelijkheid van de strafvordering**

Gelet op het standpunt van de rechtbank met betrekking tot bovenstaande procedurele argumenten, kan de rechtbank niet vaststellen dat de strafvordering niet ontvankelijk zou zijn.

De rechtbank stelt rekening houdend met de inhoud van het strafdossier, globaal genomen sedert de start van het onderzoek, alsook met de behandeling ter zitting geen schending vast van de rechten van verdediging, het recht op een eerlijk proces, het vermoeden van onschuld, of enige andere nationaalrechtelijke of internationaalrechtelijke bepaling.

De strafvordering is alleszins ontvankelijk.

### **TEN GRONDE**

Beklaagden staan terecht voor poging terroristische moord (tenlastelegging A) en lidmaatschap terroristische groep (tenlastelegging D).

Beklaagden worden vervolgd omdat ze betrokken zouden zijn bij een poging om een aanslag te plegen op 30 juni 2018 op een drukbezochte conferentie die georganiseerd werd door de Organisation des Moujahidines du Peuple Iranien/Mujahedin-e Khalq/Conseil National de la Résistance Iranienne te Villepinte (nabij Parijs).

### **De organisaties : Organisation des Moujahidines du Peuple Iranien (OMPI)/Mujahedin-e Khalq) en Conseil national de la Résistance iranienne**

De “Organisation des Moujahidines du Peuple Iranien (OMPI)/Mujahedin-e Khalq) (MEK)”, hierna “MEK”, is een Iraanse oppositiepartij, opgericht in 1965 in Iran. Oorspronkelijk voerde deze organisatie oppositie tegen de Iraanse Sjah, maar na de val van dit regime keerde deze organisatie zich snel tegen het nieuwe Islamitisch regime onder leiding van ayatollah Khomeini. Na een reeks grote betogingen en hun mogelijke betrokkenheid bij een zware aanslag in Teheran in 1981 werd MEK buiten de wet gesteld en gingen de leden in ballingschap.

MEK had een militaire vleugel, die van 1986 tot en met 1988 aan de kant van Saddam Houssein vocht tijdens de Iraaks/Iraanse oorlog (1980-1988). Tot in 2016 woonden duizenden leden van MEK in kampen in Irak (Camp Ashraf en Camp Liberty). Sedert 2016 verhuisden deze leden naar Europese landen, onder meer naar een kamp in Albanië. MEK stond op de terreurlijst van de Europese Unie tussen 2002 en 2009 en tot 2012 op de Amerikaanse terreurlijst. Sedert 2000 zou MEK officieel afzien van de gewapende strijd.

De politieke vleugel van MEK is de Conseil National de la Résistance Iranienne, hierna “CNRI”. Ze hebben hun hoofdkwartier in Frankrijk (Auvers-sur-Oise).

Door Iran worden deze oppositiepartijen beschouwd als terroristische organisaties en volgens de Iraanse staat zijn deze organisaties verantwoordelijk voor diverse (dodelijke) aanslagen en oproer in Iran.

De (leidinggevende) leden van MEK en CNRI waren in het verleden regelmatig slachtoffer van verschillende moordaanslagen of pogingen daartoe. Op 22 maart 2018 kon een poging tot aanslag op het kamp van MEK in Albanië vrijdeld worden. Deze aanslag en andere (pogingen) aanslagen werd telkens door MEK en CNRI of door de landen waar de aanslagen plaats vonden, toegeschreven aan de Iraanse Staat of één van haar veiligheidsdiensten, zoals MOIS.

#### **Wat betreft de inlichtingendienst Iraans Ministerie voor Inlichtingen en Veiligheid en departement 312**

Uit informatie die door de Veiligheid van de Staat werd aangeleverd in het strafdossier, blijkt dat het “Iraans Ministerie voor Inlichtingen en Veiligheid”, hierna MOIS, werd opgericht in 1983 en sedert 2013 onder het gezag staat van de Minister voor Inlichtingen. MOIS zou haar wortels hebben in de oude geheime politieke politie van de Sjah (de beruchte Savak). MOIS bekleedt een centrale positie binnen de Iraanse veiligheidsdiensten en zou over belangrijke inkomsten beschikken. Het departement 312 zou een directoraat zijn dat zich bezig houdt met de Iraanse oppositie in het buitenland. Mogelijk zijn er nog andere overheidsdiensten binnen Iran die zich hiermee bezig hielden.

#### **Wat betreft de start van het onderzoek**

Het strafdossier startte met een dringende melding van de Veiligheid van de Staat op 25 juni 2018 aan het Federaal Parket. De Staatsveiligheid had via een partnerdienst informatie gekregen dat een Belgo-Iraans koppel mogelijk betrokken zou zijn bij een daad van geweld of een poging daartoe in Frankrijk. De info gaf ook de concrete identiteit op van het koppel, namelijk eerste en tweede beklaagde.

Op 27 juni 2018 kwam er bijkomende informatie binnen van de Veiligheid van de Staat, gebaseerd op eigen onderzoek.

Men kon iets meer informatie geven over de mogelijke betrokkenen.

Eerste beklaagde was van Iraanse afkomst en verbleef sedert 27 juni 2003 in België. Hij had een vijftal keer asiel aangevraagd, maar werd telkens geweigerd. Ook in Zweden had hij getracht asiel aan te vragen.

Hij vroeg politiek asiel aan omdat hij zou gevlucht zijn uit Iran wegens politieke redenen. Het is niet duidelijk wat de ware toedracht was van zijn vertrek uit Iran, aangezien hij verschillende oorzaken opgaf als reden voor zijn politiek asiel. Zo gaf hij oorspronkelijk in 2004 als reden op dat hij in de problemen was gekomen met de Iraanse veiligheidsdiensten/religieuze politie, omdat hij als toevallige passant bij een studentenbetoging een gewonde student had geholpen. Omdat dit onvoldoende concreet was, gaf hij in zijn latere asielaanvragen aan dat hij sedert zijn komst in België actief was bij MEK, maar ook dit werd niet als voldoende beschouwd. Uiteindelijk kon hij genieten van humanitaire regularisatie in 2010 en werd hij in

2016 genaturaliseerd tot Belg.

Zijn echtgenote, tweede beklaagde, kwam in 2007 naar België. Ze reisde van Turkije naar Nederland, waar ze werd opgepakt omdat ze een vervalst Zweeds Schengen visum zou hebben gehad.

Ze vroeg in België politiek asiel aan omdat ze problemen had met de Iraanse veiligheidsdiensten omwille van de activiteiten van haar man voor MEK in België. Ze zou hierdoor ook haar werk hebben verloren. Ze zou sympathiseren voor het MEK, maar was niet diep betrokken bij de organisatie. Haar asiel werd afgewezen wegens te weinig geloofwaardig, opportunistisch en onoprecht. Uiteindelijk genoot tweede beklaagde ook van de humanitaire regularisatie in 2010 en verkreeg ze later de Belgische nationaliteit.

De Veiligheid van de Staat vond het ook opmerkelijk dat eerste en tweede beklaagde nog terugkeerden naar Iran, ondanks dat ze problemen hadden met de Iraanse veiligheidsdiensten.

Op basis van verder onderzoek vermoedde de Veiligheid van de Staat dat de gewelddadige actie mogelijk betrekking zou hebben op de drukbezochte conferentie van MEK/CNRI te Villepinte (nabij Parijs) op 30 juni 2018. Dit congres zou bezocht worden door internationale vooraanstaande (politieke) VIP's, die de Iraanse oppositie genegen waren.

## **Het**

## **onderzoek**

Op 28 juni 2018 werd door het Federaal parket een onderzoeksrechter gevorderd, waarbij onder meer een onmiddellijke observatie werd bevolen op eerste en tweede beklaagde, alsook een tapmaatregel op de gekende telefoonnummers.

Op 28 juni 2018 werd tijdens de internationaal gevoerde observatie vastgesteld dat eerste en tweede beklaagde zich naar het Groot-Hertogdom Luxemburg verplaatsten, waar ze contact hadden met een onbekende persoon. Na het contact werd deze persoon geïdentificeerd bij een verkeerscontrole als vierde beklaagde die in bezit was van een Oostenrijkse identiteitskaart. Hij was op dat ogenblik vergezeld van zijn echtgenote en zijn twee zonen.

Op 29 juni 2018 kwam er nog bijkomende informatie van de Veiligheid van de Staat dat eerste beklaagde contacten zou hebben met een onbekende persoon waarbij in codetaal werd gesproken.

Uit deze contacten zou blijken dat eerste beklaagde zou gefocust zijn op zijn opdracht en ervan overtuigd was dat ze zullen slagen. Er werd gesproken over een afspraak in Luxemburg en over een Playstation4, dat mogelijk een codewoord zou kunnen zijn voor een toestel dat gebruikt zou kunnen worden om een daad van geweld te plegen. Tweede beklaagde zou over een grote geldsom van 15.000 euro cash beschikken en er zou een voorschot zijn betaald van 2.500 euro voor de aankoop van een nieuw voertuig Mercedes coupé.

In deze informatie werd voor de eerste keer ook derde beklaagde genoemd, als mogelijk betrokken bij de feiten die gingen plaats vinden.

Op 30 juni 2018 stonden eerste en tweede beklaagde nog steeds onder observatie. Uit het

telefonie-onderzoek blijkt dat eerste beklaagde om 11 u 07 een oproep kreeg. Een zevental minuten later vertrokken eerste en tweede beklaagde met hun voertuig richting Brussel.

Onderweg kregen eerste en tweede beklaagde in hun voertuig verschillende verdachte sms-berichten van een Oostenrijks nummer, waarbij in codetaal werd gesproken. Men sprak over een “tuig”, dat moest geïnstalleerd worden. Men sprak van “vooruittrekken van 20 uur naar 17 u 30”. Eerste beklaagde sprak ook over van “2 uur tot 17 u 30” en over “regelmatig schoonmaken”. Dit laatste zou een codewoord kunnen zijn voor mogelijke contra-observatietechnieken. Bij het volgen van het voertuig stelde men inderdaad vast dat eerste beklaagde contra-observatietechnieken aan het uitvoeren was, door zijn snelheid regelmatig te switchen van 130 km/u naar 180 km/u, waardoor het voertuig moeilijk te volgen was.

Rond 12 u 24 kwam het voertuig van eerste en tweede beklaagde op de Brusselse ring in een file terecht, waarna ze een afrit namen in Sint-Pieters-Woluwe. Het voertuig werd enkele minuten later tegengehouden en eerste en tweede beklaagde werden geïntercepteerd en aangehouden.

Er werd onmiddellijk een perimeter van 200 meter ingesteld en de ontmiijningsdienst DOVO kwam ter plaatse.

Om 14 u 49 vond DOVO in de koffer van het voertuig een verdachte toiletzak waaruit draden steken. DOVO maakte een RX van de toiletzak.

Omstreeks 15 u 15 meldde de ontmiijningsdienst dat het mogelijk een detonator zou kunnen zijn en dat ze het pakket gingen openen en doorzoeken.

Om 16 u 25 maakte DOVO melding van een verdacht wit poeder, waarvan het gewicht geraamd werd op +/- 500 gram. Tijdens het manipuleren en ontmantelen van het bewuste toestel was het wit poeder tot ontploffing gekomen. De robot van DOVO werd zwaar beschadigd. Ondanks de grote perimeter werd een lid van de speciale eenheden onwel (hoofdpijn, rood aangezicht en gehoorschade) nadat hij geraakt werd door de drukgolf.

In het voertuig werd een geel/goud notitieboekje teruggevonden, alsook een gsm-toestel met maar één contact, een Oostenrijks nummer opgeslagen onder “Daniaaal”.

Ondertussen werden diverse huiszoekingen verricht, onder meer op het adres te Wilrijk in de woning van eerste en tweede beklaagde, waar in een reiskoffer 3 omslagen werden gevonden met in totaal 35.690 euro cash geld.

Bij een huiszoeking te Ukkel op het adres van derde beklaagde werden talrijke cd's, video-apparatuur, fotocamera's en videocassetjes en spyware teruggevonden.

Derde beklaagde kon aangehouden worden door de Franse politie op 30 juni 2018 op de parking van het congres te Villepinte en werd onmiddellijk uitgeleverd aan België.

Vierde beklaagde kon onderschept worden op 1 juli 2018 op de Duitse autostrade te Weibersbrunn, toen hij met zijn gezin terugkeerde naar Oostenrijk. Ze werden afgeleid naar een baanrestaurant, waar ze verder gecontroleerd werden. Omdat de politiehond reageerde op het voertuig op mogelijke aanwezigheid van springstoffen werd het hele gezin aangehouden.

In het voertuig werden geen springstoffen gevonden en na een eerste verhoor werden de gezinsleden van vierde beklaagde terug vrijgelaten.

Vierde beklaagde werd uiteindelijk door de Duitse justitie uitgeleverd aan België.

Eerste en tweede beklaagde gaven bij hun eerste verhoor aan dat ze schrik hadden van vierde beklaagde, die ze kennen als "Daniël". Vierde beklaagde zou op een sms aan het wachten zijn, nadat de opdracht was uitgevoerd. Ze zouden zich na hun opdracht moeten begeven naar Keulen, waar ze terug een ontmoeting zouden hebben met vierde beklaagde.

Zowel eerste en tweede beklaagde beweerden dat ze niet op de hoogte waren dat het toestel een bom was. Volgens hen ging het om een toestel dat veel lawaai zou maken.

In haar eerste verklaring beweerde tweede beklaagde dat het toestel diende gegooid te worden aan de eetkraampjes. Eerste beklaagde beweerde dat hij het op de parking in de buurt van de bussen moest plaatsen.

**De**

**bom**

Uit informatie van DOVO blijkt dat het ging om een operationeel geïmproviseerd explosief tuig ("improvised explosive device"-IED), dat verstopt zat in een toiletzak.

DOVO :

*"Technische evaluatie : Het IED was samengesteld met onderdelen die vrij verkrijgbaar zijn in de handel. Echter, een goede basisnotie van elektronica is nodig om dit soort IED te maken. De algemene opbouw van het tuig is als zeer professioneel te beschouwen en getuigt van een bewustzijn betreffende eventuele sporenonderzoek achteraf. Zo werden bijvoorbeeld alle onderdelen van het IED in rechtstreeks contact met de explosieve lading geplaatst. Dit zorgde voor een maximale verwoesting en onbruikbaarheid van het bewijsmateriaal achteraf."*

Het had twee elektrische ontstekers om zeker de correcte werking van het tuig te garanderen.

Het had een explosieve lading, geraamd op maximaal +/- 500 gr. TATP (triacetontriperioxide). TATP is een zelf gemaakt "Home Made Explosive" van aceton, waterstofperoxide en een zuur. Er was een afvuursysteem voorzien dat werkte met een op afstand bediende zender. Deze zender was krachtig genoeg om op honderden meters afstand te werken en het was niet uitgesloten dat er meerdere afstandsbedieningen waren.

In een toiletzakje van tweede beklaagde in het voertuig werd een afstandsbediening gevonden

voor dit toestel. De afstandsbediening zat in een beschermhoes, om te voorkomen dat het toestel zou afgaan bij een accidentele druk op de knop.

### **Verder onderzoek**

Er volgde verder onderzoek, voornamelijk netwerkonderzoek met de bedoeling de mails te achterhalen die door eerste en tweede beklaagde werden uitgewisseld met vierde beklaagde. Nieuwe tapmaatregelen werden genomen en er kwam een beschikking tot het direct-afluisteren van gesprekken tussen tweede en derde beklaagde en tussen eerste en tweede beklaagde, terwijl ze aan het wachten waren op hun verhoor. Diverse getuigen werden verhoord en men trachtte voornamelijk via telefonie-onderzoek (retro-actief onderzoek) en de analyse van de teruggevonden digitale toestellen de juiste toedracht van de feiten te achterhalen.

Eerste en tweede beklaagde legden uitgebreide verklaringen af, waarin ze de feiten toegaven tot op zekere hoogte. Het was de bedoeling dat het toestel, dat zij omschrijven als “vuurwerk”, zou tot ontploffing gebracht worden.

Dit zou dan chaos veroorzaken, waardoor het congres zou verstoord worden en de Iraanse deelnemers zouden afgeschrikt worden om nog deel te nemen aan latere edities.

In deze en latere verklaringen gaven eerste en tweede beklaagde aan dat ze onder druk werden gezet door de Iraanse inlichtingendienst MOIS om informatie te verzamelen over de activiteiten van MEK en haar leden.

Om zich van hun medewerking te verzekeren, werd er volgens eerste en tweede beklaagde, door de Iraanse inlichtingendienst MOIS gebruik gemaakt van enerzijds bedreigingen naar hun Iraanse familie toe, voornamelijk de vader van tweede beklaagde, en anderzijds werden beklaagden vergoed voor de informatie die ze gaven en werden ze hierdoor verleid om verder voor de inlichtingendienst te werken.

Volgens de verklaringen van eerste en tweede beklaagde zou het allemaal begonnen zijn in 2007, waarbij ze telefonisch om informatie werden gevraagd door een Iraanse agent “Jawad”. Uit hun verklaringen en de informatie met betrekking tot hun vluchtgegevens, blijkt dat eerste en tweede beklaagde in februari 2010 samen vertrokken naar Iran, waar ze een ontmoeting zouden hebben gehad met verschillende agenten van MOIS en waarbij opnieuw druk op hen werd uitgeoefend.

Uit de stempels in hun paspoort blijkt dat ze ook in december 2010 naar Teheran gevlogen zijn.

Terug in België werden ze telefonisch gecontacteerd door een nieuwe Iraanse “runner”. Deze opereerde steeds vanuit Iran. Ze werden in 2012 gesommeerd om terug naar Iran te komen.

Daar werd de druk op hen opgevoerd om meer informatie te geven over de organisatie MEK/CNRI. Ook in 2013 zou eerste beklaagde, volgens eigen zeggen, naar Teheran zijn gevlogen. Tijdens deze ontmoeting merkte hij dat de Iraanse agenten ook op de hoogte waren wanneer eerste beklaagde aanwezig was bij het MEK/CNRI, waaruit hij afleidde dat er nog andere informanten bij het MEK/CNRI waren. Sedert 2013 werden ze meer stelselmatig vergoed voor de informatie die ze aanleverden. Zo kreeg eerste beklaagde in 2013 geldsommen ten bedrage van 6.000 euro.

Volgens eerste en tweede beklaagde werden ze in 2015 gecontacteerd door een Iraanse agent in Europa, die zich "Daniël" noemde. Dit betrof vierde beklaagde. Het koppel ontmoette hem de eerste keer in München in de zomer van 2015. Vierde beklaagde had aangegeven te werken voor de Iraanse ambassade in Wenen. Ze kregen toen een geldsom van 4.000 euro voor de onkosten. Ze zouden elkaar contacteren via e-mail. Er vond eind november 2015 opnieuw een ontmoeting plaats bij MOIS in Iran, waar ook vierde beklaagde aanwezig was. Daar werd gevraagd om meer informatie te verzamelen over het hoofdkwartier van MEK/CNRI in Auvers-sur-Oise (Frankrijk). Sedertdien vonden de ontmoetingen overal in Europa plaats, zoals onder meer München, Milaan, Luxemburg en Wenen.

Uit het verder onderzoek, onder meer de exploitatie van de in beslag genomen gsm's en computer, de analyse van de teruggevonden email-berichten en de verklaringen van eerste en tweede beklaagde, blijkt dat er vooral met vierde beklaagde werd gecommuniceerd via email, waarbij filmpjes of audio-fragmenten over de activiteiten van de leden van MEK werden doorgestuurd of overhandigd. Eerste beklaagde gebruikte het email-adres "mishoo\_bounty84@yahoo.com" en vierde beklaagde "jagerurban2016@yahoo.com". In de mails werd codetaal gebruikt, maar het is duidelijk dat eerste en tweede beklaagde informatie gaven over de activiteiten van de leden van MEK/CNRI. Daarnaast waren er operationele gsm's die slechts dienden om korte berichten uit te wisselen of om elkaar te ontmoeten. Dit vond op diverse Europese locaties plaats, vaak buiten Oostenrijk, waarbij telkens gekeken werd dat er geen bewakingscamera's waren en niet teveel volk. Op een bepaald ogenblik werd er ook afgesproken op een trein. Ook via Telegram werden er gegevens uitgewisseld. Volgens eigen zeggen werden ze nu meer regelmatig betaald. Eerste beklaagde sprak over 3.500 à 4.000 euro om de drie à vier maanden, in een ander verhoor sprak hij over 1.500-1.700 euro per maand.

Uit de exploitatie van een geel notaboekje, blijken verschillende bedragen, die volgens tweede beklaagde onkosten waren (meestal verplaatsingskosten), die deels werden terug betaald door vierde beklaagde.

Uit de analyse van de e-mailberichten blijkt dat eerste en tweede beklaagde onderhandelden met vierde beklaagde over hun vergoedingen, zeker toen ze deze specifieke opdracht kregen. Het was duidelijk dat eerste en tweede beklaagde uit waren op een grote financiële vergoeding. Uit de analyse van de bankrekeningen van beide beklaagden werd vastgesteld dat door beide beklaagden voor enorme bedragen aan cash-stortingen werden verricht. In hun woning werd ook een grote geldsom aangetroffen.

In de loop van het onderzoek blijven eerste en tweede beklaagde bij hun verklaring dat ze misbruikt waren, omdat ze dachten dat het om een toestel ging dat alleen lawaai zou maken en dat het niet hun bedoeling was om mensen te verwonden of te doden. Ze blijven telkens

spreken over vuurwerk.

Eerste beklaagde geeft aan dat hij volledige en 100 % betrouwbare informatie gaf aan de verbalisanten tijdens zijn verhoren, maar uit het direct af luisteren van de gesprekken tussen eerste en tweede beklaagde, blijkt duidelijk dat ze hun verklaringen op elkaar afstemden en dat tweede beklaagde ook instructies gaf over de wijze waarop eerste beklaagde zijn verklaringen diende af te leggen, waarbij hij haar zoveel mogelijk buiten schot diende te houden.

Derde beklaagde ontkende in al zijn verhoren iets te maken te hebben met de poging tot aanslag of met spionage voor de Iraanse veiligheidsdiensten. Hij is Iraanse politiek vluchteling, die reeds jaren in België woonde. Hij zou een schrijver/dichter zijn en leven van een beperkte uitkering en hier en daar wat verbouwingswerken in het zwart doen.

Hij had regelmatig contact (bijna dagelijks) met de Belgische tak van MEK, onder meer via de VZW Iran Ref., en voerde voor hen allerlei opdrachten uit, zoals onder meer filmopnames en ontwerpen van affiches. Hij voerde soms ook taken uit bij de jaarlijkse conferentie van MEK te Villepinte. Bij een huiszoeking bij derde beklaagde werd allerlei spyware gevonden, onder meer USB-sticks waarmee men opnamen kon maken, alsook een bril met een verborgen camera. Hij nam verschillende opnamen van de manifestaties van het MEK, maar evenzeer van de verschillende deelnemers. Er zijn ook foto's teruggevonden, die op zo'n wijze achtereenvolgens werden getrokken, dat ze als een wegbeschrijving kunnen beschouwd worden naar een pand dat door leden van MEK werd gebruikt. Een getuige begreep niet waarom hij alle mensen die deelnamen aan manifestaties van MEK filmde. Een andere getuige trachtte hem op afstand te houden, omdat hij derde beklaagde al langer niet meer vertrouwde. Zo wilde derde beklaagde ook graag manifestaties van MEK in Nederland bijwonen, maar dit werd door de verantwoordelijke in België geweigerd. Verschillende leidinggevende personen vonden het ook vreemd dat hij het MEK-kamp in Albanië bezocht in 2017, wat blijkbaar niet gebruikelijk was.

Derde beklaagde hielp vroeger mee bij de veiligheid van het MEK-congres dat jaarlijks werd georganiseerd en zou vroeger geholpen hebben bij de beveiliging van de leidster van CNRI.

Dit jaar mocht hij echter niet meewerken aan de veiligheid van het congres. Hij mocht alleen de Belgische delegatie met de bus begeleiden. Het viel echter op dat hij had gezegd dat hij niet met de bus naar België ging terug keren. Een getuige vond het ook vreemd dat derde beklaagde tijdens het congres niet bij de Belgische delegatie zat, maar dat hij zich de hele tijd bij de uitgang ophield.

Bij zijn arrestatie op de parking was hij in het bezit van een gsm met een Oostenrijks nummer en met slechts één contact. Dit contact bleek vierde beklaagde te zijn en bij vierde beklaagde werd in zijn voertuig ook de simkaarthouder teruggevonden van de simkaart van deze "operationele gsm" van derde beklaagde.

Vierde beklaagde werkte niet echt mee aan het onderzoek en ontkende elke betrokkenheid. Hij kloeg erover dat hij niet behandeld werd zoals zijn diplomatieke status vereiste. Hij had met de feiten niets te maken.

In zijn laatste verhoor, op zijn eigen verzoek, waarschuwde hij dat er gewapende groepen zouden klaar staan om in België iets te ondernemen, wanneer hij veroordeeld zou worden. Zijn verdediging minimaliseert deze uitspraak als een emotionele uitschuiver, ten gevolge van het speciaal en zwaar gevangenisregime dat hij ondergaat.

### **Wat betreft de tenlastelegging poging terroristische moord**

Om over poging moord te spreken moet er bewezen worden dat er een oogmerk was tot doden en dat er voorbedachtheid was.

### **Wat betreft het oogmerk om te doden**

De verdediging van tweede beklaagde tracht de rechtbank te overtuigen dat het niet echt om een “bom” ging. Het zou onvoldoende explosieve kracht hebben gehad, er zouden vermoedelijk geen slachtoffers gevallen zijn of er zou hoogstens slechts beperkte schade zijn geweest. Eerste en tweede beklaagde zouden volgens de verdediging er niet ver van af zijn als ze constant spreken over “vuurwerk”. Het zou slechts een luide knal geven om chaos te veroorzaken. Om deze stelling hard te maken, legt de verdediging foto’s neer van het voertuig, onmiddellijk na de ontploffing. Er werd geen schade veroorzaakt aan het voertuig, noch aan de toiletas waarin het explosief zat, noch aan het wegdek. De verdediging is vlak voor de openbare zitting nog het inbeslaggenomen voertuig van naderbij gaan bekijken en stelde opnieuw vast dat er geen schade was achteraan het voertuig. Ten onrechte wordt echter geargumenteed dat de ontploffing vlak achteraan de wagen had plaats gevonden.

De verdediging van tweede beklaagde gaat hier volledig in tegen de inhoud van het strafdossier en in het bijzonder het technisch rapport van DOVO. Uit het strafdossier blijkt dat er een perimeter van (minstens) 200 meter werd ingesteld. Het toestel werd door de robot van DOVO uit de toiletas gehaald. Op ongeveer 6 meter van het voertuig ontplofte de bom incidenteel, terwijl de robot het explosief op meer dan 1 meter hoogte vast had. Om die reden werd er ook geen krater geslagen in het wegdek. Dit gebeurde bovendien voor het voertuig en niet achteraan het voertuig. De toilettas raakte inderdaad niet beschadigd, aangezien deze door de robot uit de koffer was gehaald en achter het voertuig was gelegd. De robot had het explosief uit de toilettas gehaald, nadat er eerst een RX-scan was gemaakt, en had zich dan verplaatst naar een 6-tal meter voor het voertuig.

De verdediging van diverse beklaagden haalt ook aan dat niet geweten is hoeveel gram explosief materiaal er echt aanwezig was. DOVO spreekt over maximaal 500 gr. De experts van DOVO houden in hun raming van het explosief materiaal rekening met de grootte van de toiletas waarin het explosief toestel werd ondergebracht.

Het is inderdaad niet geweten hoeveel explosief materiaal aanwezig was.

Wel staat objectief vast dat, ondanks dat de bom in gecontroleerde toestand werd

ontmanteld, deze de robot van DOVO heeft beschadigd in die mate dat de robot onbruikbaar was.

Tevens staat vast dat iemand van de speciale eenheden van de politie, ondanks de perimeter die werd ingesteld, lichamelijke schade heeft opgelopen ten gevolge van de drukgolf die de explosie veroorzaakte.

DOVO kan uiteraard niet achterhalen hoeveel explosief materiaal aanwezig is, maar raamde dit op basis van haar kennis en de specifieke feitelijke situatie op +/- 500 gram.

Het is ook geweten dat TATP een springstof is die 88 % van de explosieve kracht heeft van TNT. Dit wil zeggen dat 1 gram TATP overeenkomt met 0,88 gram TNT.

Volgens een verslag van een Duitse expert is TATP een zeer stoot- en wrijvingsgevoelig explosief dat alleen voorkomt in een zelfgemaakt labo. Bij het ontsteken van een hoeveelheid van 500 gram, moet men rekening houden met een detonatieconversie. Dit betekent dat in een gesloten omgeving, dit mogelijk kan leiden tot dodelijke letsels van personen in de onmiddellijke omgeving.

Het staat dan ook vast dat dit toestel laten ontploffen op een congres, waar duizenden mensen aanwezig waren, zou leiden tot dodelijke slachtoffers. Niet alleen door de explosie zelf, maar ook door de chaos die daarna zou zijn ontstaan.

Uit de analyse van de berichten en de verklaringen van eerste en tweede beklaagde blijkt dat de "bom" gemaakt werd in Iran. Deze werd daar op punt gesteld en meermaals getest. Volgens informatie van de Veiligheid van de Staat werd het toestel meegebracht in een diplomatieke koffer op een gewone lijnvlucht tussen Teheran en Wenen.

Het staat vast dat vierde beklaagde de intentie had om een dodelijke aanslag te plegen op een drukbezocht congres, door de opdracht te geven om dit toestel, gelet op haar specifieke inhoud en werking, tot ontploffing te laten brengen. Hij gaf duidelijke instructies aan eerste en tweede beklaagde over de wijze waarop het toestel moest opgeladen worden, hoe het toestel in een plastic folie moest gewikkeld worden en hoe de antenne moest gericht worden tijdens het vervoer zodat het toestel geen wifi-signaal zou ontvangen. Meer nog, uit het notitieboekje dat teruggevonden werd in de wagen van vierde beklaagde bij zijn interceptie, werden niet alleen aantekeningen gevonden over de werking van dit toestel, maar ook over een mogelijke aanval met zuur of andere giftige pathogene stoffen. Hieruit blijkt ontegensprekelijk de intentie tot doden.

Eerste en tweede beklaagde zijn mededaders aan deze poging tot doodslag, gelet op de feitelijke handelingen die ze stelden : het in bewaring nemen van het toestel, het over- brengen naar België, het toestel opladen conform de instructies en dan op bevel met het explosief materiaal naar Villepinte vertrekken.

Eerste en tweede beklaagde kunnen niet gevolgd worden dat het niet de bedoeling was om dodelijke slachtoffers te maken en dat ze alleen maar dachten dat het een soort vuurwerk was, dat een luide knal zou geven.

Vooreerst zijn eerste en tweede beklaagde niet eerlijk in hun verklaringen over waar ze het toestel dienden te plaatsen.

Eerste en tweede beklaagde leggen hierover uiteenlopende verklaringen af en spreken elkaar ook tegen.

Zo werd erover gesproken over het toestel te laten ontploffen bij de eetkraampjes (oorspronkelijke verklaring van tweede beklaagde onmiddellijk na de arrestatie) of bij de boekenstandjes. Deze twee locaties bevinden zich binnenin in een zaaltje naast de grote zaal. Eerste beklaagde zei in zijn eerste verklaring dat het toestel diende te ontploffen bij de bussen, in een grasveld bij de bussen. In een latere verklaring sprak hij over de tent buiten, voordat men de beveiliging moet passeren, waar de bezoekers hun tassen dienden achter te laten. In deze tent was echter ook bewaking aanwezig om toezicht te houden op de bagage.

Uit het onderzoek, onder meer uit de verhoren, blijkt dat het toestel diende tot ontploffing gebracht te worden rond een moment dat vele bezoekers de zaal gingen binnen gaan.

Beklaagden spreken soms over het toestel “plaatsen” en soms over “gooien” tussen de stoelen. Alleszins was hun ingegeven dat ze zelf voldoende afstand (tot 300 meter) moesten nemen. Volgens een bepaalde verklaring zou eerste beklaagde het toestel buiten moeten plaatsen en dan naar binnen gaan via de beveiliging.

Opmerkelijk zijn de teruggevonden chatberichten die gevoerd werden tussen eerste beklaagde en een zekere “Negar”. Eerste beklaagde meent dat “Negar” een Iraanse vrouw in Iran is, waarmee hij op een liefdevolle manier chat en een amoureuze (platonische) verhouding heeft. Via chat was oorspronkelijk (volgens zeggen van eerste en tweede beklaagde) de relatie tussen eerste en tweede beklaagde ook ontstaan. Eerste beklaagde is heel open ten aanzien van “Negar” en ze is duidelijk op de hoogte van de plannen.

Uit de resultaten van de huiszoeking in de woning van eerste en tweede beklaagde, waarbij een bepaalde smartphone werd aangetroffen toebehorende aan tweede beklaagde, uit een afgeluisterd gesprek (vanuit de gevangenis) tussen tweede beklaagde en haar zus en uiteindelijk uit de verklaringen van tweede beklaagde, blijkt dat zij heimelijk met eerste beklaagde chatgesprekken voerde, waarbij zij zich uitgaf voor “Negar”. Eerste beklaagde had dit totaal niet door.

Deze gesprekken zijn van belang om te bepalen waar de aanslag diende te gebeuren, maar deze gesprekken zullen ook van belang zijn bij de beoordeling van de persoonlijkheid van eerste en tweede beklaagde:

- Chatgesprekken op 28 juni 2018:
  - o Eerste beklaagde: *“Als het binnen gebeurt, gaat hij zelf persoonlijk naar zijn meneer. Hij zei van zijn gesprekke zal ik voor jullie aanvragen.”*
  - o Eerste beklaagde: *“Ik wou gewoon vragen, zeg mij jouw finale beslissing wat we moeten doen. Gaan we naar binnen of buiten?”*
- Chatgesprekken op 29 juni 2018:
  - o Negar (tweede beklaagde): *“Amir, morgen eerst de situatie en omgeving goed controleren daar”.*
  - o Negar (tweede beklaagde): *“Mocht het, met stress van beneden, binnen lukken, ok”. “Mocht je zien dat het moeilijk is, buiten, ok mijn schat ?”.*
  - o Eerste beklaagde : *“Ok schat”.*
- Chatgesprekken op 29 juni 2018 (even later):
  - o Negar (tweede beklaagde): *“Wees heel ontspannen met Nasim”. “Morgen als je ziet dat dat lukt, doe het binnen.  
Als niet. Buiten. Ok? Wees heel ontspannen”*
  - o Eerste beklaagde: *“Ok”*
  - o Negar (tweede beklaagde): *“Wees heel ontspannen”.*
  - o Eerste beklaagde: *“ok”*
  - o Negar (tweede beklaagde): *“En maak jullie geen zorgen. Wees ook mentaal heel goed. Maak elkaar niet zenuwachtig”.*

Uit deze berichten blijkt dat ze de opdracht hadden om het binnen te laten ontploffen en dat tweede beklaagde ook aandringt bij eerste beklaagde om het eerst binnen te proberen.

Hieruit blijkt duidelijk dat beklaagden het toestel tot ontploffing dienden te brengen in de buurt van menselijke aanwezigheid, of dit nu gebeurde binnenin de zaal of aan de bussen op de parking of in de bagage-tent.

Bovendien wisten ze dat ze afstand moesten nemen, alvorens het toestel tot ontploffing te brengen, waardoor ze ook geen zicht hadden of er mensen in buurt van de toestel waren, wanneer er gedrukt zou worden op de afstandsbediening.

Het blijkt helemaal niet dat eerste en tweede beklaagde misleid waren en er werkelijk van uitgingen dat het gewoon “vuurwerk” was. De rechtbank verwijst naar de resultaten van het direct afluisteren, waaruit blijkt dat ze de verklaringen hieromtrent op elkaar afstemden:

- Tweede beklaagde: *“Zeg dat je misleid bent geweest, dat je bedrogen bent geweest door een diplomaat van Etekaa’at” We moeten dat bewijzen. We moeten bewijzen. Ze moeten begrijpen dat we noch niet wisten dat dit iets gevaarlijk was en noch dat we van plan waren om iemand te vermoorden”.*
- Eerste beklaagde: *“Zeg ook dat er daar veel security is dat je zelfs daar met een camera niet binnen mag. Zeg het als waarheid. Dat ze dat gaan navragen.”*
- Eerste beklaagde: *“...Ik heb zelfs nooit een diefstal gepleegd, hoe kan ik mensen vermoorden? Het is toch geen grap. We moeten toch de waarheid vertellen. Nasim, waarom zouden we liegen?”*
- Tweede beklaagde: *“Ja, ik weet het, maar helaas, helaas, helaas is dat ding in onze auto wel geweest. En ik en jij hebben, zoals 2 dommeriken dat van hem in ontvangst genomen.”*
- Eerste beklaagde: *“Ik weet het.”*
- Tweede beklaagde: *“Wat zijn we goedgelovig. Hoe kan jij nu binnen die tas niet eens controleren?”*  
*“Zeg het ook toen ik naar Luxembourg ging, dacht ik enkel aan een kaart. Ik was zelfs in shock toen hij mij een tas gaf, maar toen hij zei dat het hetzelfde is en kraker is heb ik het zoals een simpele domme persoon aanvaard”.*

Zeer opmerkelijk is het volgend resultaat van het direct af luisteren:

- Eerste beklaagde: *“Seg, waarom heeft hij ons eigenlijk de waarheid niet verteld?”*
- Tweede beklaagde: *“Amir, herinner je je ? Ik vroeg aan hem : “het is toch niet iets gevaarlijk? Hij antwoordde “neen, neen, misschien beschadigd het de onderkant van de auto een beetje”.*
- Eerste beklaagde: *“Nasim vertel dit nooit. Ik heb hierover reeds dingen verteld. Ik zei dat het was om de Iraniërs die dit jaar naar daar gekomen zijn wat schok te geven zodat ze volgend jaar niet meer komen. Dat is het!”*

Uit dit gesprek blijkt duidelijk dat ze wisten dat het meer dan een gewone knal zou geven, maar dat dit vooral niet aan de politiediensten mocht gezegd worden.

Bovendien zelfs indien de rechtbank nog zou aannemen dat men dacht dat het een soort vuurwerk zou zijn, dat alleen een knal zou geven, hadden eerste en tweede beklaagde zich toch ernstige vragen moeten stellen.

Zo zou volgens hun verklaringen vierde beklaagde van eerste beklaagde een klantenkaart en een sleutel hebben meegenomen naar Iran. Het is niet duidelijk dat het de bedoeling was om hier “ het vuurwerk” in te steken of dat dit zou gebruikt worden als spyware, want ook hier zijn de verklaringen niet gelijklopend.

Ze spreken zelfs op een bepaald moment over mogelijke aangepaste make-up. Ze waren verrast dat ze toch een vrij groot toestel kregen, waar ze zeer voorzichtig dienden mee om te gaan, dat ze dienden op te laden de nacht voordat het gebruikt zou worden en waarbij ze de

antenne zo dienden te manipuleren dat het geen contact zou maken met een ander signaal.

Ze spreken hier ook over tijdens het direct afluisteren :

- Tweede beklaagde : *“Het is ons eigen fout. Hij zei tegen jou “tussen de make-up spullen”. Waarom hebben we donderdag als we zagen dat het een tas is, dat toch aanvaard?”*
- Eerste beklaagde : *“We zijn fout geweest”.*
- Tweede beklaagde : *“En daarbij. Waarom toen we het naar huis meenamen niet eens binnengekeken wat het is ?”*
- Eerste beklaagde : *“Precies”.*
- Tweede beklaagde : *“En dat we niet denken aan het feit dat het iets gevaarlijk is.”*

Eerste en tweede beklaagde voerden wetens en willens orders uit, doen zelfs geen controle van het toestel dat ze vervoerden. Uit de wijze waarop ze het toestel dienden te manipuleren, blijkt ontegensprekelijk dat ze dienden te weten dat het meer dan gewoon “vuurwerk” was.

Bovendien voortgaande op de niet geloofwaardige argumentatie van eerste en tweede beklaagde, dat gelet op de knal die het zou geven (volgens eerste beklaagde zou men het binnen in de conferentiezaal hebben gehoord), de afstand die men diende te nemen van het toestel (waardoor men onvoldoende zicht had op de menselijke aanwezigheid) en het moment dat het toestel een knal zou moeten geven (moment dat veel mensen rondliepen op de parking om naar de conferentiezaal te gaan), dit zelfs in die hypothese aanleiding zou kunnen geven tot menselijke slachtoffers, minstens ten gevolge van de paniek en de chaos.

Volledigheidshalve verwijst de rechtbank naar het afgeluisterde gesprek vanuit de gevangenis van tweede beklaagde met haar zus:

- *“Hoe dom waren jullie dat jullie niet gezien dat onstekingsmiddel had ? Rotje heeft toch geen onstekingsmiddel.”*

Het gaat hier niet om “domheid”, maar minstens om “niet willen weten”. Mededader is men wanneer men rechtstreeks meewerkt aan een misdrijf en men zich bewust is dat men deelneemt aan een ongeoorloofde handeling, zonder nadere precisering of gedetailleerde kennis.

Beklaagden hebben wetens en willens ingestemd om een toestel, waarvan ze wel wisten dat het schade aan de onderkant van een voertuig zou aanbrengen bij accidentele ontploffing en dat het geen gewoon “vuurwerk” was gezien de wijze waarop het toestel diende gemanipuleerd te worden, tot ontploffing te willen brengen op een plaats met veel menselijke aanwezigheid. Dodelijke slachtoffers zou een normaal en voorzienbaar gevolg zijn van het toegepaste geweld.

### Wat betreft de voorbedachtheid

Er kan geen betwisting over bestaan dat er voorbedachtheid was in hoofde van eerste, tweede en vierde beklaagde.

Uit de verklaringen van eerste en tweede beklaagde blijkt dat er ongeveer in maart 2018 door vierde beklaagde werd gesproken over een toestel dat tot ontploffing diende gebracht te worden. Er zouden twee ontmoetingen zijn geweest in Oostenrijk, één in Wenen en één op de trein tussen Wenen en Salzburg.

Uit de analyse van het mailverkeer van eerste en tweede beklaagde met vierde beklaagde blijkt dat er door eerste en tweede beklaagde onderhandeld werd over de verdiensten. Zo blijkt uit het mailverkeer van 25 maart 2018, dat er zelfs voorwaarden werden gesteld zoals een verhoogde maandelijkse vergoeding van 2.000 EUR en een bijkomende vergoeding voor hun aandeel bij het plaatsen van de bom en tenslotte de melding dat er moest gewaakt worden over de vergoeding omdat ze een huis wilden kopen. Ze haalden als extra argument aan dat ze grote stress hadden ten aanzien van hun familie en dat eerste beklaagde vreesde voor zijn informatiepositie bij MEK. Ze prezen ook hun eigen specifieke informatiepositie bij MEK aan.

Op 26 april 2018 antwoordde vierde beklaagde dat er intern was teruggekoppeld met een zekere "Mohsen", maar dat die voorwaarden niet haalbaar waren. Ze moesten : *"verder koken zoals voordien"*.

Uit verdere analyse van het email-verkeer blijkt dat eerste en tweede beklaagde ondertussen informatie bleven geven over MEK, onder meer over het jaarlijks congres op 30 juni 2018.

Er had een nieuwe ontmoeting plaats op 12 mei 2018 in het buitenland. Uit de uitlezing van de berichten blijkt dat alles verder voorbereid werd voor de aanslag.

Op 25 mei 2018 bevestigde eerste beklaagde opnieuw hun akkoord aan vierde beklaagde : *"Saeid en Monshi hebben veel nagedacht over het kaartspel voor het huwelijksfeest en ze hebben besloten dat het moet heel professioneel zijn, om te kunnen de wedstrijd winnen!"*, maar ze stelden wel nieuwe voorwaarden : *"Ze zijn beiden akkoord, maar als Mohsen zou beloven dat hij kan zorgen voor een grote verrassing dan zal Saied verlost geraken van zijn vermoeidheid van die afgelopen jaren"*.

Met het oog op deze vergoeding keken ze in die periode uit naar een nieuw appartement en bestelden ze een nieuw voertuig Mercedes coupé, waarvoor ze een aanbetaling deden. Dit blijkt enerzijds uit een notitie die werd aangetroffen, voor een afspraak om twee panden te bezoeken, ze waren in bezit van een visitekaartje van een immobiliënkantoor en er was een

telefoongesprek op 25 juni 2018, waaruit blijkt dat tweede beklaagde de uitbetaling van een grote geldsom verwachtte wanneer het werk gedaan was en dat men hiermee een woning zou kopen.

Op 20 juni 2018 nam eerste beklaagde deel aan een vergadering van de Belgische afdeling van MEK, ter voorbereiding van het congres. Hij kreeg onder meer de taak een koelwagen te huren en broodjes en drank te vervoeren van de Belgische deelnemers. Hij kreeg ook de opdracht mensen te vervoeren naar Parijs.

Uit de internationale observatie en het verhoor van eerste en tweede beklaagde, blijkt dat zij vierde beklaagde ontmoetten in Luxemburg-Stad, waar in een Pizzahut een USB-stick werd overhandigd met de laatste informatie, een omslag met 18.000 EUR, een nieuwe operationele gsm en de “bom”. Het explosief zat in een blauw damestoiletasje en tweede beklaagde stak dit samen met de afstandsbediening in haar handtas.

Vierde beklaagde gaf duidelijke instructies hoe de bom moest opgeladen en operationeel gemaakt worden. Deze diende verpakt worden in een zwarte plastic folie en er moest een veiligheidsperimeter gerespecteerd worden. Voor de activatie moest er 3 minuten lang gedrukt worden op de afstandsbediening. De antenne moest tijdens de verplaatsing naar beneden gedrukt worden, zodat deze geen verbinding zou maken met wifi-signalen.

Op 29 juni 2018 werden er tussen de twee operationele gsm's van eerste en vierde beklaagde diverse berichten uitgewisseld. Hieruit blijkt onder meer dat het explosief conform de instructies opgeladen was en in plastic folie gewikkeld.

Vlak voor hun vertrek op 30 juni 2018 stuurde vierde beklaagde een sms met de laatste instructies. Ze moeten de operationele gsm op de parking in Villepinte in hun voertuig achterlaten. Ze spraken af om terug contact te nemen om 17 u 30 en zouden elkaar na de aanslag terug zien in Keulen. Het onderzoek heeft aangetoond dat vierde beklaagde met zijn gezin in de buurt van Keulen logeerde.

Eerste beklaagde laadde het toestel bij hen thuis op conform de instructies van vierde beklaagde en maakte het toestel operationeel voor gebruik.

Eerste en tweede beklaagde stopten het explosief in een kleine reiskoffer in hun voertuig en de afstandsbediening ging in de handtas van tweede beklaagde.

De rechtbank verwijst ook hier naar de opmerkelijke chatgesprekken die tweede beklaagde, zogenaamd als “Negar” voerde met eerste beklaagde :

- Chatgesprekken op 11 juni 2018:
  - o Negar (tweede beklaagde): *“Jullie moeten het ding in ontvangst nemen. Jullie gaan zoveel cashgeld voor krijgen. Er moet correct gehandeld worden”.*
- Chatgesprekken op 27 juni 2018

- o Negar (tweede beklaagde): *“Jullie moeten heel ontspannen zijn voor zaterdag. Zelfs tijdens het uitvoeren van de opdracht. Je hoeft helemaal geen angst en stress te hebben. Dat jullie nergens betraapt worden”.*

Uit dit feitenrelaas blijkt ondubbelzinnig de voorbedachttheid van eerste, tweede en vierde beklaagde.

De rechtbank stelt vast dat tweede beklaagde na haar arrestatie trachtte haar betrokkenheid te minimaliseren en eerste beklaagde hierin manipuleerde.

De rechtbank verwijst naar het direct afluisteren en naar de chatgesprekken van zogenaamd “Negar”, waarin zij eerste beklaagde echt aanmoedigde om tot actie over te gaan.

#### Wat betreft het terroristisch misdrijf

Artikel 137 Sw. bepaalt : *“Als terroristisch misdrijf wordt aangemerkt het misdrijf bepaald in de §§ 2 en 3 dat door zijn aard of context een land of een internationale organisatie ernstig kan schaden en opzettelijk gepleegd is met het oogmerk om een bevolking ernstige vrees aan te jagen of om de overheid of een internationale organisatie op een onrechtmatige wijze te dwingen tot het verrichten of het zich onthouden van een handeling, of om politieke, constitutionele, economische of sociale basisstructuren van een land of een internationale organisatie ernstig te ontwrichten of te vernietigen”.*

Uit de lezing van artikel 137 § 2, 1° en artikel 51 Sw. is het misdrijf poging moord een misdrijf dat als een terroristisch misdrijf kan beschouwd worden.

Een aanslag plegen vanuit België in Frankrijk op een conferentie, waar meer dan duizenden mensen aanwezig zijn en waarbij slachtoffers zouden gevallen zijn, is ontegensprekelijk een misdrijf dat uit zijn aard en context Frankrijk en België ernstig zou schaden. Bovendien was deze aanslag gepland in een periode dat Frankrijk gebukt ging onder meerdere terroristische aanslagen. De aanslag zou de bevolking ernstig vrees aanjagen en zeker de Iraanse politieke vluchtelingen die woonachtig zijn in de Europese landen en zich beschermd voelen door onze democratische rechtsstaat.

De rechtbank heeft niet kunnen vaststellen of deze aanslag gericht was tegen de VIP-bezoekers of de gewone bezoekers van de conventie.

#### Wat betreft de rol van derde beklaagde bij deze tenlastelegging

Uit het gerechtelijk onderzoek, onder meer de resultaten van de huiszoeking (waar spyware werd aangetroffen), de analyse van digitale dragers en verschillende getuigenissen over de gedragingen van derde beklaagde, blijkt dat ook hij informatie verzamelde voor vierde

beklaagde over MEK/CNRI.

De rechtbank verwijst naar de informatie die via de Veiligheid van de Staat werd aangeleverd en waarbij derde beklaagde genoemd werd als betrokken bij de aanslag die ging gebeuren.

Derde beklaagde was bij de vorige edities steeds betrokken bij de organisatie en specifiek de veiligheid van het congres. Hij zou zelfs vroeger hebben mee ingestaan voor de veiligheid van de leidster van CNRI.

Dit jaar mocht hij niet meewerken aan de organisatie. Hij kreeg als enige opdracht de bus met Belgische deelnemers te begeleiden naar het congres en terug.

De dag zelfs viel volgens verschillende getuigen op dat derde beklaagde zich anders gedroeg. Hij was zenuwachtig en zou verstrooid zijn geweest. Het viel ook op dat hij aangaf niet terug te keren met de bus met Belgische deelnemers.

Het viel ook een getuige op dat derde beklaagde zich in de zaal niet voegde bij de Belgische delegatie, maar dat hij zich afzijdig hield achteraan in de zaal bij de uitgang.

Derde beklaagde was, op het ogenblik van zijn arrestatie, in het bezit van een operationele gsm met een Oostenrijks nummer met maar één contact, namelijk met de operationele gsm van vierde beklaagde. Deze gsm werd ook alleen maar gebruikt voor zijn contacten met vierde beklaagde.

Bij vierde beklaagde werd bovendien, bij zijn arrestatie, in zijn voertuig de simkaarthouder van de simkaart van de operationele gsm van derde beklaagde gevonden.

Het onderzoek heeft enkele sms-berichten kunnen achterhalen die tussen derde en vierde beklaagde werden uitgewisseld op 17 juni 2018.

Berichten uitgaande van derde beklaagde op 17 juni 2018 naar vierde beklaagde:

- *"Ik ben jouw nederige"*
- *"de nieuwe, neen nog niet"*
- *"de nieuwe heb ik doorgestuurd"*
- *"OK".*

Berichten uitgaande van vierde beklaagde op 17 juni 2018 naar derde beklaagde:

- *"At 18': de winkel is dicht. Kan je maandag inkopen komen doen? Om 18 uur."*
- *"Stuur een SMS naar het nummer 6700, zodat 10 eu charge wordt"*
- *"Mededeling, als het lukt, zeg ik het je, is dat nieuw?"*
- *"dan als ik volgen wee ok wordt, stuur ik je iets of ik ga maandag om dit uur naar de"*

*winkel*".

Bij de uitwisseling van deze berichten in codetaal, informeerde vierde beklaagde of er nieuws was.

Uit het onderzoek blijkt duidelijk dat de timing van deze berichten van belang is, aangezien enkele dagen later vierde beklaagde naar Iran vertrok om het explosief te gaan ophalen. Vierde beklaagde liet op 18 juni 2018 ook weten per mail aan eerste en tweede beklaagde dat hij zich naar Iran begaf ten einde de voorbereidingen te finaliseren aangaande de aanslag.

Bovendien blijkt uit een getuigenverklaring dat derde beklaagde rond 17 juni 2018 initiatief nam bij de verantwoordelijke van de Belgische tak van MEK om opnieuw betrokken te worden bij de organisatie van de veiligheid van het evenement.

Derde beklaagde was op 30 juni 2018 minstens de ogen en de oren van vierde beklaagde op het terrein tijdens de aanslag die diende te gebeuren. Hij diende ook andere zaken te verrichten voor vierde beklaagde op het ogenblik dat de aanslag plaatsvond. Hij stond minstens op uitkijk, maar zijn taak moet uitgebreider zijn geweest. Ook bij de voorbereiding was zijn rol cruciaal gezien hij, gelet op zijn rol bij de vorige edities, over concrete informatie beschikte met betrekking tot de organisatie en de beveiliging van het congres.

Uit al deze gegevens leidt de rechtbank ondubbelzinnig af dat derde beklaagde op de hoogte was en actief betrokken bij de aanslag die ging gebeuren op 30 juni 2018 en op die manier mededader is aan de poging terroristische moord.

Het is zelfs niet uitgesloten dat er nog andere personen betrokken waren of klaar stonden voor deze aanslag.

#### **Wat betreft de tenlastelegging deelname aan een terroristische groep (tenlastelegging D)**

Art. 139, eerste lid Sw bepaalt: *"Een terroristische groep is iedere gestructureerde vereniging van meer dan twee personen die sinds enige tijd bestaat en die in onderling overleg optreedt om terroristische misdrijven te plegen"*.

Eerste en tweede beklaagde trachten zich constant te verschuilen achter de druk die het Iraanse regime uitoefende, onder meer naar hun familie toe en specifiek de vader van tweede beklaagde.

Deze zware druk kan de rechtbank onvoldoende vaststellen. Er zal mogelijk wel enige druk zijn geweest, maar de druk was alleszins niet zo groot als beklaagden trachten te doen uitschijnen en was zeker niet zo groot dat eerste en tweede beklaagde niet konden weigeren om mee te werken. Deze druk werd alleen maar aangehaald in hun verhoren en blijkt voor het overige nauwelijks uit het dossier. Uit de email-berichten uitgewisseld met vierde beklaagde kan geen enkele druk afgeleid worden, integendeel. Uit het verhoor van de zus van tweede beklaagde, maar ook uit de inhoud van de getapte gesprekken tussen tweede beklaagde (vanuit de

gevangen) en haar zus, blijkt niet echt dat er druk werd uitgeoefend op de Iraanse familie, maar dat er eerder druk was met betrekking tot hun Belgische verblijfssituatie die in strijd was met hun reizen naar Iran. Uiteindelijk blijkt er maar een beperkte druk te zijn geweest en waren gewoon de financiële verdiensten voor eerste en tweede beklaagde het belangrijkste motief om hun informatie-vergaringsdiensten aan te bieden.

Uit de analyse van de internet-zoekfunctie, blijkt bovendien dat eerste beklaagde op eigen initiatief op het internet informatie zocht over spyware. Bovendien kan verwezen worden naar de analyse van de email-berichten, waarbij eerste en tweede beklaagde uitdrukkelijk financiële eisen stelden met betrekking tot de aanslag die diende gepleegd te worden, wat moeilijk te vereenzelvigen is met druk vanuit de Iraanse autoriteiten.

De rechtbank verwijst ook naar de chatgesprekken tussen de vermeende “Negar” (tweede beklaagde) en eerste beklaagde, waar over geld gesproken werd en hoe belangrijk dit was voor hen.

Ook derde beklaagde leverde zijn diensten louter uit puur geldgewin, zonder enige ideologische overtuiging.

Volgens het openbaar ministerie en de burgerlijke partijen werd de aanslag georganiseerd door de Iraanse inlichtingendienst MOIS en specifiek het departement 312. Deze vormen volgens het openbaar ministerie en de burgerlijke partijen de terroristische groep die verantwoordelijk was voor de vrijdelde aanslag.

Volgens het openbaar ministerie dat zich steunt op informatie van de Staatsveiligheid en OCAD en volgens de burgerlijke partijen die zich bijkomend steunen op hun eigen informatiebronnen, zou MOIS en specifiek het departement 312 verantwoordelijk zijn voor diverse moordaanslagen of pogingen daartoe in Europa op leidinggevend en prominente van de Iraanse oppositie.

De rechtbank kan deze informatie over aanslagen overal in Europa onvoldoende objectiveren op basis van de elementen die aangedragen werden in het strafdossier. Uit de opsomming van deze vermoedens die wijzen in de richting van de Iraanse staat of MOIS, kan de rechtbank niet besluiten dat MOIS een terroristische groep is. Moordaanslagen kunnen even goed gepleegd zijn door andere inlichtingendiensten of door rivaliserende oppositiepartijen.

Ook de verschillende rapporten en artikelen zijn voor de rechtbank onvoldoende objectiveerbaar.

De enige objectieve informatie is het vonnis van de Duitse rechtbank in 1997 waar op basis van een Duits strafdossier MOIS in verband wordt gebracht met een dodelijke aanslag in Duitsland.

Het staat alleszins vast dat eerste, tweede, derde en vierde beklaagde een terroristische groep vormden. Ze verzamelden informatie over de organisaties en de leden van deze organisaties. Op basis van deze verkregen informatie organiseerden zij zich om een aanslag te plegen op één van de belangrijkste jaarlijkse bijeenkomsten van deze Iraanse oppositiepartijen.

Uit het strafdossier kan echter ondubbelzinnig afgeleid worden dat er een grotere

betrokkenheid is dan deze vier beklaagden.

De rechtbank verwijst onder meer naar de hierna vermelde opmerkingen.

- Uit de verklaringen van eerste en tweede beklaagde blijkt duidelijk dat zij eerst geronseld en gerund werden door agenten die opereerden uit Iran. Zij verklaarden allebei dat zij werkten voor de inlichtingendienst MOIS. Ze keerden regelmatig terug naar Iran, waar ze ontmoetingen hadden met verschillende mensen van MOIS.
- Uit hun verklaringen blijkt ook dat vierde beklaagde eveneens voor de inlichtingendienst MOIS werkzaam was en dat ze ook onder hem naar Iran dienden te gaan voor overleg. In Iran ontmoetten ze niet alleen vierde beklaagde, maar ook andere agenten van MOIS.
- Vierde beklaagde opereerde vanuit een Iraanse diplomatieke cover. Hij voerde geen diplomatieke activiteiten uit, maar runde informanten in Europa. Het werken onder diplomatenstatuut zonder effectief deze werkzaamheden uit te voeren, kan alleen met instemming van verantwoordelijken binnen de Iraanse staat.
- Uit de verklaringen van eerste en tweede beklaagde en uit de analyse van de email-berichten en de audio-opnames die werden gemaakt door eerste, tweede en derde beklaagde blijkt dat eerst de oorspronkelijke runners en later vierde beklaagde informatie verzamelden over MEK.
- Iran, noch MOIS hebben zich gedistantieerd van de activiteiten van vierde beklaagde.
- Uit de analyse van de email-berichten tussen eerste/tweede en vierde beklaagde en uit de verklaringen van eerste en tweede beklaagde blijkt voldoende dat het explosief tuig gemaakt en zeker getest werd in Iran. Op basis van de gedeclassificeerde nota van de Veiligheid van de Staat van 7 september 2020, mag met een objectieve zekerheid afgeleid worden dat het explosief door vierde beklaagde in diplomatieke bagage werd meegenomen op een commerciële vlucht van Iran naar Oostenrijk.
- Vierde beklaagde beschikte over aanzienlijke geldsommen om eerste, tweede en derde beklaagde te betalen en deze gelden waren, gelet op hun omvang, geen persoonlijke gelden van vierde beklaagde.
- Uit de analyse van de email-berichten blijkt dat met betrekking tot de financiële eisen die eerste en tweede beklaagde stelden om tot actie over te gaan, vierde beklaagde zelf bij zijn opdrachtgevers toestemming diende te krijgen.
- Volgens, voor de rechtbank betrouwbare, informatie van de Veiligheid van de Staat zou vierde beklaagde een inlichtingenofficier zijn van MOIS en als inlichtingenofficier in Europa bronnen runnen voor departement 312.

Op basis van deze elementen komt de rechtbank tot het besluit dat er een groep bestaat binnen het departement 312 van de inlichtingendienst MOIS, die zich bezig hield met informatie verzamelen over het MEK/CNRI en die deze informatie gebruikte om doelwitten uit

te zoeken en uiteindelijk ook effectief over te gaan tot het organiseren van een aanslag op een conventie van deze Iraanse oppositiepartijen.

Deze groep waarvan eerste, tweede, derde en vierde beklaagde deel uitmaken, samen met een niet nader te bepalen aantal Iraanse agenten van MOIS, is een terroristische groep overeenkomstig art. 139, eerste lid Sw. Alleszins hebben eerste, tweede, derde en vierde beklaagde een actieve bijdrage geleverd aan deze terroristische groep.

Op basis van de informatie uit het strafdossier die de rechtbank voorhanden heeft, kan ze niet afleiden hoe groot deze groep is en hoe deze groep gedragen wordt binnen de Iraanse staatsstructuur en wie de uiteindelijke (hoogste) opdrachtgever was van de vrijdelde aanslag.

### **Wat betreft het bewezen verklaren van de tenlasteleggingen A en D**

De poging terroristische moord (tenlastelegging A) en lidmaatschap terroristische groep (tenlastelegging D) is dan ook lastens eerste, tweede en vierde beklaagde voldoende bewezen aan de hand van de vaststellingen van de verbalisanten:

- de initiële info van de Veiligheid van de Staat,
- de betrapping op heterdaad,
- de resultaten van de observatie in Luxemburg op 28 juni 2018,
- de analyse van de email-berichten die verstuurd werden tussen eerste en tweede beklaagde enerzijds en vierde beklaagde anderzijds,
- de resultaten van de huiszoeking bij eerste en tweede beklaagde,
- de resultaten van de doorzoeking van het voertuig van vierde beklaagde,
- het spreken in codetaal en het kennen van berichten,
- de vaststelling aangaande de gsm contacten tussen eerste en vierde beklaagde rond het moment van de feiten,
- de grote cash-bedragen waarover eerste en tweede beklaagde beschikten,
- de analyse van de chatberichten tussen “Negar” (tweede beklaagde) en eerste beklaagde,
- de resultaten van het direct af luisteren tussen eerste en tweede beklaagde,
- het technisch en deskundig verslag over het EID,
- de wijze waarop beklaagden het EID dienden te manipuleren en operationeel te maken,
- de verklaringen van eerste en tweede beklaagde over hun eigen rol, over elkaars rol en over de rol van vierde beklaagde.

Wat vierde beklaagde betreft kan bijkomend verwezen worden naar :

- zijn contacten met derde beklaagde als uniek contact,

- de uitgewisselde sms-berichten van 17/6/2018,
- en het spreken in codetaal.

De deelname aan poging terroristische moord (tenlastelegging A) en lidmaatschap terroristische groep (tenlastelegging D) is dan ook voldoende bewezen lastens derde beklaagde aan de hand van de vaststellingen van de verbalisanten:

- de initiële info van de Veiligheid van de Staat en de specifieke info over de betrokkenheid van derde beklaagde,
- zijn aanwezigheid ter plaatse en zijn gedrag aldaar,
- het aantreffen van een operationele gsm met als enig contact vierde beklaagde,
- de analyse van de sms-berichten die verstuurd werden tussen derde en vierde beklaagde op 17 juni 2018,
- het gebruik van codetaal,
- de resultaten van de huiszoeking bij derde beklaagde, waar spyware werd gevonden,
- de grote cash-bedragen waarover derde beklaagde beschikte,
- de regelmatige verplaatsingen naar Oostenrijk en zijn storting van gelden, onmiddellijk na zijn terugkeer uit het buitenland,
- de opnames en het beeldmateriaal dat derde beklaagde maakte van de activiteiten van de leden van MEK/CNRI,
- en tenslotte zijn ongeloofwaardige verklaringen.

### **Wat betreft de straftoemeting**

De feiten van tenlasteleggingen A en D vermengen zich in hoofde van eerste, tweede, derde en vierde beklaagde als zijnde gepleegd met éénzelfde strafbaar opzet, zodat maar één straf dient opgelegd te worden.

De feiten van de tenlasteleggingen zijn bijzonder ernstig. Poging terroristische moord behoort tot één van de zwaarste misdrijven in het Belgisch strafwetboek.

Beklaagden schenden niet alleen de soevereiniteit van de Belgische en Franse staat. Door een aanslag te plegen op een drukbezochte conferentie van Iraanse oppositiepartijen, ondermijnen ze niet alleen de vrije meningsuiting, maar tasten ze het veiligheidsgevoel aan van de Iraanse vluchtelingen die een veilige haven zochten in verschillende Europese landen.

Zowel eerste, tweede als derde beklaagde dienen er zich rekenschap van te geven dat op basis van de informatie die ze gaven bepaalde mensen fysiek gevaar liepen en nog steeds lopen.

Bovendien vonden eerste, tweede en derde beklaagde mensenlevens ondergeschikt aan hun financiële drijfveren.

De rechtbank zal bij het bepalen van de straf en de strafmaat voor iedere beklaagde persoonlijk rekening houden met de aard en de ernst van de feiten, de omstandigheden waarin de feiten plaatsvonden, ieders respectievelijk aandeel, persoonlijkheid, leeftijd en strafrechtelijk verleden.

*De straftoemeting betreffende eerste beklaagde*

Eerste beklaagde heeft onmiddellijk verklaringen afgelegd en meegewerkt met het strafonderzoek.

Eerste beklaagde komt bij de rechtbank naïef en beïnvloedbaar over. Hij geeft aan oprecht schuldbesef te hebben.

Gelet echter op de aard en de ernst van de feiten is een ernstige effectieve gevangenisstraf gepast.

*De straftoemeting betreffende tweede beklaagde*

Tweede beklaagde legde ook verklaringen af.

Tweede beklaagde komt de rechtbank zeer manipulatief over. De rechtbank verwijst in die zin naar het direct afluisteren tussen eerste en tweede beklaagde en naar de volgende chatgesprekken van “Negar” (tweede beklaagde) :

- dat tweede beklaagde haar echtgenoot beïnvloedt om deel te nemen aan de feiten, en om het explosief toestel binnen te laten afgaan.
- dat de financiële verdiensten voor tweede beklaagde belangrijk zijn en zelfs voor haar een groter motief zijn tot samenwerking met de geheime dienst dan voor eerste beklaagde.

Haar rol is dus zeker niet beperkt. Zij stuurde ook informatie door naar vierde beklaagde. Bovendien blijkt uit het direct afluisteren dat tweede beklaagde zelf nog naar Iran is gegaan, zonder eerste beklaagde, en daar agenten van MOIS heeft ontmoet. Uit het strafdossier blijkt dat vierde beklaagde soms alleen met tweede beklaagde wilde spreken.

Tweede beklaagde heeft volgens de rechtbank meer bindingen met MOIS dan ze doet uitschijnen. Dit blijkt uit de chatgesprekken, waarbij ze zich uitgaf voor “Negar”, uit haar reis naar Iran zonder eerste beklaagde en uit de subtiele druk op en beïnvloeding van eerste

beklaagde door tweede beklaagde. Haar rol en aandeel in de feiten is dan ook groter dan deze van eerste beklaagde.

Gelet op de aard en de ernst van de feiten en haar concrete rol hierin is een ernstige effectieve gevangenisstraf gepast.

*De                      straftoemeting                      betreffende                      derde                      beklaagde*

Derde beklaagde werkte jaren mee voor de Iraanse inlichtingendiensten en dit louter uit puur geldgewin. Hij was ter plaatse en gelet op de bevindingen omtrent zijn operationele gsm, blijkt dat hij de oren en ogen van vierde beklaagde was op het terrein. Het kan niet anders, gelet op zijn sleutelpositie, dat hij volledig op de hoogte was van de plannen die dienden uitgevoerd te worden en dat hij minstens op uitkijk stond om de operationele leider van de aanslag nauwgezet op de hoogte te houden en desgevallend op het terrein bij te sturen. Zijn belangrijke rol blijkt ook uit de geldbedragen die hij kreeg van zijn opdrachtgevers.

Gelet op de aard en de ernst van de feiten is een ernstige effectieve gevangenisstraf gepast.

*De                      straftoemeting                      betreffende                      vierde                      beklaagde*

Vierde beklaagde is het operationeel brein achter de aanslag. Hij had er totaal geen gewetensproblemen mee dat er dodelijke slachtoffers zouden vallen.

Hij misbruikte het diplomatieke statuut om terroristische misdrijven te plegen en ondermijnde op die manier het vertrouwen dat men mag hebben in de uitwisseling van officiële overheidsmandatarissen.

Een ernstige effectieve gevangenisstraf is de enige gepaste bestraffing.

### **Wat betreft het vervallen verklaren van de nationaliteit**

Door het openbaar ministerie wordt het vervallen verklaren van de nationaliteit gevorderd ten opzichte van eerste, tweede en derde beklaagde.

De rechtbank kan wanneer ze voor terreurmisdrijven veroordeelt tot een effectieve gevangenisstraf van minstens 5 jaar de vervallen verklaring van de nationaliteit uitspreken.

Het is geen verplichting voor de rechtbank.

Eerste, tweede en derde beklaagde beschikken over de Belgische nationaliteit. Daarnaast beschikken ze over de Iraanse nationaliteit. Dat Iran de dubbele nationaliteit niet aanvaardt, houdt in dat de Iraanse autoriteiten weigeren de andere nationaliteit van hun onderdanen te erkennen. Het betekent dus geenszins dat beklaagden door het verwerven van de Belgische nationaliteit geen Iraans staatsburger meer zijn.

Eerste, tweede en derde beklaagde worden niet staatloos, wanneer ze de Belgische nationaliteit verliezen.

Eerste, tweede en derde beklaagde verzoeken om de vervallen verklaring niet uit te spreken, om humanitaire redenen. Hun leven zou in gevaar zijn, wanneer ze terug gestuurd worden naar Iran. Zeker eerste en tweede beklaagde, gelet op de verklaringen die ze hebben afgelegd lastens MOIS in het algemeen en vierde beklaagde in het bijzonder.

De vervallenverklaring van de nationaliteit betekent niet dat beklaagden daadwerkelijk terug gezonden worden naar Iran. Het verlies van de Belgische nationaliteit leidt niet automatisch tot de intrekking van het verblijfsrecht in België. Op dat vlak bestaan er aparte procedures onder de bevoegdheid van de Dienst Vreemdelingenzaken, waarbij in het kader van een mogelijke uitwijzing het al dan niet respecteren van de mensenrechten in het land van herkomst een element bij de beoordeling kan zijn. Bij de beslissing over de vervallen verklaring van de nationaliteit dient de rechtbank hier geen rekening mee te houden. Beklaagden kunnen zich in een latere fase dus nog steeds verzetten tegen een mogelijke terugzending naar Iran. Ze hebben ook steeds de mogelijkheid om asiel aan te vragen in een ander land.

Eerste, tweede en derde beklaagde hebben elk misbruik gemaakt van de gastvrijheid van ons land om een aanslag te plegen in een bevriende natie. Door hun respectief aandeel in deze vrijdelde terreurdaad, hebben ze België en Frankrijk recht in hun waarden willen treffen. Het zou een aanval zijn geweest op de democratische rechtsstaat en op de vrije meningsuiting. Ze wilden Iraanse vluchtelingen, die een veilig onderkomen hebben gevonden in de Europese Unie, raken in hun veiligheidsgevoel.

Het deelnemen aan de activiteiten van een terroristische groep kan worden geïnterpreteerd als een vorm van verwerping van de waarden en instellingen van onze Belgische en van de Franse samenleving.

De rechtbank stelt vast dat de voorwaarden van artikel 23/2 Wetboek van Belgische nationaliteit vervuld zijn.

De rechtbank spreekt dan ook de vervallenverklaring van de nationaliteit uit van eerste, tweede en derde beklaagde.

#### **Wat betreft de verbeurdverklaring**

### *Wat betreft eerste beklaagde en tweede beklaagde*

Eerste beklaagde en tweede beklaagde stortten aanzienlijke bedragen cash op hun bankrekeningen. Er werd ook een grote geldsom aangetroffen bij de huiszoeking. Eerste en tweede beklaagde kunnen deze cash-stortingen totaal niet verantwoorden door hun eigen inkomsten. Hun gezamenlijke legale inkomsten zijn juist voldoende om de vaste kosten te betalen en op een normale manier te leven.

Uit verschillende getuigenverklaringen blijkt dat eerste en tweede beklaagde een levensstijl aanhielden waar iedereen bedenkingen over had.

Uit het strafdossier, namelijk hun eigen verklaringen en de analyse van het notitieboekje dat teruggevonden werd en de analyse van het email-verkeer tussen eerste beklaagde en tweede beklaagde met vierde beklaagde, blijkt dat er inderdaad geld werd betaald en dat ze zelfs onderhandelden om meer geld te krijgen. Uit de analyse van onder meer de hogergenoemde chatberichten tussen “Negar” (tweede beklaagde) en eerste beklaagde blijkt eveneens dat zij veel geld gingen krijgen, dat ze een huis wilden kopen en dat geld een belangrijke drijfveer was van beide beklaagden. Ze gingen ook een nieuw voertuig kopen.

Ze trachten enige verantwoording te vinden door te verwijzen naar gelden die ze zouden gekregen hebben uit Iran en men verwijst voornamelijk naar de vader van tweede beklaagde. Er is geen enkel objectief element dat dit aantoont. Integendeel, uit de getapte gesprekken tussen tweede beklaagde (vanuit de gevangenis) en haar zus blijkt dat hun ouders in Iran het financieel niet breed hebben. Ook andere verklaringen hieromtrent kunnen geen verantwoording geven voor deze grote cash-stortingen.

Deze gelden werd steeds cash betaald en gestort op hun rekeningen. Het kan ook niet van ander zwartwerk zijn, omdat hiervan geen aanwijzingen zijn, maar bovendien ook omdat ze op zo’n regelmatige tijdstippen informatie aan het verzamelen waren voor vierde beklaagde, dat er geen tijd overbleef om andere werkzaamheden uit te voeren.

De rechtbank verwijst hier uitdrukkelijk naar de vaststellingen in proces-verbaal 504284-2020, waarop de verbeurdverklaring is gebaseerd en kent deze dan ook integraal toe.

<i>Wat</i>	<i>betreft</i>	<i>derde</i>	<i>beklaagde</i>
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Derde beklaagde stortte aanzienlijke bedragen cash op zijn bankrekeningen. Derde beklaagde kan deze cash-stortingen totaal niet verantwoorden door zijn eigen inkomsten. Het legaal globaal gezinsinkomen kan deze stortingen niet verklaren.

Derde beklaagde verklaarde dat hij veel zwartwerk deed in de bouw en ook voor MEK betaalde jobs deed. Uit teruggevonden berichten blijkt dat hij gedurende maanden bedankte voor een

(zwarte) job in de bouw, omdat hij te veel last had van zijn arm. De opdrachten voor MEK waren beperkt en ook in vergoedingen.

Derde beklaagde was bijna dagelijks informatie aan het inwinnen voor vierde beklaagde bij MEK. Het kan ook niet anders dan dat hij hiervoor rijkelijk betaald werd, net zoals eerste en tweede beklaagde. Het valt ook op dat de geldstorting vaak gebeurden, wanneer hij terug kwam van een reis naar Oostenrijk (ontmoeting met vierde beklaagde).

Ook het verhaal dat het geld afkomstig is van zijn vader of een goede vriendin, kan derde beklaagde niet hard maken.

De rechtbank verwijst hier uitdrukkelijk naar de vaststellingen in proces-verbaal 501185-2020, waarop de verbeurdverklaring is gebaseerd en kent deze dan ook integraal toe.

*Wat betreft vierde beklaagde*

Ook de verbeurdverklaring van de in beslag genomen gelden bij vierde beklaagde dringt zich op, gelet op de inhoud van het strafdossier en zijn betrokkenheid.

### **OP BURGERLIJK GEBIED**

Elk van de burgerlijke partijen vordert een rechtsplegingsvergoeding. Alle burgerlijke partijen die binnen eenzelfde rechtsband een rechtsplegingsvergoeding lastens beklaagden genieten, worden bijgestaan door dezelfde raadslieden die via een gezamenlijke akte voor elk van hen dezelfde vordering stellen. Het past dan ook één rechtsplegingsvergoeding te voorzien voor alle burgerlijke partijen samen en deze tussen hen te verdelen.

**1) Wat betreft de burgerlijke partijstelling van E.Z.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**2) Wat betreft de burgerlijke partijstelling van R.T.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**3 – 16) Wat betreft de burgerlijke partijstelling van G.T.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**4) Wat betreft de burgerlijke partijstelling van R.G.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**5) Wat betreft de burgerlijke partijstelling van W.M.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**6) Wat betreft de burgerlijke partijstelling van de N.I.W.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**7) Wat betreft de burgerlijke partijstelling van I.B.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**8) Wat betreft de burgerlijke partijstelling van A.G.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**9) Wat betreft de burgerlijke partijstelling van L.C.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**10) Wat betreft de burgerlijke partijstelling van T.K.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**11) Wat betreft de burgerlijke partijstelling van R.B.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**12) Wat betreft de burgerlijke partijstelling van Y.B.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**13) Wat betreft de burgerlijke partijstelling van T.B.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**14) Wat betreft de burgerlijke partijstelling van F.H.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**15) Wat betreft de burgerlijke partijstelling van S.A.J.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**17) Wat betreft de burgerlijke partijstelling van R.J.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**18) Wat betreft de burgerlijke partijstelling van M.R.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**19) Wat betreft de burgerlijke partijstelling van R.H.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**20) Wat betreft de burgerlijke partijstelling van M.P.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**21) Wat betreft de burgerlijke partijstelling van A.T.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**22) Wat betreft de burgerlijke partijstelling van S.S.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**23) Wat betreft de burgerlijke partijstelling van J.L.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**24) Wat betreft de burgerlijke partijstelling van H.A.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

**25) Wat betreft de burgerlijke partijstelling van M.J.D.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

## **26) Wat betreft de burgerlijke partijstelling van P.B.**

Deze burgerlijke partij leed morele schade ten gevolge van de bewezen verklaarde feiten van de tenlastelegging A.

Het gevorderde bedrag van 1 euro provisioneel is voldoende bewezen aan de hand van het strafdossier en de voorgelegde stukken en wordt toegekend.

## **TOEGEPASTE WETTEN**

De rechtbank houdt rekening met de volgende artikelen die de bestanddelen van de misdrijven en de strafmaat bepalen, en het taalgebruik in gerechtszaken regelen:

art. 1, 2, 11, 12, 14, 16, 31, 32, 34, 35, 37, 41 wet van 15 juni 1935;  
art. 1, 2, 3, 25, 31, 32, 42, 43, 43bis, 44, 45, 50, 65, 66, 79, 80 strafwetboek  
art. 4 V.T.Sv  
artikel 162bis van het Wetboek van Strafvordering,  
artikel 1382 van het Burgerlijk Wetboek,  
alsook de wetsbepalingen aangehaald in de inleidende akte en in het vonnis.  
artikelen 152bis, 182, 189 Sv

## **De rechtbank:**

op tegenspraak ten aanzien van A.S., N.N., M.A., A.A., E.Z., R.T., G.T., R.G., W.M., **N.I.W.**, I.B., A.G., L.C., T.K., R.B., Y.B., T.B., F.H., S.A.J., G.T., R.J., M.R. R.H. M.P., A.T., S.S., J.L., H.A., M.J.D., P.B..

Stelt vast dat de burgerlijke partijen sub 3) T.G. en 16) T.G., één en dezelfde burgerlijke partij betreft;

Herstelt de materiële vergissingen zoals hoger vermeld.

Verleent akte van burgerlijke partijstelling aan de burgerlijke partij sub 26 P.B. en stelt vast dat deze burgerlijke partij werd gehoord als burgerlijke partij.

## **Op strafgebied**

Ten aanzien van A.S., eerste beklaagde

Veroordeelt **A.S.** voor de vermengde feiten van de tenlasteleggingen A en D:

tot een **gevangenisstraf** van **15 jaar**.

Spreekt ten aanzien van A.S. de vervallenverklaring van de Belgische nationaliteit uit, overeenkomstig artikel 23/2 § 1 van het Wetboek van de Belgische Nationaliteit.

Ontzet A.S. **LEVENSLANG** uit de rechten zoals vermeld in artikel 31 van het Strafwetboek;

Verklaart **verbeurd** overeenkomstig artikel 42, 3° en 43bis Sw. als vermogensvoordelen :

- een geldsom van 17.896,90 euro, zijnde de helft van het bedrag van 35.793,80 euro (aangetroffen tijdens huiszoeking) (beheerd door het COIV)
- een bedrag van 120.167,00 euro, hierin begrepen het saldo op zijn rekeningen ten bedrage van 9.277,36 euro, in beslag en beheerd door het COIV (PV 504284-2020).

Veroordeelt A.S. tot betaling van:

- een bijdrage van 1 maal 200,00 EUR, zijnde de som van 1 maal 25,00 EUR verhoogd met 70 opdecimen, ter financiering van het Fonds tot hulp aan de slachtoffers van opzettelijke gewelddaden en de occasionele redders
  - een bijdrage van 20,00 EUR aan het Begrotingsfonds voor juridische tweedelijnsbijstand
- een vaste vergoeding voor beheerskosten in strafzaken. Deze vergoeding bedraagt 50,00 EUR
  - de kosten van de strafvordering tot op heden begroot op **1/4 x 21464,23 = 5366,06 EUR**.

Ten aanzien van N.N., tweede beklaagde

Veroordeelt **N.N.** voor de vermengde feiten van de tenlasteleggingen A en D:

tot een **gevangenisstraf** van **18 jaar**.

Spreekt ten aanzien van N.N. de vervallenverklaring van de Belgische nationaliteit uit, overeenkomstig artikel 23/2 § 1 van het Wetboek van de Belgische Nationaliteit.

Ontzet N.N. **LEVENSLANG** uit de rechten zoals vermeld in artikel 31 van het Strafwetboek;

Verklaart **verbeurd** overeenkomstig artikel 42, 1° en 43 Sw. :

- het voertuig Mercedes CLC200 CDI met kenteken 1EGZ339, gestald bij Depannage 2000 (beslagstaat 2000 D2018/01238/C), als hebbende gediend om het misdrijf te plegen en diens eigendom zijnde.

Verklaart **verbeurd** overeenkomstig artikel 42, 3° en 43bis Sw. als vermogensvoordelen :

- een bedrag van 2.500 euro (voorschot aankoop nieuwe wagen) (beheerd door het COIV).
- een geldsom van 17.896,90 euro, zijnde de helft van het bedrag van 35.793,80 euro (aangetroffen tijdens huiszoeking) (beheerd door het COIV)
- een bedrag van 106.498,57 euro, hierin begrepen het saldo op haar rekeningen ten bedrage van 26.135,87 euro, in beslag en beheerd door het COIV (PV 504284-2020).

Veroordeelt N.N. tot betaling van:

- een bijdrage van 1 maal 200,00 EUR, zijnde de som van 1 maal 25,00 EUR verhoogd met 70 opdecimen, ter financiering van het Fonds tot hulp aan de slachtoffers van opzettelijke gewelddaden en de occasionele redders
  - een bijdrage van 20,00 EUR aan het Begrotingsfonds voor juridische tweedelijsbijstand
- een vaste vergoeding voor beheerskosten in strafzaken. Deze vergoeding bedraagt 50,00 EUR
  - de kosten van de strafvordering tot op heden begroot op  $1/4 \times 21464,23 = 5366,06$  EUR.

Ten aanzien van M.A., derde beklaagde

Veroordeelt **M.A.** voor de vermengde feiten van de tenlasteleggingen A en D:

tot een **gevangenisstraf** van **17 jaar**.

Spreekt ten aanzien van M.A. de vervallenverklaring van de Belgische nationaliteit uit, overeenkomstig artikel 23/2 § 1 van het Wetboek van de Belgische Nationaliteit.

Ontzet M.A. **LEVENSLANG** uit de rechten zoals vermeld in artikel 31 van het Strafwetboek;

Verklaart **verbeurd** overeenkomstig artikel 42, 3° en 43bis Sw. als vermogensvoordelen :

- 1.500 euro aangetroffen bij de huiszoeking (beheerd door het COIV)
- 226.084,50 euro, hierin begrepen al de in beslaggenomen gelden (ook via rekeningen) die beheerd worden door het COIV (PV 501185-2020).

Veroordeelt M.A. tot betaling van:

- een bijdrage van 1 maal 200,00 EUR, zijnde de som van 1 maal 25,00 EUR verhoogd met 70 opdecimen, ter financiering van het Fonds tot hulp aan de slachtoffers van opzettelijke gewelddaden en de occasionele redders
  - een bijdrage van 20,00 EUR aan het Begrotingsfonds voor juridische tweedelijsbijstand
- een vaste vergoeding voor beheerskosten in strafzaken. Deze vergoeding bedraagt 50,00 EUR
  - de kosten van de strafvordering tot op heden begroot op  $1/4 \times 21464,23 = 5366,06$  EUR.

Ten aanzien van A.A., vierde beklaagde

Veroordeelt **A.A.** voor de vermengde feiten van de tenlasteleggingen A en D:

tot een **gevangenisstraf** van **20 jaar**.

Ontzet A.A. **LEVENSLANG** uit de rechten zoals vermeld in artikel 31 van het Strafwetboek;

Verklaart **verbeurd** overeenkomstig artikel 42, 1° en 43 Sw., eigendom van beklaagde en dienstig voor het plegen van de feiten:

- 10.463,22 euro, beheerd door het COIV.

Veroordeelt A.A. tot betaling van:

- een bijdrage van 1 maal 200,00 EUR, zijnde de som van 1 maal 25,00 EUR verhoogd met 70 opdecimen, ter financiering van het Fonds tot hulp aan de slachtoffers van opzettelijke gewelddaden en de occasionele redders
  - een bijdrage van 20,00 EUR aan het Begrotingsfonds voor juridische tweedelijsbijstand
- een vaste vergoeding voor beheerskosten in strafzaken. Deze vergoeding bedraagt 50,00 EUR
  - de kosten van de strafvordering tot op heden begroot op  $1/4 \times 21464,23 = 5366,06$  EUR.

## Op burgerlijk gebied

### 1) Wat betreft de burgerlijke partijstelling van E.Z.

Verklaart de eis van de burgerlijke partij Z.E.betta ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij Z.E.betta de som van: één euro en nul cent (1,00 EUR) provisioneel,

### 2) Wat betreft de burgerlijke partijstelling van R.T.

Verklaart de eis van de burgerlijke partij T.R.. ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij T.R.. de som van: één euro en nul cent (1,00 EUR) provisioneel,

### 3 – 16) Wat betreft de burgerlijke partijstelling van G.T.

Verklaart de eis van de burgerlijke partij T.G. ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij T.G. de som van: één euro en nul cent (1,00 EUR) provisioneel.

### 4) Wat betreft de burgerlijke partijstelling van R.G.

Verklaart de eis van de burgerlijke partij G.R.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij G.R.de som van: één euro en nul cent (1,00 EUR) provisioneel.

### 5) Wat betreft de burgerlijke partijstelling van W.M.

Verklaart de eis van de burgerlijke partij M.W.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij M.W.de som van: één euro en nul cent (1,00 EUR) provisioneel.

### 6) Wat betreft de burgerlijke partijstelling van de N.I.W.

Verklaart de eis van de burgerlijke partij N.I.W. ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij N.I.W. de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**7) Wat betreft de burgerlijke partijstelling van I.B.**

Verklaart de eis van de burgerlijke partij B.I.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij B.I.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**8) Wat betreft de burgerlijke partijstelling van A.G.**

Verklaart de eis van de burgerlijke partij GHOZALI Ahmed ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij GHOZALI Ahmed de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**9) Wat betreft de burgerlijke partijstelling van L.C.**

Verklaart de eis van de burgerlijke partij CHAVEZ Linda ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij CHAVEZ Linda de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**10) Wat betreft de burgerlijke partijstelling van T.K.**

Verklaart de eis van de burgerlijke partij K.T.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij K.T.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**11) Wat betreft de burgerlijke partijstelling van R.B.**

Verklaart de eis van de burgerlijke partij B.R.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij B.R.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**12) Wat betreft de burgerlijke partijstelling van Y.B.**

Verklaart de eis van de burgerlijke partij B.Y.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij B.Y.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**13) Wat betreft de burgerlijke partijstelling van T.B.**

Verklaart de eis van de burgerlijke partij B.T.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij B.T.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**14) Wat betreft de burgerlijke partijstelling van F.H.**

Verklaart de eis van de burgerlijke partij H.F.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij H.F.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**15) Wat betreft de burgerlijke partijstelling van S.A.J.**

Verklaart de eis van de burgerlijke partij A.J.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij A.J.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**17) Wat betreft de burgerlijke partijstelling van R.J.**

Verklaart de eis van de burgerlijke partij J.R.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij J.R.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**18) Wat betreft de burgerlijke partijstelling van M.R.**

Verklaart de eis van de burgerlijke partij R.M.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij R.M.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**19) Wat betreft de burgerlijke partijstelling van R.H.**

Verklaart de eis van de burgerlijke partij H.R.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij H.R.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**20) Wat betreft de burgerlijke partijstelling van M.P.**

Verklaart de eis van de burgerlijke partij P.M.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij P.M.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**21) Wat betreft de burgerlijke partijstelling van A.T.**

Verklaart de eis van de burgerlijke partij T.A.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij T.A.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**22) Wat betreft de burgerlijke partijstelling van S.S.**

Verklaart de eis van de burgerlijke partij S.S.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij S.S.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**23) Wat betreft de burgerlijke partijstelling van J.L.**

Verklaart de eis van de burgerlijke partij L.J.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij L.J.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**24) Wat betreft de burgerlijke partijstelling van H.A.**

Verklaart de eis van de burgerlijke partij A.H.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij A.H.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**25) Wat betreft de burgerlijke partijstelling van M.J.D.**

Verklaart de eis van de burgerlijke partij J.M.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij J.M.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

**26) Wat betreft de burgerlijke partijstelling van P.B.**

Verklaart de eis van de burgerlijke partij B.P.ontvankelijk en deels gegrond.

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als schadevergoeding te betalen aan de burgerlijke partij B.P.de som van: **één euro en nul cent (1,00 EUR) provisioneel.**

Veroordeelt S.A. - N.N.- A.M. - A.A.*solidair* om als gezamenlijke rechtsplegingsvergoeding aan de burgerlijke partijen sub 1 tot en met 26 te betalen de som van 180,00 EUR (art.1022 Gerechtelijk Wetboek - art.1 tot 13 Wet van 21/4/2007 - art.162 bis - 194 Wetboek van Strafvordering).

Wijst het meer- en anders gevorderde af.

OooO

Dit vonnis is gewezen door de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen, kamer AC8:

xxx

en uitgesproken in openbare terechtzitting op 4 februari 2021 door de voorzitter, in aanwezigheid van een magistraat van het openbaar ministerie, met bijstand van griffier xxx



# ANNEX 259



## *Iranian Diplomat Is Convicted in Plot to Bomb Opposition Rally in France*

A court in Belgium sentenced Assadollah Assadi, an envoy based in Vienna, to 20 years in prison for his role in a thwarted attack on a group that seeks to overthrow the Iranian leadership.



By Steven Erlanger

Published Feb. 4, 2021 Updated Feb. 15, 2021

BRUSSELS — A Belgian court on Thursday stripped a senior Iranian official of his diplomatic immunity, convicted him of organizing a thwarted bomb attack aimed at an Iranian opposition rally in France in 2018 and sentenced him to 20 years in prison.

The Iranian official, Assadollah Assadi, a Vienna-based diplomat detained in Belgium, invoked his diplomatic status in refusing to testify during his trial, which began in November. Mr. Assadi, now 49, received the maximum sentence on charges of attempted terrorist murder and participation in the activities of a terrorist group. He did not attend the hearing on Thursday at the courthouse in Antwerp.

The conviction is a blow to the Iranian government as it tries to persuade the United States to re-enter the 2015 Iranian nuclear deal before Iranians vote in presidential elections in June.

Mohammad Javad Zarif, the Iranian foreign minister, claimed in 2018 that the bomb plot allegations were a “false flag” operation designed to embarrass Iran as President Hassan Rouhani prepared to travel to Europe to rally support for the nuclear deal that President Donald J. Trump had recently abandoned.

The target of the bomb plot was an annual convention in Villepinte, outside Paris, of the National Council of Resistance of Iran, the political wing of the Mujahedeen Khalq, or M.E.K. The leader of the council, Maryam Rajavi, is a controversial figure who has been compared to the leader of a cult, as has her husband, Massoud Rajavi, who disappeared during the Iraq war in 2003 and is believed to be dead.

Ms. Rajavi has long argued for a revolution in Iran and says she would act as interim president of a new government. Prosecutors say the bomb plot was aimed at killing her and well-known international figures who also attended the 2018 convention.



About 25,000 people attended the convention in Villepinte, France, in 2018, including several prominent Americans. Zakaria Abdelkafi/Agence France-Presse — Getty Images

Those included Rudolph W. Giuliani, the former mayor of New York; Newt Gingrich, the former House speaker; Louis J. Freeh, the former F.B.I. director; Bill Richardson, the former governor of New Mexico; Stephen Harper, the former prime minister of Canada; and Ingrid Betancourt, a Colombian politician. In the past, such figures have been paid large sums of money for their appearances and lobbying activities.

The M.E.K., which Ms. Rajavi also leads, has a complicated history. The group began in opposition to the shah of Iran and later was considered a terrorist organization by the European Union until 2009 and by the United States until 2012.

The Belgian court also convicted three accomplices of Mr. Assadi, all dual citizens of Iran and Belgium, who were given jail terms of 15 to 18 years and stripped of their Belgian citizenship. All three are believed to be agents of the Iranian intelligence ministry, prosecutors said.

The head of Belgium's State Security Service, Jaak Raes, said in a letter to the prosecutors that intelligence officials had determined the planned bombing was a state-sanctioned operation, approved by Tehran.

A spokesman for the Iranian Ministry of Foreign Affairs condemned the verdict, calling Mr. Assadi's detention and sentence illegal under international law. "Iran reserves the right to resort to legal and diplomatic means to realize the rights of Assadollah Assadi and hold governments accountable for violating their international obligations," said the spokesman, Saeed Khatibzadeh, according to the semi-official Fars News Agency.

Mr. Assadi was attached to the Iranian mission in Austria when he supplied explosives for the planned attack. Prosecutors said that he brought about a pound of the explosive triacetone triperoxide, or TATP, and a detonator from Iran to Vienna in his luggage and then drove it to Luxembourg. There, he handed it over on June 30, 2018, to an Iranian-Belgian couple at a Pizza Hut. Mr. Assadi was arrested at a service station in Germany, where he did not have diplomatic immunity, as he drove back to Austria.

The couple, Amir Saadouni, 40, and his wife, Nassimeh Naami, 36, had been granted political asylum and later citizenship in Belgium. They were arrested as they drove to Paris from Antwerp on the day of the rally. The fourth defendant, Mehrdad Arefani, 57, was an associate of Mr. Assadi who was supposed to guide the couple at the rally.

Iran has been accused in the past of trying to eliminate opponents abroad. Denmark called for sanctions against Iran for planning another assassination there in 2018.

Mr. Assadi was in contact with Iranian agents all over Europe, according to documents provided to Belgian prosecutors by the police in Germany and the Netherlands, according to Belgium's Flemish broadcaster, VRT. The documents include a notebook found in his car containing numerous receipts for payments to people identified only by aliases.

A note from Belgium's intelligence and security agency identified Mr. Assadi as an officer of Iran's intelligence and security ministry who operated undercover at the Iranian Embassy in Vienna, according to The Associated Press. Belgium's state security officers said he worked for the ministry's so-called Department 312, the directorate for internal security, which is on the European Union's list of terrorist organizations.

Elian Peltier contributed reporting from London.



# ANNEX 260



[News](#) [Opinion](#) [Sport](#) [Culture](#) [Lifestyle](#)**Iran**

## Belgian court sentences Iranian diplomat to 20 years over bomb plot

**Daniel Boffey in Brussels**

Thu 4 Feb 2021 11.31 EST

An Iranian diplomat who masterminded a failed bomb attack at a rally outside Paris attended by five British MPs has been sentenced to 20 years in jail by a Belgian court for attempted murder and involvement in terrorism.

Assadollah Assadi, 49, had been attached to the Iranian mission in Vienna when he supplied explosives for the intended atrocity at an [Iranian opposition rally in France in 2018](#).

The courtroom was heavily guarded during sentencing, with armoured vehicles outside and police helicopters overhead, despite Assadi refusing to appear at any point

Annex 260

in the trial.

Assadi, believed to be an officer of the so-called department 312 in Iran's intelligence and security ministry, had warned authorities last year of possible retaliation if he was found guilty.

"This would have been an attack on the democratic state of law and freedom of speech," the judge in Antwerp said. "When the army bomb squad wanted to make the bomb safe, it exploded. A robot was incapacitated. Thousands of people were present at the rally in Paris. This would have resulted in many fatalities due to the explosion but also the subsequent chaos."

Assadi was found guilty alongside three accomplices of trying to bomb a rally organised by the exiled National Council of Resistance of Iran on the orders of Iran's government, a claim denied by Tehran.

The Conservative MPs Bob Blackman, Matthew Offord, Theresa Villiers and Sir David Amess attended along with Labour's Roger Godsiff. Donald Trump's lawyer Rudy Giuliani was also at the rally.

Belgian police officers foiled the attack on 30 June 2018 after receiving a tipoff and stopping a couple, Amir Saadouni, 40, and Nasimeh Naami, 36, travelling in a Mercedes car in which they found 550 grams of the unstable TATP explosive and a detonator hidden in luggage in the vehicle's boot.



▲ People gesture and wave former flags of Iran as they protest outside the Antwerp criminal court. Photograph: Belga/AFP/Getty Images

Assadi was arrested the next day in Germany, where he was deemed unable to claim diplomatic immunity as he was on holiday and outside the country where he had been posted.

The court heard that Assadi had smuggled in the explosives on a commercial flight to Austria then handed the bomb over to Saadouni and Naami during a meeting in a Pizza Hut restaurant in Luxembourg two days before their arrest.

The court was shown surveillance pictures of Assadi dressed as a tourist, in a hat and with a camera, handing the Belgian-Iranian couple a package.

It is believed the target was a Free Iran rally being staged in the French town of Villepinte, north of Paris, where about 25,000 people had gathered.

Naami, described in court as highly manipulative, received an 18-year sentence and Saadouni 15 years.

Mehrdad Arefani, a former Iranian dissident based in [Belgium](#), was found to have been an accomplice of Assadi's who had been due to guide the couple at the rally.

He was the only defendant to agree to appear in court for the sentencing and sat impassively as he was jailed for 17 years.

Georges-Henri Beauthier, a lawyer for the prosecution, said: “The ruling shows two things: a diplomat doesn’t have immunity for criminal acts ... and the responsibility of the Iranian state in what could have been carnage.”

A spokesman for Iran’s foreign ministry told the semi-official Iranian Students News Agency last month that Assadi’s diplomatic immunity from prosecution had been violated and that he had been a victim of a western trap.

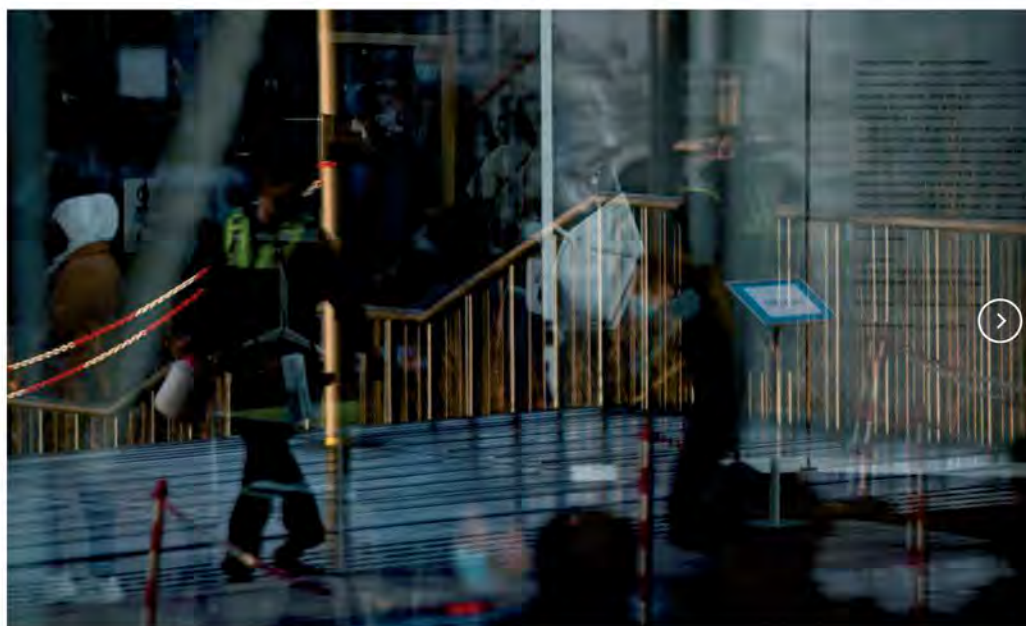
# ANNEX 261



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## Iranian diplomat convicted of planning attack on opposition

By SAMUEL PETREQUIN February 4, 2021



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ANTWERP, Belgium (AP) — An Iranian diplomat identified as an undercover secret agent was convicted Thursday in Belgium of masterminding a thwarted bomb attack against an exiled Iranian opposition group in France and sentenced to 20 years in prison, a legal outcome that infuriated Tehran.

A Belgian court rejected the Vienna-based official's claim of diplomatic immunity. The official, Assadollah Assadi, contested the charges and refused to testify during his trial last year, invoking his diplomatic status. He did not attend Thursday's hearing at the Antwerp courthouse.

Prosecutors had requested the maximum prison sentence of 20 years on charges of attempted terrorist murder and participation in the activities of a terrorist group.

During the trial, lawyers for the plaintiffs and representatives of the Mujahedeen-e-Khalq opposition group, or MEK, claimed without offering evidence that the diplomat set up the attack on direct orders from Iran's highest authorities. Tehran has denied having a hand in the plot.

A spokesman for Iran's Foreign Affairs Ministry, Saeed Khatibzadeh, condemned the court decisions and said Iran did not recognize the sentence because it considers the Belgian proceedings against Assadi to have been illegal.

The court in Antwerp rejected Assadi's claims of individual immunity and said the case did not violate state immunity principles since neither Iran nor an Iranian security service stood trial.

In its ruling, it made clear Iran was not on trial, but insisted the quartet of defendants were members of a cell operating for Iran's intelligence services gathering information about the opposition group to identify targets and set up an attack.

Assadi's conviction comes at a critical time and has the potential to embarrass his country as U.S. President Joe Biden's administration weighs whether to rejoin the 2015 nuclear deal between Tehran and world powers. Iran also said last month it expects Washington to lift economic sanctions that former President Donald Trump imposed on the country after pulling America out of the atomic deal in 2018.

The European Union centered its reaction on Assadi specifically and did not draw in Iran as a nation. "The acts committed by this person are completely unacceptable. That's a fact. The other aspect I can add is that the person in question is already on the EU counter-terrorism list," said EU spokesman Peter Stano.

The Belgian government said the ruling stood on its own, separated from diplomacy and international relations.

"What matters is that today the justice system has ruled on facts of terrorism and made a clear statement about it. And it must be able to do that in complete independence. Otherwise, we no longer live in a constitutional state," said Justice Minister Vincent Van Quickenborne.

On June 30, 2018, Belgian police officers tipped off by intelligence services about a possible attack against the annual meeting of the MEK, stopped a couple traveling in a Mercedes car. In their luggage, they found 550 grams of the unstable TATP explosive and a detonator.

Belgium's bomb disposal unit said the device was of professional quality. It could have caused a sizable explosion and panic in the crowd, estimated at 25,000 people, that had gathered that day in the French town of Villepinte, north of Paris.

Among dozens of prominent guests at the rally that day were Trump's lawyer, Rudy Giuliani; Newt Gingrich, former conservative speaker of the U.S. House of Representatives; and former Colombian presidential candidate Ingrid Betancourt.

Assadi was arrested a day later in Germany and transferred to Belgium. The court said since Assadi was on vacation at the time of his arrest — and not in Austria, where he was accredited — he was

not entitled to immunity.

A note from Belgium's intelligence and security agency seen by The Associated Press identified him as an officer of Iran's intelligence and security ministry who operated undercover at the Iranian Embassy in Austria. Belgium's state security officers said he worked for the ministry's so-called Department 312, the directorate for internal security, which is on a European Union list of organizations the EU regards as terrorist groups.

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Prosecutors identified Assadi as the alleged “operational commander” of the planned attack and accused him of recruiting the couple — Amir Saadouni and Nasimeh Naami — years earlier. Both were of Iranian heritage.

Saadouni was sentenced to 15 years in prison while Naami received an 18-year prison term.

According to the investigation, Assadi carried the explosives to Austria on a commercial flight from Iran and later handed the bomb over to the pair during a meeting at a Pizza Hut restaurant in Luxembourg. The ruling confirmed that the explosives were made and tested in Iran.

The fourth defendant, Mehrdad Arefani, was sentenced to 17 years in prison.

The National Council of Resistance of Iran is a part of the Mujahedeen-e-Khalq, an exiled Iranian opposition group largely based in Albania and Paris.

It was formed in 1965 by college students who embraced both Marxism and Islamic governance while seeking to overthrow the ruling shah. They’ve been blamed for killing Americans in the 1970s and later assassinations and bombings, attacks in which the group now denies being involved.

They were pushed out of Iran in the wake of the 1979 Islamic Revolution, then joined Iraqi dictator Saddam Hussein in battling Iran, becoming incredibly unpopular in their country. The group has sought to rehabilitate its image in recent years, paying tens of thousands of dollars in speaking fees to American politicians. The MEK says it renounced violence in 2001.

The organization’s leader, Maryam Rajavi, welcomed the ruling and reasserted her claims that Assadi’s plot had been approved by Iranian President Hassan Rouhani and Supreme Leader Ayatollah Ali Khamenei.

“The time has come for the European Union to take action,” she said, urging EU countries to recall their ambassadors from Tehran in light of the ruling.

Amir Vahdat in Tehran, Angela Charlton in Paris, Raf Casert in Brussels and Jon Gambrell in Dubai contributed to this report.

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# ANNEX 262



 An official website of the United States government  
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## Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, November 6, 2019

### Two Individuals Plead Guilty for Working on Behalf of Iran

Ahmadreza Mohammadi-Doostdar, 39, a dual U.S.-Iranian citizen, and Majid Ghorbani, 60, an Iranian citizen and resident of California, have entered pleas of guilty to charges stemming from their conduct conducting surveillance of and collecting identifying information about American citizens and U.S. nationals who are members of the Iranian dissident group Mujahedin-e Khalq (MEK).

On Oct. 8, 2019, Doostdar entered a guilty plea to one count of acting as an agent of the Government of Iran without notifying the Attorney General, in violation of 18 U.S.C. § 951, and one count of conspiring to violate that statute, in violation of 18 U.S.C. § 371. On November 4, 2019, Ghorbani entered a guilty plea to one count of violating the International Emergency Economic Powers Act, 50 U.S.C. § 1705, and the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560.

"The defendants both have admitted to conducting surveillance and collecting identifying information on behalf of Iran about Americans, and in particular, individuals who were exercising their First Amendment rights to oppose the Iranian government," said Assistant Attorney General for National Security John C. Demers. "The Department of Justice is committed to holding accountable governments like Iran that would threaten and intimidate Americans who criticize them."

"The Iranian government thought it could get away with conducting surveillance on individuals in the United States by sending one of its agents here to task a permanent resident with conducting and collecting that surveillance," said Jessie K. Liu, United States Attorney for the District of Columbia. "This case highlights our efforts to pursue those who threaten national security and disrupt foreign governments that target U.S. persons."

"This alleged activity demonstrates a continued interest in targeting the United States, as well as potential opposition groups located in the United States," said Acting Executive Assistant Director Jay Tabb. "The FBI will continue to identify and disrupt those individuals who seek to engage in unlawful activity, on behalf of Iran, on US soil."

As part of his plea, Doostdar admitted under oath that he traveled to the United States from Iran on three occasions in order to meet with Ghorbani and to convey directions for Ghorbani's activities on behalf of the Government of Iran. Prior to Doostdar's first trip to the United States, his handler with the Government of Iran identified Ghorbani by name, showed Doostdar a photograph of Ghorbani, and told him where Ghorbani worked.

During Doostdar's first trip to the United States in July 2017, Doostdar met Ghorbani at Ghorbani's workplace. Doostdar admitted that during a subsequent conversation, Ghorbani told Doostdar that he was willing to work for the Government of Iran in the United States.

On Sept. 20, 2017, Ghorbani attended an MEK rally in New York City. The rally consisted of constitutionally protected activity, including U.S. citizens denouncing the Iranian regime. At the rally, Ghorbani photographed rally attendees, including MEK leaders.

During Doostdar's second trip to the United States as part of the conspiracy, in December 2017, Doostdar met with Ghorbani and collected the rally photographs from Ghorbani. The photographs depicted MEK leaders, and included hand-written notes identifying the individuals and listing their positions in the group. Ghorbani and Doostdar also discussed Ghorbani's planned travel to Iran in March 2018, and Ghorbani offered to provide an in-person briefing on rally attendees during this trip. Under oath, Ghorbani admitted to attending the September 2017 MEK rally and to photographing and gathering information on rally attendees to provide to Doostdar and ultimately to individuals in Iran.

In December 2017, Doostdar departed the United States for Iran with the photographs and the handwritten notes provided by Ghorbani. Doostdar paid Ghorbani \$2,000 for his work, which Doostdar admitted had been provided by Doostdar's Government of Iran handler.

In May 2018, Ghorbani traveled to another MEK rally in Washington, D.C., where he again collected information on participants critical of the Iranian regime. Following that rally, Doostdar admitted that he and Ghorbani spoke by telephone and discussed the methods that Ghorbani could use to provide information collected at that rally to Doostdar in Iran.

Doostdar further admitted that during his travel to the United States to task Ghorbani with collecting information on U.S. persons on behalf of the Iranian regime, he communicated with his Government of Iran handler through another co-conspirator. Doostdar's handler relayed instructions and encouragement, and answered Doostdar's questions that came up during his mission to the United States.

Doostdar is scheduled to be sentenced on Dec. 17, 2019, at 2:00 p.m., before the Honorable Paul L. Friedman of the U.S. District Court for the District of Columbia. Ghorbani is scheduled to be sentenced before Judge Friedman on Jan. 15, 2020, at 10:00 a.m.

The maximum penalty for conspiracy is five years; the maximum penalty for acting as an agent of a foreign power is 10 years; and the maximum penalty for violating the International Emergency Economic Powers Act is 20 years. The maximum statutory sentence is prescribed by Congress and is provided here for informational purposes. Each defendant's sentence will be determined by the court based on the advisory U.S. Sentencing Guidelines and other statutory factors.

The investigation into this matter was conducted by the FBI's Washington Field Office and Los Angeles Field Office. The case is being prosecuted by the National Security Section of the U.S. Attorney's Office for the District of Columbia and the Counterintelligence and Export Control Section of the National Security Division of the Department of Justice.

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**Topic(s):**

Counterintelligence and Export Control  
National Security

**Component(s):**

National Security Division (NSD)  
USAO - District of Columbia

**Press Release Number:**

19-1197

*Updated November 22, 2019*

# ANNEX 263



Media Industry

NOVEMBER 6, 2019 / 6:39 AM / UPDATED A YEAR AGO

## Sweden charges man with spying on Ahwazi community for Iran

By Reuters Staff



STOCKHOLM (Reuters) - Sweden's state prosecutors have charged an Iraqi Swede with spying on the Ahwazi community in Sweden and elsewhere in Europe and passing the information to Iranian authorities.

The Ahwazi are an Arab minority mostly living in the Iranian province of Khusestan and face persecution and discrimination from authorities there, according to Amnesty International.

The prosecution authority said on Wednesday that the 46 year-old man was charged with collecting personal information about members of the Ahwazi community under the pretence of working for an online publication.

Some of the information was passed to members of the Iranian security services, the prosecutor said in a statement. The man denies the charges.

The man's activities included filming conference delegates and demonstrators at Ahwazi events in Sweden and around Europe, photographing number plates and obtaining internet log-in details of members of the community during a four-year period from 2015 to 2019, the prosecutors said.

Figures for the size of the Ahwazi community in Sweden were not available.

Unrest in the province of Khusestan goes back at least 100 years when the local leader rebelled against the rule of Reza Shah Pahlavi and has flared up numerous times since.

In 2018, the Ahwaz National Resistance, an Iranian ethnic Arab movement which seeks a separate state in oil-rich Khuzestan province, claimed responsibility for an attack on a parade in the regional capital of Ahvez that killed 25 people.

That led Iran to arrest hundreds of Ahwazi Arabs.

In January this year, the European Union froze the assets of an Iranian intelligence unit after the Netherlands accused Iran of two killings on its soil and joined France and Denmark in alleging Tehran plotted other attacks in Europe.

Reporting by Simon Johnson; Editing by Angus MacSwan

*Our Standards: The Thomson Reuters Trust Principles.*

# ANNEX 264



**World News**

JUNE 26, 2020 / 6:33 AM / UPDATED 8 MONTHS AGO

## Norwegian found guilty of spying for Iran in Denmark

By Reuters Staff



COPENHAGEN (Reuters) - A Danish court on Friday sentenced a Norwegian citizen to seven years in jail after convicting him of spying for an Iranian intelligence service and complicity in a suspected plot to kill an Iranian Arab opposition figure in Denmark.

Slideshow ( 11 images )

Mohammad Davoudzadeh Loloei, a 40-year-old Norwegian with Iranian heritage, was arrested in October 2018 after a major police operation in which Denmark temporarily closed its international borders.

For several days in late September that year, Loloei observed and took photos of the home of an Iranian exile in Denmark, as well as the streets and roads surrounding the home, Roskilde District Court said in a statement.

“The court found that the information was collected and passed on to a person working for an Iranian intelligence service, for use by the intelligence service’s plans to kill the exile,” the court said.

Loloei was sentenced to seven years in prison and permanent expulsion from Denmark, public prosecutor Soeren Harbo told Reuters. Loloei will be denied entrance to Denmark after serving his sentence.

“It’s a historic case,” Harbo said. “And it’s a powerful message to (foreign) intelligence services: they have to handle their conflicts among themselves and stop involving us.”

Harbo added that Danish authorities had filed an international arrest warrant with the International Criminal Police Organization, Interpol, for Loloei’s Iranian case officer.

Loloei, who has denied all charges, immediately appealed against the verdict, Harbo said.

The exile, who was not named in the statement, is the leader of an Iranian Arab resistance group known as the Arab Struggle Movement for the Liberation of Ahvaz (ASMLA).

Separately, Danish police have charged three members of ASMLA, including the group’s leader, with spying for Saudi intelligence services and financing and supporting terrorism in Iran.

Reporting by Nikolaj Skydsgaard; Editing by Mark Heinrich

# ANNEX 265



## Iran Issues Death Sentence for Opposition Journalist

Ruhollah Zam once ran a popular news service that helped share information about the widespread protests in 2017. He had been exiled in France until October, when he traveled to Iraq and then disappeared.



By Elian Peltier

June 30, 2020

An Iranian opposition journalist who played an active role in widespread protests that engulfed the country in 2017 and 2018 has been sentenced to death, Iranian authorities said on Tuesday, months after he disappeared in neighboring Iraq and ended up in his home country under murky conditions.

The activist, Ruhollah Zam, was found guilty by a court in Tehran of “corruption on earth,” a term often used to describe attempts to overthrow the Iranian government, according to Gholam Hossein Esmaili, a judiciary spokesman who announced the death sentence at a news conference on Tuesday, Iranian news outlets reported.

Mr. Zam spent years exiled in France as a refugee before his sudden disappearance and detention by Iranian authorities. It was unclear when Mr. Zam was convicted, but the sentencing is the latest move by Iranian authorities cracking down on dissenting voices that have challenged its ruling elite.

Mr. Zam ran Amad News, a website and popular channel on the messaging platform Telegram, out of France, where he had lived since 2011 as a refugee. His Telegram account had more than 1 million followers, and he used it to post information about Iranian officials and share logistics about the protests that rocked the country.

Telegram shut down the channel at the request of Iranian authorities in December 2017, arguing that it incited violence by encouraging protesters to use Molotov cocktails during the demonstrations. Mr. Zam created a new channel, according to Reporters Without Borders, which Telegram refused to close down.

Mr. Zam is a divisive and controversial figure in Iran and in the broader Iranian diaspora. Reporters Without Borders said in a statement denouncing his sentencing that he had been accused of being manipulated by Iranian intelligence into publishing false information.

The 2017 protests were triggered by a jump in food prices and started in the city of Mashhad, where the country’s supreme leader, Ayatollah Ali Khamenei, was born. Initially led by disaffected young people in rural areas and towns, the protests soon grew to an anti-government movement that turned against the country’s entire ruling class and spread to dozens of cities, with some demonstrators calling for Mr. Khamenei to step down.



Students clashed with police officers around Tehran University during anti-government protests in 2017. Associated Press

The Telegram messaging app played a major role as millions of protesters used its channels and groups to disseminate information and plan the protests.

Security forces swiftly cracked down on the protests, thousands were arrested and at least two dozens protesters were killed during one two-week period at the height of the unrest. Iran blocked the Telegram app in May 2018, but many in the country have circumvented the blockage by using virtual private networks, or VPNs.

Mr. Zam's own story of how he ended up in Iranian detention in the first place remains murky. He left France on Oct. 11, according to the French foreign ministry. Iran's Revolutionary Guards said days later that Mr. Zam had been arrested in a complex operation, according to Iranian news outlets. Mr. Zam's wife, Mahsa Razani, who is still living in Paris with the couple's child, said he had disappeared not long after arriving in Baghdad from Paris.

Reza Moini, head of the Iran-Afghanistan desk at Reporters Without Borders, said Mr. Zam was looking for funds to create a television channel and had been lured into a trip to Iraq to meet with Ayatollah Ali al-Sistani, an influential Shia cleric and Khamenei rival who could finance his media venture.

Mr. Zam had received various threats in recent years, Mr. Moini said, and until he left France, he was under police protection.

"Ruhollah Zam was publishing damaging information for Mr. Khamenei's entourage," Mr. Moini said. "He had been manipulated a few times by publishing erroneous information coming from the Revolutionary Guards, and he was desperately looking for funds."

Iraqi intelligence sources said they had no information about his arrest and had not been involved in the operation.

Mr. Zam's trial began in February, without a defense lawyer, according to Reporters Without Borders. He was accused of spreading propaganda against the Iranian regime, cooperating with the United States and spying for the Israeli and French intelligence services, among other charges.

Iran has long sought to silence opponents, both at home and abroad. In January, the country's most famous rapper, Amir Tataloo, was detained in Turkey and faced deportation, but was ultimately released. In November, Masoud Molavi, an Iranian dissident who also ran a Telegram channel critical of the leadership, was shot dead in Istanbul in an operation orchestrated by Iranian intelligence services, according to Turkish officials cited by Reuters.

Mr. Esmaili, the judiciary spokesman, also said on Tuesday that an appeals court had upheld the sentence for Fariba Adelkhah, a renowned French-Iranian academic who was arrested in Tehran in June, 2019.

Ms. Adelkhah, whose detention has strained an already fraught relationship between France and Iran, was sentenced to five years in prison in May on national security charges, with an additional one-year jail term for disseminating "propaganda against the Islamic Republic."

She will serve five years, Mr. Esmaili said, because she has already been in detention for over a year, according to the semiofficial Fars news agency.

Alissa J. Rubin contributed reporting from Baghdad.

# ANNEX 266



# Federal Foreign Office on the Execution of the Blogger Ruhollah Zam

12.12.2020 - Press release 

A Federal Foreign Office spokesperson issued the following statement today (12 December) on the execution of the blogger Ruhollah Zam:

”

The Federal Government is horrified about the execution of the blogger Ruhollah Zam carried out today in Iran. Our sympathy goes out to his family and friends. We are shocked by the circumstances surrounding the conviction, particularly by the preceding kidnapping from abroad. The Federal Government's position on the death penalty is clear, namely that it is a cruel and inhumane form of punishment that we reject in all circumstances. We call upon Iran to respect the freedom of opinion of its citizens, to release all political prisoners and to refrain from handing down or carrying out further death penalties.

## Background information:

The dissident and blogger Ruhollah Zam who had been granted asylum in France, was kidnapped abroad in unclear circumstances in October 2019 and shown a few days later on Iranian state television wearing a blindfold. In June 2020, he was sentenced to death by an Iranian revolutionary court. On 8 December, it was announced that the supreme court had upheld the death sentence.



# ANNEX 267



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### France condemns execution of Iranian journalist

#### Iran – Execution of Ruhollah Zam – Statement by the Ministry for Europe and Foreign Affairs Spokesperson

Paris, 12 December 2020

Ruhollah Zam, a journalist who had been sentenced to death, was executed in Iran today.

France utterly condemns this serious infringement of the freedom of expression and freedom of the press in Iran. This is a barbaric and unacceptable act that is contrary to Iran's international commitments. France reaffirms its unwavering opposition to the death penalty everywhere and under all circumstances./.

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# ANNEX 268



# Iran: Statement by the Spokesperson on the execution of Mr Ruhollah Zam

Brussels, 12/12/2020 - 16:56, UNIQUE ID: 201212\_4

## Statements by the Spokesperson

On 12 December 2020, Ruhollah Zam, convicted of playing a role in provoking violent riots, was executed in Iran. The European Union condemns this act in the strongest terms and recalls once again its irrevocable opposition to the use of capital punishment under any circumstances. It is also imperative for the Iranian authorities to uphold the due process rights of accused individuals and to cease the practice of using televised confessions to establish and promote their guilt.

The EU believes that the death penalty is a cruel and inhumane punishment, which fails to act as a deterrent to crime and represents an unacceptable denial of human dignity and integrity. The European Union calls on Iran to refrain from any future executions and to pursue a consistent policy towards the abolition of the death penalty.



# ANNEX 269





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## Iran: UN experts condemn execution of Ruhollah Zam

[Persian version](#)

GENEVA (14 December 2020) - UN human rights experts\* condemned the execution of Ruhollah Zam, an Iranian dissident and founder of *AmadNews*, calling his conviction and execution “unconscionable” and a serious violation of Iran’s obligations under international law.

In July 2020, the Iranian judiciary announced that Mr. Zam had been sentenced to death on the vague charge of “spreading corruption on earth”. Iranian authorities convicted Mr. Zam over information released on *AmadNews* that they allege helped inspire nation-wide anti-government protests in 2017, and which revealed damaging accusations about State officials. Iranian state media said on 12 December he had been executed.

“The conviction and execution of Mr. Zam are unconscionable,” the experts said. “The reports of his arrest, his treatment in detention, and the process of his trial, as well as the reasons for his targeting by the Iranian authorities, are a serious violation of Iran’s obligations under the International Covenant on Civil and Political Rights, including the right to freedom of opinion and expression and the right to life,” the experts said.

In October 2019, the Islamic Revolutionary Guard Corps announced they had detained Mr. Zam while he was travelling to Iraq and returned him to Iran. Mr. Zam had been granted refugee status and had been living in France prior to his detention. Soon after his detention, an alleged forced confession by Mr. Zam was broadcast on state-affiliated news outlets, before an investigation or judicial process had commenced.

The Special Rapporteur on the situation of the human rights in the Islamic Republic of Iran [raised concerns regarding Mr. Zam’s detention and forced confession in his report to the Human Rights Council in 2020](#).

“It is clear that Ruhollah Zam was executed for expressing opinions and providing information on *AmadNews* that dissented from the official views of the Iranian Government,” the experts said.

“There are serious and credible concerns that judicial proceedings against him breached fair trial rights, including the broadcast of an alleged forced confession when he was detained. His execution is an arbitrary deprivation of his right to life. We strongly condemn the Iranian Government’s actions.”

The Special Rapporteur had raised his serious concerns regarding Mr. Zam’s death sentence in recent engagement with the Iranian Government. On 8 December 2020, Iran’s judiciary announced that Mr. Zam’s death sentence had been upheld by Iran’s Supreme Court.

“Iran must end its systematic use of the judicial process to impose arbitrary detention and death

sentences against human rights defenders, journalists and other individuals who express dissent against the Government through the free exercise of their internationally-recognised human rights.”

ENDS

**\* The UN experts: Javaid Rehman, *Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*; Agnes Callamard, *Special Rapporteur on extrajudicial, summary or arbitrary executions*.**

*The Special Rapporteurs and Working Groups are part of what is known as the [Special Procedures](#) of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.*

*UN Human Rights, Country Page — [Iran](#)*

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# ANNEX 270



# High-Risk Jurisdictions subject to a Call for Action – 21 February 2020

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High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the "black list". \*

## Democratic People's Republic of Korea (DPRK)

The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime and the serious threats they pose to the integrity of the international financial system. The FATF urges the DPRK to immediately and meaningfully address its AML/CFT deficiencies. Further, the FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing.

The FATF reaffirms its 25 February 2011 call on its members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf. In addition to enhanced scrutiny, the FATF further calls on its members and urges all jurisdictions to apply effective counter-measures, and targeted financial sanctions in accordance with applicable United Nations Security Council Resolutions, to protect their financial sectors from money laundering, financing of terrorism and WMD proliferation financing (ML/TF/PF) risks emanating from the DPRK. Jurisdictions should take necessary measures to close existing branches, subsidiaries and representative offices of DPRK banks within their territories and terminate correspondent relationships with DPRK banks, where required by relevant UNSC resolutions.

## Iran

In June 2016, Iran committed to address its strategic deficiencies. Iran's action plan expired in January 2018. In February 2020, the FATF noted Iran has not completed the action plan.<sup>[1]</sup>

In October 2019, the FATF called upon its members and urged all jurisdictions to: require increased supervisory examination for branches and subsidiaries of financial institutions based in Iran; introduce enhanced relevant reporting mechanisms or systematic reporting of financial transactions; and require increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in Iran.

Now, given Iran's failure to enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, the FATF fully lifts the suspension of counter-measures and calls on its members and urges all jurisdictions to apply effective counter-measures, in line with Recommendation 19.<sup>[2]</sup>

Iran will remain on the FATF statement on [High Risk Jurisdictions Subject to a Call for Action] until the full Action Plan has been completed. If Iran ratifies the Palermo and Terrorist Financing Conventions, in line with the FATF standards, the FATF will decide on next steps, including whether to suspend countermeasures. Until Iran implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system.

[1] In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan. Since 2016, Iran established a cash declaration regime, enacted amendments to its Counter-Terrorist Financing Act and its Anti-Money Laundering Act, and adopted an AML by-law.

In February 2020, the FATF noted that there are still items not completed and Iran should fully address: (1) adequately criminalizing terrorist financing, including by removing the exemption for designated groups "attempting to end foreign occupation, colonialism and racism"; (2) identifying and freezing terrorist assets in line with the relevant United Nations Security Council resolutions; (3) ensuring an adequate and enforceable customer due diligence regime; (4) demonstrating how authorities are identifying and sanctioning unlicensed money/value transfer service providers; (5) ratifying and implementing the Palermo and TF Conventions and clarifying the capability to provide mutual legal assistance; and (6) ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information.

[2] Countries should be able to apply appropriate countermeasures when called upon to do so by the FATF. Countries should also be able to apply countermeasures independently of any call by the FATF to do so. Such countermeasures should be effective and proportionate to the risks.

[The Interpretative Note to Recommendation 19](#) specifies examples of the countermeasures that could be undertaken by countries.

\* This statement was previously called "Public Statement"



# ANNEX 271



# High-Risk Jurisdictions subject to a Call for Action – 23 October 2020

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High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing (ML/TF/PF) risks emanating from the country. This list is often externally referred to as the “black list”.

On 2 August 2020, FATF decided to pause the review process for the list of High-Risk Jurisdictions subject to a Call for Action. Therefore, please refer to the statement on these jurisdictions adopted in February 2020. While the statement may not necessarily reflect the most recent status in Iran and the Democratic People’s Republic of Korea’s AML/CFT regime, the FATF’s call for action on these high-risk jurisdictions remains in effect.

- [High-Risk Jurisdictions subject to a Call for Action – 21 February 2020](#)

More on:

- [Jurisdictions under Increased Monitoring](#)
- [Outcomes FATF Plenary 23 October 2020](#)



# ANNEX 272



**Security Council**

Distr.: General  
10 December 2019

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**Implementation of Security Council resolution 2231 (2015)****Eighth report of the Secretary-General****I. Introduction**

1. The Joint Comprehensive Plan of Action on the Iranian nuclear issue is an important multilateral diplomatic achievement, which enjoys the broad support of Member States and was endorsed by the Security Council in its resolution 2231 (2015). Diplomatic efforts by China, France, Germany, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the European Union with the Islamic Republic of Iran culminated in an agreement to ensure the exclusively peaceful nature of the nuclear programme of the Islamic Republic of Iran, verified by the International Atomic Energy Agency. An essential part of the Plan is the lifting of nuclear-related sanctions on the Islamic Republic of Iran, allowing for the normalization of trade and economic relations.

2. On 16 January 2016 (Implementation Day), upon completion of certain actions by the Islamic Republic of Iran (stipulated in the Plan)<sup>1</sup> as verified by the Agency, a decade of United Nations sanctions as well as multilateral and national sanctions related to the nuclear programme of the Islamic Republic of Iran were lifted. Between 16 January 2016 and 14 June 2019, the Agency reported 15 times (most recently in S/2019/212 and S/2019/496) to the Security Council that the Islamic Republic of Iran had been fully implementing its nuclear-related commitments under the Plan.

3. I regret that the United States withdrew from the Joint Comprehensive Plan of Action on 8 May 2018, that it reimposed all of the national sanctions that had been lifted or waived pursuant to the Plan and that it has since continued to implement its decision not to extend waivers with regard to the trade in oil with the Islamic Republic of Iran and not to fully renew waivers for nuclear non-proliferation projects in the framework of the Plan. These actions continue to be contrary to the goals set out in the Plan and in resolution 2231 (2015) and may also impede the ability of the Islamic Republic of Iran to implement certain provisions of the Plan and of the resolution. I note the most recent concerns expressed in the letter dated 4 November 2019 from the Permanent Representative of the Islamic Republic of Iran addressed to me (S/2019/863).

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<sup>1</sup> As specified in paragraphs 15.1 to 15.11 of annex V to the Joint Comprehensive Plan of Action.



4. I regret the steps taken by the Islamic Republic of Iran under the monitoring of the Agency since 1 July 2019 – further to its announcement on 8 May 2019<sup>2</sup> – to reduce its nuclear-related commitments under the Plan (see para. 7). I continue to believe that full and effective implementation of the Plan by all participants is the best way to ensure the exclusively peaceful nature of the nuclear programme of the Islamic Republic of Iran and to secure tangible economic benefits for the Iranian people. I note that the Islamic Republic of Iran has stated that it wants to remain in the Plan and has emphasized that all of its measures since 1 July are reversible. It is important that the Islamic Republic of Iran reverse all of the measures and that it refrain from taking further steps to reduce its agreed commitments.

5. During both the meetings of the Joint Commission held in Vienna on 28 June and 6 December 2019 and the ministerial meeting of the E3/EU+2 (China, France, Germany, the Russian Federation and the United Kingdom of Great Britain and Northern Ireland) and the Islamic Republic of Iran held in New York on 25 September 2019, all participants in the Joint Comprehensive Plan of Action reaffirmed their continued commitment to preserving the Plan. I welcome their continuing efforts to protect the freedom of their economic operators to pursue legitimate business with the Islamic Republic of Iran in full accordance with resolution 2231 (2015) and their other initiatives in support of trade and economic relations with the Islamic Republic of Iran. These initiatives should be given full effect as a matter of urgency. I am also encouraged by the operationalization of the Instrument in Support of Trade Exchanges, the interest expressed by European Union and other Member States in joining France, Germany and the United Kingdom as shareholders, and efforts to open the special purpose vehicle to economic operators from third countries. It is essential that the Plan continue to work for all of its participants.

6. I also stress the important contribution of other Member States to preserve the Plan and continue to encourage them to work effectively with the participants in the Plan towards creating the conditions necessary for their economic operators to engage in trade with the Islamic Republic of Iran in accordance with resolution 2231 (2015).

7. The International Atomic Energy Agency plays an important role in supporting the full implementation of the Joint Comprehensive Plan of Action, especially by providing the international community with reports on its verification and monitoring activities in the Islamic Republic of Iran in line with resolution 2231 (2015). I commend its impartial, factual and professional work. In its reports issued since 1 July 2019,<sup>3</sup> the Agency has confirmed the activities announced and undertaken by the Islamic Republic of Iran to reduce its commitments under the Plan. The Agency has also reported that it continued to verify the non-diversion of declared nuclear material and that its evaluations regarding the absence of undeclared nuclear material and activities remained ongoing. The Agency has further reported that the Islamic Republic of Iran continued to provisionally apply the Additional Protocol to its Safeguards Agreement and to apply the transparency measures contained in the Plan. The Agency indicated that it had conducted complementary accesses under the Additional Protocol to all the sites and locations in the Islamic Republic of Iran that it needed to visit.

8. The Joint Comprehensive Plan of Action and resolution 2231 (2015) are essential for nuclear non-proliferation, and for regional and international security. I

<sup>2</sup> Supreme National Security Council of the Islamic Republic of Iran, statement of 8 May 2019, available at [www.president.ir/en/109588](http://www.president.ir/en/109588).

<sup>3</sup> See reports of the International Atomic Energy Agency entitled “Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)” dated 1 and 8 July (S/2019/559 and S/2019/560), 30 August (S/2019/737), 8 and 26 September (S/2019/738 and S/2019/899), 7, 11 and 18 November 2019 (S/2019/900, S/2019/901 and S/2019/902).

encourage the Islamic Republic of Iran to carefully consider and urgently address the concerns of Member States in relation to the restrictive measures contained in annex B to the resolution. I call upon all Member States to avoid provocative rhetoric and actions that may have a negative impact on regional stability.

9. The present report, my eighth on the implementation of resolution [2231 \(2015\)](#), provides an assessment of the implementation of the resolution, including findings and recommendations, since the issuance of my seventh report ([S/2019/492](#)) on 13 June 2019. Consistent with previous reports, the focus of the present report is on the provisions set forth in annex B to resolution [2231 \(2015\)](#), which include restrictions applicable to nuclear-related transfers, ballistic missile-related transfers and arms-related transfers to or from the Islamic Republic of Iran, as well as asset freeze and travel ban provisions.

## II. Key findings and recommendations

10. The procurement channel continues to be a vital transparency and confidence-building mechanism for the legitimate transfer to the Islamic Republic of Iran of nuclear and nuclear-related dual-use goods and related services pursuant to resolution [2231 \(2015\)](#). All participants in the Joint Comprehensive Plan of Action and the Joint Commission have a special role to play to ensure its success. To support its effective and efficient functioning, it is also important for the Security Council, through the Facilitator and with the assistance of the Secretariat, to increase awareness of and confidence in this important mechanism. I call upon Member States and the private sector to fully utilize and support this channel.

11. The United States announced on 18 November 2019 that participation in activities related to the modification of infrastructure at the Fordow facility may now be exposed to its national sanctions. The United States had previously announced on 3 May 2019 that participation in other activities set forth in paragraph 2 of annex B to resolution [2231 \(2015\)](#) may be exposed to its national sanctions. I note again that the exemptions set out in paragraph 2 of annex B to the resolution are designed to provide for the transfer of such items, materials, equipment, goods and technology required for the nuclear activities of the Islamic Republic of Iran under the Plan.

12. The Secretariat continued its review of the arms and related material seized by the United Arab Emirates in Aden in December 2018 (see [S/2019/492](#), para. 31). Information provided by the State of manufacture indicates that the seized PGO-7V-type optical sights for RPG-7-type rocket-propelled grenade launchers were delivered to the Islamic Republic of Iran in 2016. This suggests that these optical sights seized in Aden may have been retransferred from the Islamic Republic of Iran after 16 January 2016.

13. The Secretariat was able to examine the debris of the weapons systems used in the attacks on an oil facility in Afif (May 2019), on Abha International Airport (June and August 2019) and on the Saudi Aramco oil facilities in Khurays and Abqaiq (September 2019). At this time, it is unable to independently corroborate that the cruise missiles and unmanned aerial vehicles used in those attacks were of Iranian origin and were transferred in a manner inconsistent with resolution [2231 \(2015\)](#). The Secretariat is still collecting and analysing additional information on these cruise missiles and unmanned aerial vehicles, and I intend to report to the Security Council on further findings in due course, as appropriate.

14. Information from Iraqi media outlets suggests that Major General Soleimani has undertaken travel inconsistent with the travel ban provisions of the resolution. I call

upon all Member States to diligently implement the restrictive measures imposed on the individuals and entities on the list maintained pursuant to resolution 2231 (2015).

### III. Implementation of nuclear-related provisions

15. Since 13 June 2019, no new proposals to participate in or permit the activities set forth in paragraph 2 of annex B to resolution 2231 (2015) were submitted to the Security Council for approval through the procurement channel. Of the 44 proposals received from 16 January 2016 to 13 June 2019, 30 were approved by the Council, 5 were not approved and 9 were withdrawn by the proposing States. It is vital that the procurement channel continue to work effectively and efficiently, and in a manner that promotes increased international engagement with the Islamic Republic of Iran.

16. In addition, the Security Council received four new notifications pursuant to paragraph 2 of annex B to resolution 2231 (2015) for certain nuclear-related activities consistent with the Joint Comprehensive Plan of Action that do not require approval, but do require a notification to the Council or to both the Council and the Joint Commission. As previously reported, on 3 May 2019, the United States announced that involvement in some of the above-mentioned activities may now be exposed to its national sanctions, specifically assistance to expand the Bushehr Nuclear Power Plant beyond the existing reactor unit and any involvement in transferring enriched uranium out of the Islamic Republic of Iran in exchange for natural uranium.<sup>4</sup> The United States also announced that other activities, such as the redesign of the Arak reactor, modification of infrastructure at the Fordow facility and work at the existing unit of the Bushehr Nuclear Power Plant, would be permitted to continue for a renewable duration of 90 days but that it reserved the right to modify or revoke its policy covering these non-proliferation activities at any time. Consequently, the United States announced on 18 November 2019 that it “will terminate the sanctions waiver related to the nuclear facility at Fordow, effective December 15th, 2019”.<sup>5</sup> Subsequently, in a letter dated 5 December 2019 addressed to me (A/74/575–S/2019/928), the Permanent Representative of the Islamic Republic of Iran noted that, by taking this action, the United States “not only violates resolution 2231 (2015), but also coerces other countries to stop implementing their relevant international commitments”.

### IV. Implementation of ballistic missile-related provisions

#### A. Restrictions on ballistic missile-related activities by the Islamic Republic of Iran

17. In identical letters dated 29 August 2019 addressed to me and the President of the Security Council (S/2019/705), the Chargé d'affaires a.i. of the United States Mission brought to my attention information regarding two ballistic missiles launches, reportedly conducted by the Islamic Republic of Iran on 25 July and 9 August 2019. The Chargé d'affaires a.i. noted that both missiles were designed to

<sup>4</sup> United States Department of State, “Advancing the Maximum Pressure Campaign by Restricting Iran’s Nuclear Activities”, Fact sheet, 3 May 2019, available at [www.state.gov/advancing-the-maximum-pressure-campaign-by-restricting-irans-nuclear-activities/](http://www.state.gov/advancing-the-maximum-pressure-campaign-by-restricting-irans-nuclear-activities/).

<sup>5</sup> “Secretary Michael R. Pompeo Remarks to the Press” on 18 November 2019, available at <https://www.state.gov/secretary-michael-r-pompeo-remarks-to-the-press/>.

be category I systems under the Missile Technology Control Regime<sup>6</sup> and therefore were designed to be capable of delivering nuclear weapons. The Chargé d'affaires a.i. observed that the Council, in paragraph 3 of annex B to resolution 2231 (2015), called upon the Islamic Republic of Iran not to undertake launches with these types of ballistic missiles. In response, in a letter dated 19 September 2019 addressed to me and the President of the Security Council (S/2019/752), the Permanent Representative of the Islamic Republic of Iran reiterated that there was no implicit or explicit reference in paragraph 3 of annex B to the Missile Technology Control Regime and the criteria contained therein. He reiterated the view of the Islamic Republic of Iran that none of its ballistic missiles were “designed to be capable of delivering nuclear weapons” and therefore that its related activities were not inconsistent with paragraph 3 of annex B to resolution 2231 (2015). He also noted that when previous missile launches by the Islamic Republic of Iran were discussed in the Security Council, there was no consensus on how these launches related to resolution 2231 (2015).

18. In identical letters dated 19 November 2019 addressed to me and the President of the Security Council (S/2019/895), the Permanent Representative of Israel informed me of three additional flight tests of ballistic missiles reportedly conducted between March and June 2019. He stated that two of these flight tests were inconsistent with the resolution because the tested missiles crossed the threshold of 300 km range and 500 kg payload and, therefore, violated annex B restrictions on the ballistic activity of the Islamic Republic of Iran. The Permanent Representative of the Islamic Republic of Iran, in identical letters dated 26 November 2019 addressed to me and the President of the Security Council (S/2019/907), stated that the Islamic Republic of Iran had “neither launched any missile nor conducted any other action inconsistent with annex B” and strongly rejected the information contained in the aforementioned letters from the Permanent Representative of Israel.

19. In a letter dated 21 November 2019 addressed to me (S/2019/911), the Permanent Representatives of France, Germany and the United Kingdom brought to my attention recent actions undertaken by the Islamic Republic of Iran. They stated that undated footage released on social media on 22 April 2019 revealed a previously unseen flight test of a new Shahab-3 medium-range ballistic missile variant equipped with a manoeuvrable re-entry vehicle. They also stated that, on 24 July 2019, the Islamic Republic of Iran flight-tested a ballistic missile that flew over 1,000 km and that media reporting indicated that this flight test involved a Shahab-3 missile. They noted that, as a category I system under the Missile Technology Control Regime, the Shahab-3 “is designed to be capable of delivering nuclear weapons”. They further stated that, if confirmed, the test would constitute an activity inconsistent with paragraph 3 of annex B to resolution 2231 (2015). They also noted that media reporting indicated that the Islamic Republic of Iran had unsuccessfully attempted to launch a Safir satellite launch vehicle at the end of August 2019. They recalled the technical analysis of the Safir satellite launch vehicle provided in their letter dated 25 March 2019 (S/2019/270) and concluded that, if confirmed, this attempted launch would also constitute an activity inconsistent with paragraph 3 of annex B to resolution 2231 (2015).

20. In identical letters dated 4 December 2019 addressed to me and the President of the Security Council (S/2019/926), the Permanent Representative of the Islamic Republic of Iran referred to the aforementioned letter (S/2019/911) and reiterated the view that “there is no implicit or explicit reference in paragraph 3 of annex B to Security Council resolution 2231 (2015) either to the Missile Technology Control

<sup>6</sup> Category I systems under the Missile Technology Control Regime are defined as “complete rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) capable of delivering at least a 500 kg ‘payload’ to a ‘range’ of at least 300 km” (see I.A.1 of the Equipment, Software and Technology Annex of the Missile Technology Control Regime).

Regime itself or to its definitions”. The Permanent Representative noted that, given the fact that “none of Iran’s missiles are ‘designed to be capable of delivering nuclear weapons’, paragraph 3 of annex B to resolution 2231 (2015) does not limit, in any way, the activities related to the conventional ballistic missiles of the Islamic Republic of Iran”. The Permanent Representative also stated that there was “no implicit or explicit reference or language” in paragraph 3 of annex B to resolution 2231 (2015) pertaining to space launch vehicles. He further recalled that, as noted in the third and fourth six-month reports of the Facilitator on the implementation of resolution 2231 (2015) (S/2017/515 and S/2017/1058), there was no consensus in the Security Council on how previous launches by the Islamic Republic of Iran of ballistic missiles and space launch vehicles related to resolution 2231 (2015). Finally, the Permanent Representative re-emphasized the view that “Iran has not conducted any activity inconsistent with paragraph 3 of annex B to resolution 2231 (2015)”.

21. In identical letters dated 26 November addressed to me and the President of the Security Council (A/74/565–S/2019/909), the Chargé d’affaires a.i. of the Permanent Mission of the Russian Federation reiterated the position of his country regarding the implementation of paragraph 3 of annex B to resolution 2231 (2015). He underscored that the Islamic Republic of Iran was not prohibited by multilateral non-proliferation mechanisms or resolution 2231 (2015) from developing missile and space programmes. He stated that the Russian Federation continued to consider that the Islamic Republic of Iran “is respecting in good faith the call addressed to it in paragraph 3 of annex B to resolution 2231 (2015) to refrain from activities related to ballistic missiles that are designed to be capable of carrying nuclear weapons”. He reiterated that the parameters of the Missile Technology Control Regime were never intended to be used in the context of resolution 2231 (2015) to ascertain whether certain missiles were designed to be capable of carrying nuclear weapons and that “such types of missiles should include certain specific features and, up until now, no evidence of their existence on Iranian ballistic missiles or space launch vehicles” had been presented to the Council.

## **B. Restrictions on ballistic missile related-transfers or activities with the Islamic Republic of Iran**

22. Pursuant to paragraph 4 of annex B to resolution 2231 (2015), provided that they have obtained prior approval from the Security Council, on a case-by-case basis, all States may participate in and permit the supply, sale or transfer to or from the Islamic Republic of Iran of certain ballistic missile-related items, materials, equipment, goods and technology. At the time of reporting, one proposal had been submitted to the Council pursuant to that paragraph (see also report of the Facilitator S/2019/xxx).

23. In identical letters dated 3 and 7 September 2019 addressed to me and the President of the Security Council (S/2019/704 and S/2019/716), the Permanent Representative of Israel stated that the Islamic Republic of Iran and Hizbullah have redoubled their efforts to convert and produce precision-guided missiles in Lebanon by attempting to build manufacturing and conversion facilities in a number of locations in Lebanon. He also stated that the components necessary for manufacturing and converting the precision-guided missiles were being transferred from the Islamic Republic of Iran through different routes. The Permanent Representative of Israel further stated that, on 3 September 2019, the Israel Defense Forces exposed a facility located near Nabi Shit in the Bekaa Valley in Lebanon designed to manufacture motors and warheads of precision-guided missiles and that the Islamic Republic of Iran provided “cutting-edge equipment and expertise to the manufacturing crews” of that facility. The Permanent Representative of the Islamic Republic of Iran, in

identical letters dated 6 September 2019 (S/2019/714) and identical letters dated 23 October 2019 (S/2019/836) addressed to me and the President of the Security Council, rejected all claims made in the aforementioned letters from the Permanent Representative of Israel.

24. In October 2019, the authorities of the United States informed the Secretariat that, in their assessment, several shipments of a commodity to the Islamic Republic of Iran were undertaken contrary to paragraph 4 of annex B. According to the United States, two shipments of hydroxyl-terminated polybutadiene were transferred to the Research and Self-Sufficiency Jihad Organization of the Islamic Revolutionary Guards Corps in July and August 2017 without prior approval of the Security Council. The Secretariat is examining the information provided by the United States and will update the Council, as appropriate, in due course.

25. In their letter dated 21 November 2019 addressed to me (S/2019/911), the Permanent Representatives of France, Germany and the United Kingdom also brought to my attention that Houthi forces, on 2 August 2019, announced the launch of the Borkan-3, a new liquid-propelled medium-range ballistic missile. They noted that video of the launch showed that the Borkan-3 was “clearly an adaptation of earlier Borkan-2H missiles”. Pointing to similar features on both the Borkan-2H and Borkan-3 missiles and the Qiam-1 missile launched in September 2018 by the Islamic Republic of Iran against targets in the Syrian Arab Republic, they stated that the Islamic Republic of Iran “may be acting in breach of relevant provisions of annex B to Council resolution 2231 (2015) barring the transfer of missile technology from Iran”. In his letter dated 4 December 2019 addressed to me and the President of the Security Council (S/2019/926), the Permanent Representative of the Islamic Republic of Iran stated that the argument contained in the aforementioned letter (S/2019/911) that “annex B to Council resolution 2231 (2015) barr[ed] the transfer of missile technology from Iran” was a “distortion of the text of that resolution”. Instead, he recalled that “all States may participate in and permit” such activities with prior approval of the Security Council. He also stated that “the actual operationalization of the necessary mechanism for making required decisions to permit such activities” had been prevented “for clear political reasons”. He further stated that the Islamic Republic of Iran refuted the charges related to a possible Iranian transfer of missile technology to the Houthis.

## V. Implementation of arms-related provisions

26. In my most recent report, I informed the Security Council that the Secretariat had examined (in the United Arab Emirates) samples of an arms shipment that had been seized in Aden in December 2018. The samples of the shipment included rocket-propelled grenade launchers with characteristics similar to Iranian-produced RPG-7-type launchers (see S/2019/492, para. 31). The samples also included 23 PGO-7V-type optical sights for RPG-7-type rocket-propelled grenade launchers. The Secretariat has since confirmed that serial numbers observed on the sights matched those of semi-knock-down kits for PGO-7V-type optical sights delivered to the Islamic Republic of Iran in 2016. The State of manufacture informed the Secretariat that the importer was an entity located in Tehran and that the end user was the “Ministry of Defence and Armed Forces of Iran”. This suggests that these optical sights seized in Aden may have been retransferred from the Islamic Republic of Iran after 16 January 2016.

27. In a letter dated 13 June 2019 addressed to the President of the Security Council (S/2019/489), the Permanent Representative of Saudi Arabia called attention to the attack carried out on 12 June 2019 on Abha International Airport in south-western

Saudi Arabia. He stated that the Houthis had claimed responsibility for the attack, saying that they had used a cruise missile, and that the attack proved the continued support provided by the Islamic Republic of Iran to the Houthis. In a letter dated 14 June 2019 addressed to me (S/2019/494), the Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran categorically rejected the information contained in the aforementioned letter.

28. In identical letters dated 18 September 2019 addressed to me and the President of the Security Council (S/2019/758), the Permanent Representative of Saudi Arabia brought to my attention the attacks on the Saudi Aramco oil facilities in Abqaiq and Khurays on 14 September 2019. He informed me that “all preliminary signs and indicators reveal that this attack did not emanate from Yemeni lands”, as claimed by the Houthis, and that “the weapons used were Iranian-made”. In identical letters dated 2 October 2019 addressed to me and the President of the Security Council (S/2019/785), the Permanent Representative of the Islamic Republic of Iran categorically rejected the claim by Saudi Arabia that the weapons used in the attack against the Abqaiq and Khurays oil facilities were Iranian-made.

29. In response to invitations from the authorities of Saudi Arabia, members of the Secretariat travelled to Riyadh in September and November 2019 to examine if arms or related materiel used in the above-mentioned attacks were transferred in a manner inconsistent with resolution 2231 (2015). While in Riyadh, on 19 September 2019, the Secretariat was informed that at least 18 unmanned aerial vehicles were used in the attack on Abqaiq, four cruise missiles were used in the attack on Khurays and three more cruise missiles fell short of their target, for a total of at least 25 weapons systems. The Ministry of Defence also provided the Secretariat with its assessment (based on photographic comparison) that the “misfired land attack cruise missile” bore similarities with the Iranian cruise missile “Ya Ali”. The Secretariat was also shown a photograph from an Iranian exhibition in May 2014 of a possible mock-up of a delta-wing unmanned aerial vehicle, which Saudi Arabia considered to be similar to the ones used in the Abqaiq attack. On 22 November 2019, at the invitation of the United States, the Secretariat visited Washington D.C. and was informed that, owing to the maximum range of the cruise missiles (which they assessed to be 700 km) and of the unmanned aerial vehicles (which they assessed to be 900 km), it was highly unlikely that the weapons systems used in the attacks against the oil facilities in Abqaiq and Khurays had been transferred to and subsequently launched by the Houthis. The authorities of the United States also stressed that the number and nature of the weapons systems involved in the attacks on 14 September 2019 were inconsistent with statements made by the Houthis.<sup>7</sup>

30. Consistent with its mandate, when reviewing these attacks, the Secretariat focused on arms-related restrictive measures in annex B to resolution 2231 (2015) and not on other circumstances of the attacks. During these visits, the Secretariat was able to conduct a first-hand and in-depth examination of the debris recovered by Saudi authorities of the weapons systems used in the attack on Abha International Airport on 12 June 2019 and in the attacks on the Saudi Aramco oil facilities in Abqaiq and Khurays on 14 September 2019. The examination also included the debris of the weapons systems used in a second attack on Abha International Airport in August 2019 and in an attack on another oil facility in Afif in May 2019. The Secretariat observed that the number of impact points at the oil facilities in Khurays and Abqaiq was inconsistent with the statements made by the Houthis but more consistent with

<sup>7</sup> See “Second Deterrent Balance Operation Hits Abqaiq, Khurais Oil Refineries East of Saudi Arabia”, Almasirah, 14 September 2019, available at [https://english.almasirah.net/details.php?es\\_id=8774&cat\\_id=1](https://english.almasirah.net/details.php?es_id=8774&cat_id=1); and “Armed Forces Warn Foreign Companies Not to Be Present in Abqaiq, Khurais Refineries”, Almasirah, 19 September 2019, available at [https://english.almasirah.net/details.php?es\\_id=8810&cat\\_id=1](https://english.almasirah.net/details.php?es_id=8810&cat_id=1).

the figures provided by Saudi Arabia regarding the number of unmanned aerial vehicles and cruise missiles involved.

31. In relation to the cruise missiles, with the aim of ascertaining the manufacturer and a possible transfer of these arms and related materiel, the Secretariat:

(a) Observed that a similar type of cruise missile was used in the attacks on both Abha International Airport and the Saudi Aramco oil facility in Khurays. The Secretariat notes that these cruise missiles have similar design characteristics and configuration<sup>8</sup> to the mock-up of the Quds cruise missile that the Houthis displayed on 7 July 2019;<sup>9</sup>

(b) Identified the manufacturer of two subcomponents of the jet engines of the cruise missiles used in the attacks on 14 September 2019. The manufacturer informed the Secretariat that both subcomponents were part of two similar jet engines that it had manufactured and exported to another Member State in 2010 and 2011;

(c) Was informed by that manufacturer that it had not produced the jet engines examined by the Secretariat (excluding the above-mentioned components). Two of these engines had manufacturing date markings of January 2019 and April 2019, respectively.

32. The Secretariat is still conducting its review of the components and subcomponents retrieved from the debris of the cruise missiles with a view to establishing their supply chain. At this time, the Secretariat is unable to independently corroborate that the aforementioned components or the cruise missiles are of Iranian origin and were transferred from the Islamic Republic of Iran in a manner inconsistent with resolution 2231 (2015).<sup>10</sup> The Secretariat is still collecting and analysing additional information on these cruise missiles, and I intend to report to the Security Council on our further findings in due course, as appropriate.

33. Similarly, in relation to the unmanned aerial vehicles, the Secretariat:

(a) Observed that a similar type of delta-wing-type unmanned aerial vehicle was also used in the attacks on both the oil facility in Afif and the Saudi Aramco oil facility in Abqaiq;

(b) Noted that the Houthis have not been shown to be in possession of, nor been assessed to be in possession of, such a delta-wing unmanned aerial vehicle;

(c) Observed that these unmanned aerial vehicles were equipped with a “Model V9” vertical gyroscope. As noted in my most recent report, the Secretariat observed that an Iranian unmanned aerial vehicle, reportedly recovered in Afghanistan in 2016, was also equipped with a “Model V9” vertical gyroscope (S/2019/492, para. 29). The manufacturer of the “Model V9” is yet to be determined;

(d) Identified that a subcomponent (servo motors) used in the unmanned aerial vehicles had been produced between December 2014 and the end of 2018; that other subcomponents (flowmeters) were identified to have been transferred to two Member States in July 2017, but the Secretariat is unable to determine if or when they were subsequently retransferred to other Member States since that time; and that other

<sup>8</sup> The number of sections, approximate length and diameter per section examined, layout of wings, control surfaces and jet engine.

<sup>9</sup> See Almasirah video, published on 7 July 2019, available at [https://almasirah.net/gallery/preview.php?file\\_id=28295](https://almasirah.net/gallery/preview.php?file_id=28295) and photo, available at <https://www.newsit.gr/wp-content/uploads/2019/09/SAUDI-ARAMCO-HOUTHIS.jpg>.

<sup>10</sup> Any such transfer from the Islamic Republic of Iran after 16 January 2016 would also be relevant to the implementation of paragraph 4 of annex B to resolution 2231 (2015).

subcomponents (pressure regulators) were identified to have been produced in February 2018 and transferred to another Member State later that month.

34. The Secretariat is also still conducting its review of the components and subcomponents retrieved from the debris of the unmanned aerial vehicles with a view to establishing their supply chain. At this time, the Secretariat is unable to independently corroborate that these components or the unmanned aerial vehicles are of Iranian origin and were transferred from the Islamic Republic of Iran in a manner inconsistent with resolution 2231 (2015).<sup>11</sup> The Secretariat is still collecting and analysing additional information on these unmanned aerial vehicles and I intend to report to the Security Council on further findings in due course, as appropriate.

35. In identical letters dated 27 August 2019 addressed to me and the President of the Security Council (S/2019/688), the Permanent Representative of Israel informed me that, on 24 August 2019, Israel had thwarted “the threat of launching [of] armed drones” from the Quds Force and Shiite militia site in Aqrabah, south-west of Damascus. According to the Permanent Representative of Israel, prior to this, “Iranian Quds Force operators had arrived in Syria via Damascus International Airport equipped with drones and explosives”. In identical letters dated 6 September 2019 addressed to me and the President of the Security Council (S/2019/714), the Permanent Representative of the Islamic Republic of Iran rejected “all claims raised” in the aforementioned letter from the Permanent Representative of Israel.

36. My earlier reports referred to the remnants of two unmanned aerial vehicles that were recovered in Yemen and assessed by the authorities of the United Arab Emirates to be of Iranian origin (see S/2018/1089, para. 23, and S/2019/492, para. 29). In September 2019, the Secretariat was invited by the United Arab Emirates to examine the engines of the two unmanned aerial vehicles. The Secretariat ascertained that both engines were exported from the State of manufacture to another Member State, and subsequently re-exported to the Islamic Republic of Iran in July 2015. The Secretariat, as yet, has no indication as to whether these engines were transferred from the Islamic Republic of Iran in a manner and at a time inconsistent with resolution 2231 (2015).

37. In identical letters dated 19 November 2019 addressed to me and the President of the Security Council (S/2019/895), the Permanent Representative of Israel stated that the Islamic Republic of Iran had transferred the Sadad-103 electro-optic surveillance system to the Iraqi military and that this transfer most probably constituted a violation of arms transfer restrictions. Photographs published by an Iraqi media outlet show that a new thermal security camera system deployed in the Najaf province in November 2017<sup>12</sup> has some external design features similar to those of the Iranian Sadad-103 monitoring system.<sup>13</sup> The Permanent Representative of the Islamic Republic of Iran, in identical letters dated 26 November 2019 addressed to me and the President of the Security Council (S/2019/907), “strongly rejected” the information contained in the aforementioned letters from the Permanent Representative of Israel.

## VI. Implementation of the travel ban and asset freeze provisions

38. During the reporting period, information surfaced regarding additional travel by Major General Soleimani. According to Iraqi media outlets, he travelled a number of

<sup>11</sup> Likewise, any such transfer from the Islamic Republic of Iran after 16 January 2016 would also be relevant to the implementation of paragraph 4 of annex B to resolution 2231 (2015).

<sup>12</sup> See, for example, pictures published by the Iraqi Alforat News Agency on 14 November 2017, available at <https://alforatnews.com/modules/news/article.php?storyid=154080>.

<sup>13</sup> Catalogue of the Export Centre of the Ministry of Defence of the Islamic Republic of Iran. Available at <http://www.mindexcenter.ir/frontpage>.

times to Baghdad in October 2019. The Secretariat has sought clarification from the Permanent Mission of Iraq, and I will report to the Council in due course.

39. The Secretariat is aware of information released by an academic organization indicating that, in 2017, it had signed a memorandum of understanding with an entity that is on the list maintained pursuant to resolution [2231 \(2015\)](#). The memorandum of understanding establishes a framework for academic cooperation and joint activities, but leaves the details of financial arrangements to future, separate agreements. The Secretariat has written to the Member State concerned to seek clarification and will provide an update to the Security Council in due course, as appropriate. The Secretariat is also aware of several cooperation agreements in the construction sector involving entities on the list maintained pursuant to resolution [2231 \(2015\)](#). The Secretariat has requested clarification from the relevant Member States and will report to the Council in due course, as appropriate.

## **VII. Secretariat support provided to the Security Council and its Facilitator for the implementation of resolution [2231 \(2015\)](#)**

40. During the reporting period, the Security Council Affairs Division of the Department of Political and Peacebuilding Affairs continued to support the work of the Security Council, in close cooperation with the Facilitator for the implementation of resolution [2231 \(2015\)](#). The Division also continued to liaise with the Procurement Working Group of the Joint Commission on all matters related to the procurement channel. In addition, the Division provided induction briefings for the incoming members of the Security Council to assist them in their work on the implementation of resolution [2231 \(2015\)](#). The Division continued to respond to queries from Member States and to provide relevant support to Member States regarding the provisions of resolution [2231 \(2015\)](#).

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# ANNEX 273





# Security Council

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## Implementation of Security Council resolution 2231 (2015)

### Ninth report of the Secretary-General

#### I. Introduction

1. The Joint Comprehensive Plan of Action, concluded on 14 July 2015, was the result of 12 years of intense diplomacy and dialogue. The Plan was subsequently endorsed by the Security Council in its resolution 2231 (2015), in which the Council called upon all Member States, regional organizations and international organizations to support the implementation thereof. Since then, the international community has expressed strong support for the Plan. The Plan is a testament to the efficacy of multilateralism and is a success in nuclear non-proliferation. It remains the best way to ensure the exclusively peaceful nature of the nuclear programme of the Islamic Republic of Iran and secure tangible economic benefits for the Iranian people. It is essential that the Plan continue to work for all its participants, and that issues not directly related to the Plan be addressed without prejudice to preserving the agreement and its accomplishments.

2. I regret the withdrawal of the United States of America from the Plan in May 2018, as well as the steps taken by the Islamic Republic of Iran since July 2019 to cease performing its nuclear-related commitments under the Plan. I remain concerned that these actions by the United States and the Islamic Republic of Iran do not advance the goals set out in the Plan and in resolution 2231 (2015). I call upon all Member States to avoid provocative rhetoric and actions that may have a further negative impact on regional stability.

3. Since May 2018, the United States has reimposed all of its national sanctions that had been lifted or waived pursuant to the Plan and has continued to implement its decision not to extend waivers with regard to the trade in oil with the Islamic Republic of Iran and not to fully renew waivers for nuclear non-proliferation projects in the framework of the Plan. These actions continue to be contrary to the goals set out in the Plan and in resolution 2231 (2015) and may also impede the ability of the Islamic Republic of Iran to implement certain provisions of the Plan and of the resolution. I note the most recent concerns expressed in the letter dated 8 May 2020 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to me (A/74/850-S/2020/380), and the concerns contained in the letter dated 27 May 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to me and to the President of the Security



Council (S/2020/451), as well as the concerns expressed in the letter dated 8 June 2020 from the Permanent Representative of China addressed to me and to the President of the Security Council (S/2020/517).

4. Since July 2019, the Islamic Republic of Iran has taken a series of steps to cease performing its nuclear commitments under the Plan. These steps have been undertaken under the monitoring and verification by the International Atomic Energy Agency (IAEA) (see also para. 7 below). On 5 January 2020, the Islamic Republic of Iran announced<sup>1</sup> that it had taken its fifth and final step to “withdraw from its last operational limitation within the (JCPOA) scope, in other words, the limitations on the centrifuges numbers”. It was further indicated in the statement that “from now on, the Iran nuclear program will merely progress according to its technical requirements”, but that “Iran cooperation with IAEA will continue as in the past. In case of the imposed sanctions resolving and Iran’s subsequent benefiting from the (JCPOA) concerned privileges, then the country is ready to assume its admitted commitments”. I note that the Islamic Republic of Iran has stated that it wants to remain in the Plan and has emphasized that all of its measures since 1 July 2019 are reversible. I appeal again to the Islamic Republic of Iran to return to full implementation of the Plan. I also urge the Islamic Republic of Iran to carefully take into account and urgently address the other concerns raised by other participants in the Plan and by Member States in relation to resolution 2231 (2015).

5. On 6 January 2020, France, Germany and the United Kingdom of Great Britain and Northern Ireland jointly issued a statement in which they called upon the Islamic Republic of Iran to reverse all measures inconsistent with the Plan. On 14 January, the three countries announced that they had referred the matter to the Joint Commission under the dispute resolution mechanism, as set out in paragraph 36 of the Plan. During the meeting of the Joint Commission, held in Vienna on 26 February, to address both the steps taken by the Islamic Republic of Iran in terms of nuclear commitments under the Plan and long-standing concerns regarding the impact of the withdrawal of the United States from the Plan and the reimposition of its national sanctions, all participants reaffirmed the importance of preserving the Plan as a “key element of the global nuclear non-proliferation architecture”. I urge them to resolve all differences within the dispute resolution mechanism under the Plan.

6. I am encouraged by the positive developments in the Instrument in Support of Trade Exchanges, which started to process its first transactions. It is important that initiatives in support of trade and economic relations with the Islamic Republic of Iran continue and be given full effect as a matter of urgency, especially during the current economic and health challenges posed by the coronavirus disease (COVID-19) pandemic. I also stress the important contribution of other Member States to preserving the Plan and continue to encourage them to work effectively with the participants in the Plan towards creating the conditions necessary for their economic operators to engage in trade with the Islamic Republic of Iran in accordance with resolution 2231 (2015).

7. The International Atomic Energy Agency plays an important role in supporting the full implementation of the Plan. Reports on its verification and monitoring activities in the Islamic Republic of Iran, in line with resolution 2231 (2015), provide transparency and are important confidence-building measures. Since 1 July 2019, the Agency confirmed the activities announced and undertaken by the Islamic Republic of Iran to cease performing its commitments under the Plan. In its two most recent reports (see S/2020/307 and S/2020/548), the Agency reported that it continued to

<sup>1</sup> Atomic Energy Organization of Iran, “I.R. of Iran’s fifth step statement on JCPOA commitments reduction”, 6 January 2020, available at <https://aeoi.org.ir/EN/portal/home/?news/45799/69280/295927/i.r.-of-iran-s-fifth-step-statement-on-jcpoa-commitments-reduction>.

verify the non-diversion of nuclear material at the nuclear facilities and locations outside facilities where nuclear material is customarily used, as declared by the Islamic Republic of Iran under its Safeguards Agreement. The Agency also reported that the Islamic Republic of Iran continued to provisionally apply the Additional Protocol pending its entry into force, and that it continued to evaluate the declarations made by the Islamic Republic of Iran under the Additional Protocol. I commend IAEA for its impartial, factual and professional work.

8. The present report, my ninth on the implementation of resolution [2231 \(2015\)](#), provides an assessment of the implementation of the resolution, including findings and recommendations, since the issuance of my eighth report ([S/2019/934](#) and [S/2019/934/Corr.1](#)) on 10 December 2019. Consistent with previous reports, the focus of the present report is on the provisions set forth in annex B to resolution [2231 \(2015\)](#), which include restrictions applicable to nuclear-related transfers, ballistic missile-related transfers and arms-related transfers to or from the Islamic Republic of Iran, as well as asset freeze and travel ban provisions.

## II. Key findings and recommendations

9. Since 10 December 2019, four new proposals have been submitted to the Security Council for approval through the procurement channel. The procurement channel continues to be a vital transparency and confidence-building mechanism, providing assurances that the transfer of nuclear and nuclear-related dual-use goods and related services to the Islamic Republic of Iran is consistent with resolution [2231 \(2015\)](#), as well as the provisions and objectives of the Plan. I continue to encourage all participants in the Plan, Member States and the private sector to fully support and utilize the channel.

10. The United States announced on 27 May 2020 that participation in additional activities set forth in paragraph 2 of annex B to resolution [2231 \(2015\)](#), namely the modernization of the Arak reactor, might now be exposed to its national sanctions. I wish to reiterate that the exemptions set out in paragraph 2 of annex B to the resolution are designed to provide for the transfer of such items, materials, equipment, goods and technology required for the nuclear activities of the Islamic Republic of Iran under the Plan.

11. Several of the items in the two seizures of arms and related materiel by the United States, in November 2019 and February 2020, have been assessed by the Secretariat as follows: (a) they were of Iranian origin (container launch units of the anti-tank guided missiles with production dates in 2016, 2017 and 2018); (b) they had been delivered to the Islamic Republic of Iran (15 POSP-type optical weapon sights) between February 2016 and April 2018; (c) they had design characteristics (such as thermal optical weapon sights) similar to those also produced by a commercial entity in the Islamic Republic of Iran; or (d) they bore Farsi markings (on a keyboard of a computer terminal associated with the anti-ship missile, the relay box tester of an unidentified missile, as well as the navigation antenna and navigation module of the cruise missile). The items may have been transferred in a manner inconsistent with resolution [2231 \(2015\)](#).

12. The Secretariat observed that some items in the two seizures by the United States were identical or similar to those found in the debris of the cruise missiles and the delta-wing uncrewed aerial vehicles used in the attacks on Saudi Arabia in 2019 (see [S/2019/934](#), paras. 27–34).

13. The Secretariat assessed that the examined cruise missiles and/or parts thereof used in the attacks on Saudi Arabia and those seized by the United States were of

Iranian origin. Components of the fuel-feed system of the examined cruise missiles used in the attacks were exported to the Islamic Republic of Iran in March 2018. The sections of the cruise missiles recovered after the attacks and the sections seized by the United States in November 2019 form part of the same missile system, and it is highly likely that they were produced by the same entity. The cruise missile jet engines recovered after the attacks, as well as those seized in November by the United States, are similar to an Iranian jet engine exhibited by the Islamic Republic of Iran on 21 August 2016. The control mechanism and some of the electronics of the examined debris, as well as the navigation module and some of the electronics of the cruise missile seized in November, show similarities to those of the Iranian short-range ballistic missile “Labbayk-1”, as displayed in October 2019 in the Islamic Republic of Iran.

14. The Secretariat assessed that the examined delta-wing uncrewed aerial vehicles and/or parts thereof used in the attacks on Saudi Arabia were of Iranian origin. The engines found in the uncrewed aerial vehicles show similarities to an Iranian engine designated as “Shahed 783”, presented by the Islamic Republic of Iran at a military exhibition held in May 2014. The gyroscopes and some of the engines recovered from among the debris are similar to the gyroscope and the engine seen in an Iranian uncrewed aerial vehicle reportedly recovered in Afghanistan in 2016. In addition, one of the ignition coils recovered from among the debris of the attacks was exported to the Islamic Republic of Iran in 2016.

### III. Implementation of nuclear-related provisions

15. Since 10 December 2019, four new proposals to participate in or permit the activities set forth in paragraph 2 of annex B to resolution 2231 (2015) have been submitted to the Security Council for approval through the procurement channel. Of the 48 proposals received from 16 January 2016 to 11 June 2020, 33 were approved by the Council, five were not approved, nine were withdrawn by the proposing States and one is currently under review. It is vital that the procurement channel continue to work effectively and efficiently, and in a manner that promotes increased international engagement with the Islamic Republic of Iran.

16. In addition, the Security Council received six new notifications pursuant to paragraph 2 of annex B to resolution 2231 (2015) for certain nuclear-related activities consistent with the Plan that do not require approval, but do require a notification to the Council or to both the Council and the Joint Commission. As previously reported, in May and November 2019, the United States announced that involvement in some of the above-mentioned activities might now be exposed to its national sanctions, specifically assistance to expand the Bushehr Nuclear Power Plant beyond the existing reactor unit, any involvement in transferring enriched uranium out of the Islamic Republic of Iran in exchange for natural uranium, and the modification of infrastructure at the Fordow facility.<sup>2</sup> On 27 May, the United States further announced that participation in activities related to the modernization of the Arak reactor would also be exposed to its national sanctions after a 60-day period for companies to wind down their activities.<sup>3</sup> At the same time, the United States announced its intention to issue a 90-day extension of the waiver covering activities related to the existing unit

<sup>2</sup> United States Department of State, “Advancing the Maximum Pressure Campaign by Restricting Iran’s Nuclear Activities”, Fact sheet, 3 May 2019, available at [www.state.gov/advancing-the-maximum-pressure-campaign-by-restricting-irans-nuclear-activities/](http://www.state.gov/advancing-the-maximum-pressure-campaign-by-restricting-irans-nuclear-activities/); and “Secretary Michael R. Pompeo Remarks to the Press” on 18 November 2019, available at [www.state.gov/secretary-michael-r-pompeo-remarks-to-the-press/](http://www.state.gov/secretary-michael-r-pompeo-remarks-to-the-press/).

<sup>3</sup> “Keeping the World Safe from Iran’s Nuclear Program”, Press statement, 27 May 2020, available at [www.state.gov/keeping-the-world-safe-from-irans-nuclear-program/](http://www.state.gov/keeping-the-world-safe-from-irans-nuclear-program/).

at the Bushehr Nuclear Power Plant, while noting that the waiver could be modified at any time.

## IV. Implementation of ballistic missile-related provisions

### A. Restrictions on ballistic missile-related activities by the Islamic Republic of Iran

17. In letters addressed to me and the President of the Security Council from the Permanent Representative of the United States to the United Nations, dated 20 February 2020 (S/2020/138) and 20 May 2020 (S/2020/428), from the Permanent Representative of Israel to the United Nations, dated 8 May 2020 (S/2020/382) and from the Permanent Representatives of France, Germany and the United Kingdom to the United Nations, dated 3 June 2020 (S/2020/400), I was informed about the launches by the Islamic Republic of Iran of a Simorgh space launch vehicle on 9 February 2020 and of a Qased space launch vehicle on 22 April 2020. These Member States mentioned that both space launch vehicles incorporate virtually identical technologies to those used in ballistic missiles designed to be capable of carrying nuclear weapons, the latter classified by the Permanent Representatives of France, Germany, the United Kingdom and the United States as Missile Technology Control Regime category-1 systems.<sup>4</sup> These Member States reiterated that the Council, in paragraph 3 of annex B to resolution 2231 (2015), called upon the Islamic Republic of Iran not to undertake launches using such ballistic missile technology. The involvement of the Islamic Revolutionary Guard Corps in the 22 April launch was also noted as a point of concern.

18. In a letter dated 16 March 2020 addressed to me (A/74/752–S/2020/212), the Permanent Representative of the Russian Federation to the United Nations reiterated the position of his country regarding the implementation of paragraph 3 of annex B to resolution 2231 (2015). He underscored that the Islamic Republic of Iran was not prohibited by multilateral non-proliferation mechanisms or resolution 2231 (2015) from developing missile and space programmes. He stated that the Russian Federation continued to consider that the Islamic Republic of Iran “is respecting in good faith the call addressed to it in paragraph 3 of annex B to resolution 2231 (2015) to refrain from activities related to ballistic missiles that are designed to be capable of carrying nuclear weapons”. In a letter dated 28 May 2020 addressed to me and the President of the Security Council (S/2020/454), the Permanent Representative of the Russian Federation stated that the Islamic Republic of Iran is “fully entitled to the advantages of space science and technology” as “none of the existing international instruments and mechanisms, including the Treaty on the Non-Proliferation of Nuclear Weapons and Missile Technology Control Regime, either directly or implicitly, prohibit Iran to peacefully explore space for the purposes of development”. In a letter dated 9 June 2020 (S/2020/522) addressed to me and to the President of the Security Council, the Permanent Representative of the Russian Federation reiterated that the Islamic Republic of Iran “is fully entitled to the advantages of space science and technology” and that none of the international instruments or mechanisms “directly or implicitly prohibit Iran from developing missile and space programmes”. He further stated that applying “the Missile Technology Control Regime category-1 systems criteria” would effectively “prohibit any non-State actor, including private entities, from manufacturing, acquiring, possessing, developing, transporting, transferring or using

<sup>4</sup> Category I systems under the Missile Technology Control Regime are defined as “complete rocket systems (including ballistic missiles, space launch vehicles, and sounding rockets) capable of delivering at least a 500 kg ‘payload’ to a ‘range’ of at least 300 km” (see 1.A.1 of the Equipment, Software and Technology Annex of the Missile Technology Control Regime).

any space launch vehicles” “regardless of claimed intent”, affecting private-public partnerships in the area of space exploration. Noting that all provisions of resolution 1929 (2010) had been terminated, including the provision that “prohibited Iran from undertaking ‘any activity related to ballistic missiles capable of delivering nuclear weapons’”, the Permanent Representative stated that concluding that “the Qased ‘shares these inherent design features thereby making it nuclear-capable’” was a “deliberate fallacy”.

19. In a letter dated 26 May 2020 addressed to me and the President of the Security Council (S/2020/443), the Permanent Representative of the Islamic Republic of Iran to the United Nations “categorically rejected” all the allegations made by the United States and Israel regarding their launches of space launch vehicles on 9 February and 22 April 2020. The Permanent Representative stated that paragraph 3 of annex B to resolution 2231 (2015) does not concern the space launch vehicles as “there is no explicit reference to ‘space launch vehicles’”, and that “space launch vehicles do not incorporate technologies identical to ‘ballistic missiles designed to be capable of delivering nuclear weapons’”. Moreover, “space launch vehicles, which are exclusively designed to place satellites into orbit, are not ‘designed to be capable of delivering nuclear weapons’ and [...] ‘space launch vehicles are not capable of delivering nuclear weapons’”. The Permanent Representative also noted that the addition of the phrase “designed to be” to the wording “capable of delivering nuclear weapons” was “a deliberate modification following lengthy negotiations in order to exclude Iran’s defensive missile programme that is ‘designed’ to be exclusively capable of delivering conventional warheads”. The Permanent Representative re-iterated that “there is no implicit or explicit reference” in paragraph 3 of annex B to resolution 2231 (2015) “to the Missile Technology Control Regime itself or to its definitions.” In a letter dated 8 June 2020 addressed to me and the President of the Security Council (S/2020/513), the Permanent Representative of the Islamic Republic of Iran reiterated the previously raised points, including that the Iranian missile programme “falls outside of the purview or competence of the Security Council resolution and its annexes”. The Permanent Representative said that those who had cited “the name of certain places in Iran, referring to the launch of the space launch vehicle by Iran from a ‘mobile launch pad’, as well as mentioning the name of the organization involved in the development and launch of the space launch vehicle concerned” were to “make their own arbitrary conclusions”. Finally, the Permanent Representative underscored that “activities related to ballistic missiles and space launch vehicles” were within “inherent rights under international law” and highlighted “the right to the peaceful use of outer space, and its space programme”.

20. The Security Council discussed the launch of the Qased space launch vehicle on 13 May 2020. There was no consensus among Council members on how that launch related to resolution 2231 (2015).

## **B. Restrictions on ballistic missile related-transfers or activities with the Islamic Republic of Iran**

21. In a letter dated 31 March 2020 addressed to the President of the Security Council (S/2020/257), the Permanent Representative of Saudi Arabia to the United Nations reported that on 28 March 2020, “Iran-backed Houthi militia” launched two ballistic missiles towards civilians and civilian objects in Saudi Arabia. The Secretariat received from the Permanent Mission of Saudi Arabia photographs of the debris of the two ballistic missiles launched at Jazan and Riyadh on 28 March 2020. The photographs of the debris from the launch at Riyadh showed parts of a liquid-propellant ballistic missile that had similarities with the Borkan-3 ballistic missile,

the first launch of which the Houthis announced on 2 August 2019.<sup>5</sup> In their letter dated 21 November 2019 addressed to me (S/2019/911), the Permanent Representatives of France, Germany and the United Kingdom to the United Nations stated that the Borkan-3 was “clearly an adaptation of earlier Borkan-2H missiles” with similar features to the Iranian Qiam-1 missile. In a letter dated 3 June 2020, the Permanent Representative of the Islamic Republic of Iran to the United Nations stated that the above-mentioned information was “baseless allegations and disinformation”, which he rejected “unequivocally”. The Secretariat will continue its analysis of this issue and I intend to report to the Council in due course, as appropriate.

## V. Implementation of arms-related provisions

### *Arms and related materiel seized by the United States, 25 November 2019*

22. In December 2019, at the invitation of the United States, the Secretariat examined arms and related materiel which the United States indicated were seized on 25 November 2019 in “international waters (seaward of the territorial sea of Yemen and any other State)” and assessed to be “evidently of Iranian origin” (S/2020/322). The arms and related materiel shown to the Secretariat consisted of:

- Two portable surface-to-air missiles (one fully assembled, the other partly disassembled)
- Sections and components of a cruise missile
- Sections of two types of anti-ship cruise missiles and items (assessed by the United States to be) associated with these anti-ship cruise missiles
- 21 anti-tank guided missiles
- Three thermal optical weapon sights with accessories
- Components of uncrewed aerial vehicles
- Components (assessed by the United States to be) used in the assembly of uncrewed surface vessels
- More than 80 boxes of non-electric detonators

### *Analysis of arms and related materiel seized on 25 November 2019*

23. The Secretariat observed that the disassembled surface-to-air missile was fitted with a digital air data computer identical to those found among the debris of the delta-wing uncrewed aerial vehicles used in the attacks on the Saudi oil facilities in Afif in May 2019 and Abqaiq in September 2019 (S/2019/934, para. 33). This disassembled missile was also equipped with a “Model V10” vertical gyroscope (manufacturer unknown). A “Model V9” (manufacturer unknown) of that same vertical gyroscope had been observed in an Iranian uncrewed aerial vehicle, reportedly recovered in Afghanistan in 2016 (S/2019/492, para. 29) as well as among the debris of the delta-wing uncrewed aerial vehicles used in the aforementioned attacks on Saudi Arabia (S/2019/934, para. 33).

24. Based on the Secretariat’s analysis, the sections and components of the cruise missile seized by the United States form the front section of the cruise missile used in the attacks on Saudi Arabia (S/2019/934, para. 31) at Abha International Airport in June and August 2019, and in Abqaiq and Khurays in September 2019. The debris of

<sup>5</sup> See “Unveiling of Ansar Allah’s new long-range missile ‘Borkan 3’”, Islamic World News, 2 August 2019, available at <https://english.iswnnews.com/6561/images-unveiling-of-ansar-allahs-new-long-range-missile-borkan-3/>.

the rear section of this cruise missile was examined by the Secretariat in 2019 in Saudi Arabia. These front and rear sections are identical in structure, material and assembly, in addition to having identical reference numbers and project labels. Other seized parts of this cruise missile (the control surfaces and the section fitted with a jet engine) are also identical to the corresponding parts of this same type of cruise missile used in the aforementioned attacks on Saudi Arabia. The jet engine is also similar (dimensions, design characteristics and configuration) to an Iranian jet engine exhibited in the Islamic Republic of Iran on 21 August 2016.<sup>6</sup> The Secretariat further observed that the digital air data computer in a section of the seized cruise missile is identical to those found among the debris of the delta-wing uncrewed aerial vehicles (S/2019/934, para. 33) and also to that in the surface-to-air missile detailed in paragraph 23 above. In addition, Farsi markings were observed on a quality control sticker on the navigation antenna and on two navigation modules of the seized cruise missile.

25. In relation to the seized anti-ship missiles and associated items, the Secretariat noted that one of the items (a computer terminal) included a keyboard modified with Farsi markings. In terms of the 21 anti-tank guided missiles (one of which was a training unit), the container launch units of the missiles had characteristics consistent with those of the Iranian-produced Dehlavieh anti-tank guided missile (see S/2018/1089 and S/2018/1089/Corr.1, para. 24). Twenty of the container launch units had 2017 and 2018 production dates (the training unit did not reflect a production date). The thermal optical weapon sights (one marked as RU90/120G and two units marked as RU60G) had 2017 production dates on their rechargeable batteries, and had design characteristics similar to thermal optical weapon sights also produced by a commercial entity in the Islamic Republic of Iran.

*Arms and related materiel seized by the United States, 9 February 2020*

26. The Permanent Mission of the Islamic Republic of Iran informed the Secretariat that the “allegedly seized anti-tank guided missiles and thermal optical weapon sights do not conform to the products manufactured by the Islamic Republic of Iran”.

27. In February 2020, at the invitation of the United States, the Secretariat examined arms and related materiel which the United States indicated were seized on 9 February 2020 in “international waters (seaward of the territorial sea of Yemen and any other State)” and assessed to be “evidently of Iranian origin” (S/2020/322). The arms and related materiel shown to the Secretariat consisted of:

- Three portable surface-to-air missiles
- 150 anti-tank guided missiles
- 17 thermal optical weapon sights with accessories
- 15 optical weapon sights
- Ground support and test systems of an unidentified missile
- Items (assessed by the United States to be) associated with an anti-ship cruise missile and components of uncrewed surface vessels

*Analysis of arms and related materiel seized on 9 February 2020*

28. The anti-tank guided missiles examined by the Secretariat (90 of the 150) had container launch units with characteristics consistent with those of the Iranian-

<sup>6</sup> “President of the Republic inspects the aircraft capacities of the Ministry of Defence” (بازدید ‘‘هواایی حوزه در دفاع وزارت توانمندیهای از جمهوری رئیس’), Official website of the President of the Islamic Republic of Iran, 21 August 2016, available at <http://president.ir/fa/94798>.

produced Dehlahvieh anti-tank guided missile and had 2016, 2017 and 2018 production dates. The 17 thermal optical weapon sights (one marked as RU90/120G and 16 units marked as RU60G) had 2017 production dates on their rechargeable batteries and had design characteristics similar to thermal optical weapon sights also produced by a commercial entity in the Islamic Republic of Iran.

29. The Secretariat was able to confirm, with the assistance of the manufacturing State, that the serial numbers of the 15 POSP-type optical weapon sights (ten 4x24 models and five 8x42 models) matched those delivered to the Islamic Republic of Iran between February 2016 and April 2018. The State of manufacture informed the Secretariat that the importer of the 4x24-model sights was the “State Purchasing Organization of the Ministry of Defence and Armed Forces Support of Iran”, while the importer of the 8x42-model sights was a commercial entity located in Tehran. This same commercial entity was previously identified as the importer of the semi-knock-down kits for PGO-7V-type optical sights, seized in Aden in December 2018, for the end user listed as “Ministry of Defence and Armed Forces of Iran” in 2016 (S/2019/934, para. 26). In addition, the Secretariat examined a flight computer tester, a relay box tester and a missile simulator of an unidentified missile and observed that the relay box tester contained an electronic component with an inspection sticker in Farsi from the Iranian “Ministry of Industry, Mining and Trade”.

30. The Permanent Mission of the Islamic Republic of Iran shared information with the Secretariat relating to the anti-tank guided missiles and thermal optical weapon sights (see para. 26 above), and noted that “similar optical sights... claimed to be exported to Iran and later seized in Aden, were examined... and it was verified that the imported optical sights -- distributed to different military units -- are still in use”.

31. In a letter dated 22 May 2020 addressed to me and the President of the Security Council (S/2020/434), the Permanent Representative of the Islamic Republic of Iran to the United Nations indicated that “it has not been the policy of Iran to export weapons in violation of relevant arms embargoes of the Security Council” and that it will “continue to actively cooperate with the United Nations in that regard”. The Permanent Representative referred to “false assumptions and distorted speculations regarding the characteristics and markings of Iranian weapons” which “clearly indicate how unreliable the relevant information is and how incredible the relevant assessments are”. He also stressed that “Security Council resolution 2231 (2015) does not prohibit the transfer of arms from Iran” and that “the temporary arrangements in paragraph 6 (b) of annex B to that resolution were set only to authorize, on a case-by-case basis, the supply, sale or transfer of arms or related materiel from Iran”.

#### *Updates on 2019 attacks on Saudi Arabia*

32. Since the publication of my eighth report (S/2019/934, paras. 27–34), the Secretariat has continued its analysis of the debris of the cruise missiles and delta-wing uncrewed aerial vehicles used in the attacks on Saudi oil facilities in Afif (May 2019), in Abqaiq and Khurays (September 2019), and in the attacks on the Abha International Airport in south-western Saudi Arabia (June and August 2019).

33. On the cruise missiles used in the attacks, the Secretariat:

(a) Identified the manufacturer of two fuel pressure sensors (of the fuel-feed system) of these missiles, who indicated that these subcomponents were exported to its distributor in the Islamic Republic of Iran in March 2018;

(b) Ascertained that the jet engines of these cruise missiles (seen in both the debris from the attacks as well as the arms and related materiel seized by the United

States in November 2019)<sup>7</sup> are similar (dimensions, design characteristics and configuration) to an Iranian jet engine exhibited by the Islamic Republic of Iran on 21 August 2016;<sup>8</sup>

(c) Observed that the control mechanism, the navigation module (also observed in the arms and related materiel seized by the United States in November 2019) and some of the electronics of the cruise missile show similarities (markings, dimensions, configuration) to those of the Iranian short-range ballistic missile “Labbayk-1”, as displayed in October 2019 in the Islamic Republic of Iran;<sup>9</sup>

(d) Noted that the debris of the cruise missiles recovered from the attacks and the sections and components of the cruise missiles seized by the United States in November 2019, form part of the same missile system (see para. 24 above), and were highly likely made by the same entity – based on identical structure, material and assembly, in addition to having identical reference numbers and project labels.

34. The Permanent Mission of the Islamic Republic of Iran informed the Secretariat that “the concerned pressure transmitter is not a dual-use item to be monitored by the government”.

35. Taking into consideration the above findings (and the information provided to the Security Council in S/2019/492, para. 31), the Secretariat assessed that the cruise missiles and/or parts thereof used in the four attacks were of Iranian origin.

36. In terms of the delta-wing uncrewed aerial vehicles used in the attacks on Saudi oil facilities in May and September 2019, the Secretariat:

(a) Observed that some of the engines found on these uncrewed aerial vehicles show similarities (design characteristics, dimensions and configuration) to an Iranian engine designated as “Shahed-783”, presented by the Islamic Republic of Iran in a military exhibition in May 2014;<sup>10</sup>

(b) Identified that the ignition coils of the engines recovered from among the debris are the same type of ignition coil observed in a similar engine of an Iranian uncrewed aerial vehicle, reportedly recovered in Afghanistan in 2016 (S/2019/492, para. 29);

(c) Confirmed that one of the ignition coils recovered from among the debris of the uncrewed aerial vehicles used in the May 2019 attacks on Saudi Arabia was exported to the Islamic Republic of Iran in 2016.

37. Taking into consideration the above findings (and the information provided to the Security Council in S/2019/492, para. 33), the Secretariat assessed that the uncrewed aerial vehicles and/or parts thereof used in the two attacks were of Iranian origin.

<sup>7</sup> The Secretariat has identified the manufacturer of some components of the jet engines. The manufacturer informed the Secretariat that it had only produced these components but not the jet engines, and that these components were exported as part of similar jet engines to a Member State in 2010 and 2011 (S/2019/934, para. 31).

<sup>8</sup> “President of the Republic inspects the aircraft capacities of the Ministry of Defence” (‘بازدید’), (‘هوایی حوزه در دفاع وزارت توانمندیهای از جمهوری رئیس’), Official website of the President of the Islamic Republic of Iran, 21 August 2016, available at <http://president.ir/fa/94798>.

<sup>9</sup> “Iran’s army unveils new military gear”, Tasnim News Agency, 3 October 2019, available at [www.tasnimnews.com/en/news/2019/10/03/2110500/iran-s-army-unveils-new-military-gear](http://www.tasnimnews.com/en/news/2019/10/03/2110500/iran-s-army-unveils-new-military-gear).

<sup>10</sup> “Preparations for an exhibition of the achievements of the Aerospace Force of the Islamic Revolutionary Guard Corps” (‘سپاه پاسداران + تصاویر هوافضای نیروی دستاوردهای نمایشگاه تجهیزات’), Young Journalists Club, 12 May 2014, available at [www.yjc.ir/fa/news/4836689/-تجهیزات-نمایشگاه-دستاوردهای-نیروی-هوافضای-سپاه-پاسداران-تصاویر](http://www.yjc.ir/fa/news/4836689/-تجهیزات-نمایشگاه-دستاوردهای-نیروی-هوافضای-سپاه-پاسداران-تصاویر).

*Other notifications by Member States*

38. In his letter dated 8 May 2020 (S/2020/382), the Permanent Representative of Israel noted the existence of imagery of four Iranian Dehlavieh anti-tank guided missiles being employed in Libya. In response, in a letter dated 26 May 2020 (S/2020/443), the Permanent Representative of the Islamic Republic of Iran “categorically rejected” the “so-called violation” of resolution 2231 (2015) as “totally baseless”. The Secretariat is still in the process of reviewing the information in connection to this report and I will report back to the Security Council, as appropriate.

39. In a letter dated 17 March 2020 addressed to the President of the Security Council (S/2020/217), the Permanent Representative of Saudi Arabia shared information regarding the “Houthi militia backed by Iran” and “an attempted terrorist attack that was planned to target an oil tanker [...] south-east of the Yemeni port of Nishtun” on 3 March 2020. In a letter dated 3 June 2020, the Permanent Representative of the Islamic Republic of Iran stated that the abovementioned information was “baseless allegations and disinformation”, which he rejected “unequivocally”. The Secretariat has contacted Saudi authorities for further details and I will report back in due course, as appropriate.

40. On 19 May 2020, the Australian authorities provided to the Secretariat relevant information pertaining to the seizure in June 2019 of arms and related materiel.<sup>11</sup> The authorities informed the Secretariat that while on operations in the Middle East region, the *HMAS Ballarat*, an Australian vessel, boarded a dhow in international waters off the Gulf of Oman, about 150 km south-east of Muscat. The materiel seized onboard included “approximately 476,000 rounds of 7.62mm ammunition, and 697 bags of chemical fertiliser”. The crew of the dhow had Iranian passports and identification cards and claimed to have sailed on 19 June 2019 from Bandar Abbas in the Islamic Republic of Iran, en route to Somalia and Yemen. A crew member also claimed that the materiel had been delivered to the dhow by Iranian military personnel. The Secretariat is reviewing the information provided and I will report back to the Security Council, as appropriate.

## VI. Implementation of the travel ban and asset freeze provisions

41. In a letter dated 3 January 2020 addressed to me and the President of the Security Council (S/2020/13), the Permanent Representative of the Islamic Republic of Iran referred to the “assassination of Major General Qasem Soleimani, the Commander of the Quds Force of the Islamic Revolutionary Guard Corps [...] on 3 January 2020 at Baghdad International Airport”. Major General Soleimani is on the list maintained pursuant to resolution 2231 (2015); no travel exemption requests were received or granted by the Security Council in relation to this travel undertaken by Major General Soleimani to Iraq.

42. In my most recent report, I shared information about an academic organization in a Member State which, in 2017, signed a memorandum of understanding with an entity on the list maintained pursuant to resolution 2231 (2015). In response to the Secretariat’s request for clarification, the concerned Member State explained that the signed memorandum of understanding is not legally binding and does not involve any financial commitment. During the reporting period, the Secretariat received new information indicating that additional memorandums of understanding were signed with the same entity on the list maintained pursuant to resolution 2231 (2015) and has

<sup>11</sup> “*HMAS Ballarat* conducts boarding”, 28 June 2019, Australian Government Department of Defence, available at <https://news.defence.gov.au/media/media-releases/hmas-ballarat-conducts-boarding>.

reached out to the Member State for clarification; I will report back to the Council in due course.

43. In my most recent report, I informed the Council that the Secretariat was aware of several cooperation agreements in the construction sector between companies in several Member States and entities on the list maintained pursuant to resolution 2231 (2015) (S/2019/934, para. 39). A Member State informed the Secretariat that it had conducted an investigation of the concerned company in its territory and concluded that, since 16 January 2016, the company has not engaged with any entities on the list maintained pursuant to resolution 2231 (2015). I will report back if further updates become available from other relevant Member States.

44. I previously reported to the Council regarding an entity on the list maintained pursuant to resolution 2231 (2015), Khatam al-Anbiya Construction Headquarters, which signed a memorandum of understanding with an entity in the Syrian Arab Republic in 2017 (S/2018/602, para. 47). Local media reports from 2019<sup>12</sup> indicate that the Ministry of Transport of the Syrian Arab Republic conducted a study for a project related to the establishment of a port in Tartus Governorate and held several meetings with Khatam al-Anbiya for this purpose. Another media report also described that there are several bids from foreign companies, the most important of which is a bid from the Iranian Khatam al-Anbiya company.<sup>13</sup> The Secretariat sought further clarification from the Permanent Mission of the Syrian Arab Republic. I intend to report back to the Council, as appropriate.

45. The United States informed the Secretariat of a possible financial transaction involving a subsidiary of an entity on the list maintained pursuant to resolution 2231 (2015), which occurred in 2018. The Secretariat is reviewing the information provided and will report back to the Security Council, as appropriate.

## VII. Secretariat support provided to the Security Council and its Facilitator for the implementation of resolution 2231 (2015)

46. The Security Council Affairs Division of the Department of Political and Peacebuilding Affairs has continued to support the work of the Security Council, in close cooperation with the Facilitator for the implementation of resolution 2231 (2015). The Division has also continued to liaise with the Procurement Working Group of the Joint Commission on all matters related to the procurement channel. During the reporting period, the Division continued to respond to queries from Member States and to provide relevant support to Member States regarding the provisions of resolution 2231 (2015).

<sup>12</sup> See “Iranian port on the Syrian Mediterranean coast”, Alalam TV, 16 August 2019, available at [www.alalamtv.net/news/4381061/مرفأ-إيراني-على-ساحل-البحر-المتوسط-السوري](http://www.alalamtv.net/news/4381061/مرفأ-إيراني-على-ساحل-البحر-المتوسط-السوري); and “Ministry of Transport considers establishing a multi-purpose port in Hamidiyah district” (إقامة تدرس النقل), Al-Baath, 29 August 2019, available at <http://newspaper.albaathmedia.sy/2019/08/29/في-الأعراض-متعدد-مرفأ-إقامة-تدرس-النقل>.

<sup>13</sup> Inas Abdulkareem, “Syria will establish new sea port in South Tartous”, Syria Times, 2 September 2019, available at <http://syriatimes.sy/index.php/tourism/43419-syria-will-establish-new-sea-port-in-south-tartous>.

# ANNEX 274



# IRAN – UNITED STATES CLAIMS TRIBUNAL REPORTS

Volume

33

EDITED

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MOUSSA ARYEH, *Claimant**v.*THE ISLAMIC REPUBLIC OF IRAN, *Respondent*

(Case No. 266)

*Chamber Three: Arangio-Ruiz, Chairman; Allison, Aghahosseini,<sup>[1]</sup> Members*Signed 25 September 1997<sup>[2]</sup>

AWARD No. 583-266-3

The following is the text as issued by the Tribunal:

## APPEARANCES

For the Claimant:

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Claimant

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Counsel

For the Respondent:

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Observers

Also present:

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Agent of the Government of the

United States of America

Dr. Sean D. Murphy

Deputy Agent of the Government of

the United States of America

[<sup>1</sup> Dissenting Opinion.][<sup>2</sup> Filed 25 September 1997.]

Mr. Allen S. Weiner  
 Attorney-Adviser to the Department  
 of State of the Government of the  
 United States of America

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## I. INTRODUCTION

1. The Claimant in this Case is Moussa Aryeh, a dual Iran-United States national, residing in the United States (the "Claimant"). The Respondent in this Case is the Islamic Republic of Iran (the "Respondent" or the "IRI"). The Claimant contends that he was the owner of 16 pieces of real estate in the village of Vardavard in Karaj, a city approximately 40 km north-west of Tehran, and one piece of real estate in Tehran itself. The Claimant alleges that the properties were expropriated by the Respondent by means of a decree of expropriation that confiscated the assets of his entire family in or about May 1979. He claims an amount of U.S.\$1,095,006.00, as revised, plus interest and costs.

2. The Respondent denies liability. It argues, *inter alia*, that: the Claimant is not of dominant United States nationality and therefore the Tribunal does not have jurisdiction over his claim; the Claimant could not have owned the properties in question, as he was an American national at the time of purchase; the IRI has not expropriated his property; and the Claimant's claim should be barred by the application of the *caveat* in *Case No. A18*.

## II. PROCEDURAL HISTORY

3. The Claimant filed a Statement of Claim on 14 January 1982. The Respondent filed a Statement of Defence on 21 September 1982. On 2 May 1983, the Claimant filed a Rejoinder to the Respondent's Statement of Defence.

4. By Order of 28 June 1985, the Tribunal noted that the Full Tribunal in *Case No. A18* had held "that it has jurisdiction over claims against Iran by dominant Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States," and ordered the Parties to file all the written evidence they wished the Tribunal to consider on the nationality issue. On 5 August 1985, 28 November and 21 December 1990 the Claimant filed evidence on his nationality; on 15 July 1991 the Respondent filed a request to dismiss the Case on the basis of the *caveat* in *Case A18*. By Order of 23 October 1991, the Tribunal joined all jurisdictional issues, including the issue of the Claimant's nationality during the relevant period between the time the claim allegedly arose and 19 January 1981, to the consideration of the merits of the Case and set a schedule for future pleadings.

5. On 5 January 1993 the Claimant filed a request for the consolidation of his Case with Cases 839 and 840, which cases involve the claims of two of his brothers, Ouziel and Eliyahou Aryeh. The Claimant also asked for the suspension of the proceedings "pending the outcome of negotiations between Claimants and Respondent." The Respondent objected to this request on 8 January 1993 and the Claimant responded thereto on 15 January 1993. By Order of 26 January 1993 the Tribunal noted that "there is not an apparent close connection between the Claims in Cases Nos. 839, 840 and this Case" and rejected the request for consolidation or co-ordination of the Cases. The Tribunal also rejected the request for suspension of the proceedings.

6. On 31 March 1993, the Claimant filed his Hearing Memorial. On 28 April 1994, the Respondent in turn filed its Hearing Memorial. On 2 May 1994 the Claimant filed an unauthorized second volume to its Hearing Memorial containing a valuation report, which document was accepted into evidence by Order of 13 May 1994. In the same Order the Tribunal invited

the Respondent to reply to the Claimant's valuation report. On 31 October 1994 the Respondent filed its brief on valuation. On 20 January 1995, the Claimant filed his Rebuttal Memorial and on 24 October 1995 the Respondent filed its Rebuttal Memorial. In addition, on 26 October 1995 the Respondent filed the Brief of the Islamic Republic of Iran on the issue of the *caveat* in Case No. A18. On 29 February 1996 the Agent of the United States of America submitted for filing the Memorial of the United States on the application of the Treaty of Amity to Dual United States-Iranian Nationals, which was accepted into evidence by Tribunal Order of 29 February 1996.

7. On 19 April 1996 the Tribunal requested the Respondent to produce the complete document entitled "List of Decrees Issued by Courts of Islamic Republic of Iran," an extract from which had been filed by the Claimant on 16 March 1995. In response, the Respondent filed or telefaxed submissions on 10 and 15 May and 10 June 1996 asserting that it was unable to comply with the Tribunal's request.

8. A Hearing in this Case was held on 16 May 1996.

### III. JURISDICTIONAL ISSUES

#### *Dominant and Effective Nationality of the Claimant*

9. The Claimant was born in Iran to Iranian parents on 5 September 1927,<sup>3</sup> and is therefore an Iranian national by birth. In addition, he was naturalized a United States citizen on 21 January 1966. There is no evidence in the record that the Claimant has relinquished or otherwise lost either his Iranian nationality in accordance with Iranian law, or his United States nationality in accordance with United States law. Consequently, the Tribunal finds that since 21 January 1966, the Claimant has been a national of both Iran and the United States.

10. On 6 April 1984 the Full Tribunal issued a decision in *Case No. A18*, in which it determined that the Tribunal has jurisdiction over claims against Iran by dual Iran-United States nationals "when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States."<sup>4</sup> Accordingly, for the Tribunal to have jurisdiction over his claim, it must be shown that Mr. Aryeh's United States nationality was dominant and effective during the relevant period, *i.e.*, from the date his claim arose until 19 January 1981 (the Tribunal's jurisdictional cut-off date). For the limited purpose of establishing

<sup>3</sup> This is the date in his Iranian registration of birth document; his United States Certificate of Naturalization and passport put his birthdate at 20 August 1927.

<sup>4</sup> *Islamic Republic of Iran v. United States of America*, Decision No. DEC 32-A18-FT (6 April 1984), in 5 IRAN-U.S. C.T.R. 251, 265 [hereinafter "*Case No. A18*"].

the parameters of the relevant period, the Tribunal accepts the earliest date of expropriation alleged by the Claimant – April 1979 – as the date on which the claim arose.<sup>5</sup> Consequently, for the purposes of its inquiry into the dominant and effective nationality of the Claimant, the Tribunal concludes that the relevant period is that between April 1979 and 19 January 1981.

11. In order to reach a conclusion as to the Claimant's dominant and effective nationality during the relevant period, the Tribunal must determine whether the Claimant had stronger ties with Iran or with the United States during that period. To this end, the Tribunal must consider all relevant factors, such as the Claimant's habitual residence, center of interests, family ties, participation in public life and other evidence of attachment. *See Case No. A18*, 5 IRAN-U.S. C.T.R. at 265. While the Tribunal's jurisdiction is dependent on the Claimant's dominant and effective nationality during the period between April 1979 and 19 January 1981, "it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant." *Reza Said Malek v. The Government of the Islamic Republic of Iran*, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 IRAN-U.S. C.T.R. 48, 51.

12. The record reveals that the Claimant lived in Iran from 1927 until March 1947, when he moved to the United States with his family at the age of 19 years. He claims to have lived in the United States ever since and never even to have visited Iran since that time. The Claimant was naturalized as a United States citizen on 21 January 1966. He married an Iranian-born woman, Sara Arabzadeh, on 5 February 1952 and she was subsequently naturalized as a United States citizen on 24 January 1969. The couple had seven children, all born in the United States and educated in American schools. The Claimant was issued a United States passport on 3 February 1966; his wife was issued a United States passport on 20 April 1971. In addition, the Claimant and his wife own a house in New York purchased on 16 July 1959. The Claimant states that they still live in that house. He also states that he "conducted business at one location in the City of New York . . . for the past twenty-five years." At the Hearing, the Claimant added that from 1947 until 1970, he conducted a business in Oriental rugs with his father, after which he went into business on his own.

13. The Claimant concludes that he is a dominant and effective United States national, as he has grown up in the United States, all his emotional,

<sup>5</sup> Later in this Award, the Tribunal concludes that the expropriation took place on 14 May 1979. *See infra* para. 49. In either case, the nationality analysis is identical.

social and economic ties are to the United States, and he has no ties to Iran beyond his claim for some property there.

14. While the Respondent states explicitly that it does not concede the dominance of the Claimant's United States nationality, it has produced little evidence to counter the Claimant's contentions on the issue, saying:

Issues of nationality have a direct relationship with one's private life. Gaining knowledge of Claimant's private life is not always easy for the Respondent. . . . If the Respondent fails to present evidence in rebuttal of Claimant's dominant and effective U.S. nationality, it does not [necessarily] mean that Claimant's claim is established, and it must not be considered that the Respondent has conceded to Claimant's claim.

15. The Tribunal notes that the Claimant left Iran at a relatively young age and resided in the United States for at least 30 years before his claim allegedly arose, during which time he conducted business in the United States. Moreover, for some thirteen of those years he resided in the United States as a United States citizen. In addition, the Claimant is married to a naturalized United States national, his children were born and raised in the United States and he owns a home in the United States.

16. Accordingly, the Tribunal finds that although the fact that the Claimant acquired property in Iran demonstrates that he did not sever all his links with Iran, this factor does not outweigh his much closer and very lengthy ties to the United States. His economic and personal activities have been centered in the United States throughout his adult life. Consequently, the Tribunal finds that the dominant and effective nationality of the Claimant from the date his claim is alleged to have arisen (April 1979) until 19 January 1981 was that of the United States, such that the Tribunal has jurisdiction over his claim in accordance with Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration (CSD).

#### IV. THE MERITS

##### *A. Ownership*

17. The Claimant contends that he was the registered owner of 17 pieces of real property in Iran: 16 plots in Vardavard, Karaj, and one property in Tehran. In support of this contention he has produced title deeds to all the properties at issue, which show that the properties were registered in his name: 14 of the Vardavard properties were purchased in 1969, one plot in 1970 and one plot in 1977. The sole property in Tehran was purchased in June 1966.

18. The Respondent does not deny that the Claimant was registered as

the owner of the properties at issue. In fact, it states: "The truth of the matter is that Claimant's property continues to be registered in his own name in the Property Registers. . . . He can exercise his property rights with respect to the property." At the same time, however, the Respondent argues that under the provisions of Article 989 of the Iranian Civil Code, the Claimant did not have the capacity to own property in Iran from the date of his acquisition of United States nationality (*i.e.*, 21 January 1966).

19. The Tribunal notes that the title deeds of the properties at issue confirm that the Claimant was the registered owner of those properties. It notes further that this fact is not contested by the Respondent. Indeed, the Respondent maintains that the Claimant continues to own the properties despite alleging that the Claimant's title is in some way defective. The Tribunal is disinclined to question the official ownership records and is therefore satisfied that the record confirms that the Claimant was the registered owner of the properties at issue in this Case.

#### *B. Expropriation*

20. The Tribunal therefore turns to the question whether the official actions invoked by the Claimant constituted an expropriation of his property within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration.

##### *1. The Claimant's Contentions*

21. In his Statement of Claim, the Claimant contends:

Sometime in April or May 1979, Teheran newspapers published a Decree of the Islamic Republic of Iran. Although [a] copy of the Decree is not now available to the claimant, the substance of the Decree follows.

The Islamic Republic of Iran decreed that members of certain families, including the claimant and his family, could no longer own real estate or personal property of any kind from that time forward and could not lawfully transfer or otherwise sell real estate or personal property theretofore owned by them. The claimant was, therefore, deprived of all his right, title and interest in and to the real property described herein below.

The real property . . . was, to the best of the claimant's knowledge, seized by local governmental officials who have transferred the real property to third parties.

22. In his memorial, the Claimant submits an article from the Iranian newspaper *Javanan-e-Emruz* dated 18 June 1979 containing a list of names of "persons whose properties have been confiscated or seized." Although the Claimant's name does not appear in the article, he points out that the list

contains the names of several members of the Aryeh family and contends that it includes an entry that the Claimant translates as "Aryeh brothers." The Claimant alleges that this characterization refers to him and his brothers.

23. The Claimant also relies on an extract from a document entitled "List of Decrees Issued by Courts of Islamic Revolution of Iran," which extract originally was submitted by the Respondent in Cases Nos. 842-844 before the Tribunal, and subsequently filed by the Claimant in this Case [hereinafter the "List of Decrees"]. The extract from this List of Decrees appears to be taken from an alphabetical list prepared by the Center for Statistics and Information of the Bonyad Mostazafan (the Foundation for the Oppressed) containing names of people whose property had been taken. The first entry in the list of members of the Aryeh family whose assets had been expropriated simply reads "Aryeh." The Claimant contends that this entry (which is dated 14 May 1979) is the blanket seizure order for the entire Aryeh family. He argues that the List of Decrees proves that the assets of the entire Aryeh family were expropriated, including those of the Claimant and other family members not individually named.

24. The Claimant argues further that he was known to be involved in a common land holding with other members of the Aryeh family, some of whom were individually named on various expropriation lists. He argues that this fact, too, supports his contention that his property was taken.

## 2. The Respondent's Contentions

25. The Respondent denies that it expropriated any property belonging to the Claimant. It contends that the Claimant's property has not been interfered with in any way and that the property continues to be registered in his name. More specifically, it argues in response to the article in *Javanan-e-Emruz* that: the source of the news is unknown, in that the Claimant variously identified the newspaper article as being from *Ettela'at* and *Javanan-e-Emruz*; the words "Aryeh Bardaran" translated by the Claimant as "Aryeh brothers" "by no means the same as Aryeh Brothers"; and even if the words did mean "Aryeh brothers" that phrase would have applied to well-known members of the family, rather than the Claimant and his brothers who by their own admission left Iran long before the Iranian revolution. The Respondent adds that the Claimant does not belong to any of the groups of people identified in the article as those who had their property expropriated.

26. In response to these contentions, the Claimant submits a later article from *Javanan-e-Emruz*, dated 25 June 1979 (i.e., one week after the original article), in which the newspaper states that the list published the previous week was the text of an official circular received by the Bureau for Registration of Documents and that the original text was in the possession of the newspaper.

27. In further response, the Claimant contends that there is clear evidence that the Revolutionary Council intended to deprive the most prominent Jewish families in Iran (including the Aryehs) of all their possessions in Iran. He argues that the Revolutionary Decree was all-embracing: many members of the Aryeh family were mentioned by name, and the catch-all phrase "Aryeh brothers" was used to ensure that the rest of the family was covered, i.e. the brothers of the Claimant's uncle, Morad Aryeh, and their sons. While the names of all the "brothers" may not have been known to the Respondent, the Claimant alleges that he and his brothers were known to be involved in a common land holding with two family members whose names do appear on the list, namely his sister-in-law and cousin, Mahindokht Aryeh, and her sister, Homa Aryeh Hakimzadeh.

28. In support of these contentions, the Claimant submits affidavits by Raphael Aryeh and Mahindokht Aryeh. Raphael Aryeh (another brother of the Claimant) contends that the main reason for the Revolutionary government's targeting the Aryeh family was the family's history of close ties with the Shah. Mahindokht Aryeh (a daughter of Morad Aryeh and married to her first cousin, Raphael) attests to the family relationships and common land holdings owned by her, her sister, and Yahya Aryeh and his sons, Moussa, Ouziel and Eliyahou.

29. The Respondent also challenges the Claimant's reliance on the List of Decrees, contending that if the assets of the entire Aryeh family had been expropriated, as alleged by the Claimant, there would have been no need for separate and specific orders to be issued.

30. More specifically, the Respondent denies that the expropriation order invoked by the Claimant is a blanket order covering the entire Aryeh family: it presents evidence purporting to show that the Revolutionary Court decree number (number 291) appearing beside the entry "Aryeh" and invoked by the Claimant has nothing to do with the Aryeh family but relates to another matter entirely: a criminal charge against a Mr. Farzan Kashani in connection with the illegal export of foreign exchange from Iran. The Respondent argues:

Thus Claimant's contention that Order No. 291 mentioned under item 50 of the list in question [the entry for "Aryeh"] relates to him has no basis in fact. The truth of the matter is that on 14 May 1979 the item numbers of the Orders issued by the revolutionary courts had not reached No. 291. Mention of No. 291 in the revolutionary court orders registration book on the date of 14 May 1979 is a mere slip of the pen. The person who prepared this list, who was a petty administrative employee, did not exercise sufficient care and diligence in preparing it.

At the Hearing, the Respondent reiterated that the entry was a "mistake" due to the "carelessness" of a clerk.

### 3. *The Tribunal's Findings on Expropriation*

31. The Tribunal notes as a preliminary matter that the Claimant has contended that in pre-Revolutionary Iran the Aryeh family was a prominent and wealthy Jewish family that was known to have close links to the former Shah of Iran. Indeed, the Claimant's uncle, Morad Aryeh, was the designated representative of the Jewish community in the Iranian Parliament or Majlis. This evidence has not been disputed by the Respondent.<sup>6</sup> It is against this background that the Claimant contends that his properties were expropriated by the revolutionary authorities.

32. The first piece of evidence of note submitted by the Claimant in support of his contentions is the 18 June 1979 article published in the Tehran weekly newspaper *Javanan-e-Emruz*, which lists the names of some 200 people whose assets had been expropriated by the Revolutionary government. Included in that list of names are at least 16 members of the Aryeh family, most of whom are cousins or other close relatives of the Claimant. In addition, there is an entry that the Claimant translates as "Aryeh brothers." The Respondent argues that this entry cannot mean "Aryeh brothers" as the Persian phrase is spelled "Aryeh Bardaran" instead of "Baradaran Aryeh." Allegedly both spelling and word order are incorrect. The Claimant acknowledges the discrepancy but contends that this is merely the result of a typographical error by the newspaper.

33. The Tribunal notes that during the pleadings the Respondent failed to provide an alternative explanation for the meaning of the disputed phrase, should it not mean "Aryeh brothers." However, at the Hearings in this Case and Cases Nos. 839-840 (involving the claims of two of the Claimant's brothers), the Respondent contended for the first time that the entry was a hyphenated family name, loosely translated as "Lion-Lifters." The Tribunal notes that this explanation is belated and that the Respondent was unable to provide any further details of the "Lion-Lifter" family or its entry on the list. For instance, the Respondent has not provided a copy of the expropriation decree for the "Lion-Lifter" family or any other documentation recording its existence. Indeed, the IRI has not provided any documentation of the existence of a single "Lion-Lifter" family in all of Iran, let alone one so prominent that its assets might have been expropriated. Given the close similarity of the disputed phrase with the Persian phrase for "Aryeh brothers" and the fact that it appears on the list so close to other members of the Aryeh family, the Tribunal considers it to be far more likely that the newspaper made a minor typographical error.

<sup>6</sup> The Respondent, in fact, acknowledges that the Claimant belonged to the "well-known Aryeh family."

34. The Respondent further points out, however, that even if the disputed phrase does mean "Aryeh brothers," it would not necessarily refer to the Claimant and his brothers but rather to other, more prominent, members of the Aryeh family. While the evidence on this point is not conclusive, the Tribunal finds it credible that the phrase would have been intended to apply to those Aryeh brothers who were known to be living outside Iran but whose names were not necessarily known to the authorities at that time.

35. Moreover, the Government of Iran has used similar designations in other expropriation lists available to the Tribunal. For instance, in the List of 51 names of people whose property had been taken that is attached to the Law on Protection and Development of Iranian Industries, three entries are composed of a family name followed by the word "brothers" and another entry is a named individual followed by the word "and brother."<sup>7</sup> The entries in question read: "The Amid-Hozour brothers"; "The Fooladi brothers"; "The Lavi brothers"; and "Enayat Behbahani and brother." In light of this circumstance, the Tribunal concludes that this formulation was not infrequently adopted by the Revolutionary authorities.

36. The Tribunal notes, however, that some confusion was created in the record by the fact that the Claimant also submitted another newspaper article early in his pleadings, which he identified as an extract from the Tehran daily newspaper *Ettela'at*. The Claimant alleged that the phrase "Aryeh brothers" also appeared in this report. This contention was disputed by the Respondent, and the Tribunal's Language Services Division confirmed that the phrase did not appear. In his rebuttal brief, the Claimant conceded that he no longer relied on the article "since Claimant's attorney has not been able to verify the existence of the [relevant phrase] in the original Farsi." The Respondent contends that this shows bad faith on the part of the Claimant. At the Hearing, however, the Claimant's counsel explained that the article was removed from the pleadings when the Claimant engaged new counsel and that the original filing was due merely to confusion.

37. The Tribunal notes that the disputed filing consists of one page from *Ettela'at* and another page from *Javanan-e-Emruz*, and that the original Persian version of the *Ettela'at* article was also submitted by the Claimant. The Tribunal considers that these facts show that the submission was merely confused and that no attempt was made to misinform the Tribunal. Moreover, there is no evidence that the extract from *Ettela'at* was intended to be a comprehensive statement of all expropriations; thus, the fact that the Clai-

<sup>7</sup> The Law on Protection and Development of Iranian Industries was approved on 1 July 1979 by the Islamic Revolutionary Council and published in Official Gazette No. 10031-9/5/1358 (31 July 1979).

mant's name does not appear on the *Ettela'at* list establishes nothing more than that the Claimant was not specified on this particular list. The Tribunal therefore does not consider this issue to be of particular significance.

38. In light of the aforementioned considerations, the Tribunal concludes that, while not dispositive, the newspaper article from *Javanan-e-Emruz* is a factor that supports the Claimant's contention that his property was expropriated. See *Jahangir Mohtadi, et al. v. The Government of the Islamic Republic of Iran*, Award No. 573-271-3, para. 65 (2 December 1996), reprinted in 32 IRAN-U.S. C.T.R. 124, 145 ("While newspaper reports alone may not be sufficient to establish the Claimant's contentions, the Tribunal regards these reports as contemporaneous evidence that corroborates several of the Claimant's contentions. . . .") ("*Mohtadi*"); *Rouhollah Karubian v. The Government of the Islamic Republic of Iran*, Award No. 569-419-2, paras. 133-37 (6 March 1996), reprinted in 32 IRAN-U.S. C.T.R. 3, 33 ("*Karubian*").

39. The second piece of evidence upon which the Claimant relies is the consolidated list of expropriation decrees (the List of Decrees) compiled by the Center for Statistics and Information of the Foundation for the Oppressed,<sup>8</sup> in which an alphabetical list of members of the Aryeh family whose assets had been expropriated starts with the entry "Aryeh," unaccompanied by any first name. The Claimant contends that this entry is the blanket seizure order for the entire Aryeh family. He argues that it shows that the assets of the entire Aryeh family were expropriated, including those of the Claimant and others not individually named. The Respondent contends that if the assets of the entire Aryeh family had been expropriated, as claimed by the Claimant, there would have been no need for separate and specific orders to be issued.

40. The Tribunal notes first that the entry "Aryeh" appears close to the beginning of an alphabetically arranged list and bears its own sequential number on the List (number 50). There is no entry for a first name in the column reserved for that purpose next to the family name, unlike every other entry on the extract. In addition, it bears the lowest entry number (number 5) and decree number (number 291) and the earliest date (14 May 1979) of all the Aryeh entries. Furthermore, there is a decree code next to the name, in the column for that purpose – the decree code being a number "1" for "seizure," according to the key at the top of the List of Decrees. Moreover, while, according to the key, the decree code "3" symbolizes "annulment of decree," this number does not appear next to the entry "Aryeh." This decree appears, therefore, not to have been revoked.

<sup>8</sup>The Bonyad Mostazafan, or Foundation for the Oppressed, is the body that was most active in implementing the expropriation decrees of the Revolutionary Courts and redistributing expropriated assets.

41. The Respondent, however, has provided evidence purporting to show that the number of the entry refers to another matter entirely: *see para. 31 supra*. This evidence consists of a judgment from what appears to be the Criminal Courts of Tehran recording the conviction of a Mr. Ebrahim Farzad Kashani for violation of Iranian foreign exchange control regulations. The Respondent contends that this evidence shows that there was no separate expropriation decree for the Aryeh family and that the appearance of the decree number 291 next to the entry "Aryeh" on the List of Decrees was merely a mistake by a minor clerk.

42. In this regard, the Tribunal notes that the Respondent has not explained the relationship between the "Courts of [the] Islamic Revolution of Iran" and the Criminal Courts of Iran or Tehran. Nor has the Respondent explained whether several different systems of numbering might have existed in different courts. Furthermore, the Respondent's contention that on 14 May 1979 (the date adjoining the entry "Aryeh") "the item numbers of the Orders issued by the revolutionary courts had not reached No. 291" is not borne out by the List of Decrees. Instead, it is apparent that the numbering of other decrees issued within the same period is either comparable or in fact much higher than No. 291. For instance, the Order dated 22 May 1979 for individual members of the Aryeh family bears No. 1544; the Order dated 7 October 1979 for a Mr. Aboufath Ardalan bears No. 1374. In addition, the list of judgments of the Criminal Courts of Tehran submitted by the Respondent bears dates in March 1982 and Judgment number 291 of that list is dated 18 March 1982 – nearly three years after the expropriation decrees listed in the List of Decrees. This fact suggests strongly that the list of judgments from the Criminal Courts derives from a different source than the List of Decrees and that the two documents are not related.

43. In addition, the Tribunal is not convinced that the existence of specific expropriation orders for individual members of the Aryeh family necessarily implies that no blanket order for the Aryeh family would have been issued. On the contrary, there appears to have been a significant degree of duplication between different governmental authorities (or by the same authorities at different times) during the Revolution. For instance, a 12 April 1979 expropriation decree issued by the Public Prosecutor General's Office containing 209 names (the "List of 209")<sup>9</sup> includes the names of some 16 members of the Aryeh family. According to the consolidated List of Decrees, however, the assets of some 13 of those Aryehs named on the 12 April 1979 List of 209 were again expropriated by an order dated 22 May 1979.

<sup>9</sup> This list was submitted by the Government of Iran in *Reza Nemazee v. The Islamic Republic of Iran*, Award No. 575-4-3 (10 December 1996), reprinted in 32 IRAN-U.S. C.T.R. 184.

Furthermore, the name Morad Aryeh (which had appeared on both previous lists) appears on the 31 July 1979 "List of 51" attached to the Law on Protection and Development of Iranian Industries. An Amendment to this Law dated 12 August 1979 extends the expropriatory scope of the List of 51 to the spouses and children of those named on the List of 51. Again, the assets of most of the children of Morad Aryeh had already been expropriated by the 12 April and the 22 May 1979 decrees. In this context, the existence of a blanket expropriation order for the Aryeh family dated 14 May 1979 would not appear to have excluded the possibility of repetition.

44. The Tribunal concludes that the Respondent has not provided evidence capable of rebutting the contention that the entry "Aryeh" is exactly what it appears to be – that is, an expropriation order referring to the entire Aryeh family rather than to an individual. While this might not have been the usual practice of the revolutionary authorities, in light of the identity of the family in question and in light of the noted inability of the Respondent to rebut convincingly the Claimant's position, this is by far the most plausible interpretation. Even if there were other branches of the Aryeh family in Iran, or other completely unrelated Aryehs, given the prominence of the Claimant's branch of the family, it is highly likely that this branch was the intended target of any expropriation decree. This is borne out by the fact that all the individuals named on the aforementioned expropriation list are closely related to the Claimant – they are the Claimant's uncle and a number of first or second cousins. Consequently, the Tribunal concludes that the entry "Aryeh" on the List of Decrees, too, suggests that the assets of the entire Aryeh family were taken. Finally, the Tribunal notes that although the Claimant's first piece of evidence, the article from *Javanan-e-Emruz*, refers to "Aryeh brothers" and his second piece of evidence, the List of Decrees, refers simply to "Aryeh," this difference in no way undermines the Tribunal's conclusion that both pieces of evidence support a finding that the Respondent expropriated the Claimant's property.

45. In further support of his contentions, the Claimant argues that he was known to be involved in a common land holding with other members of the Aryeh family, some of whom were individually named on expropriation lists. In that regard, the Claimant has submitted an affidavit by Mahindokht Aryeh (a daughter of Morad Aryeh and married to her first cousin, Raphael, a brother of the Claimant). Ms. Aryeh herself appears on the list in *Javanan-e-Emruz* and she attests to the family relationships and land holdings held in common by her, her sister (Homa Aryeh Hakimzadeh, whose name also appears on the list in *Javanan-e-Emruz*), her sister-in-law (Esther Hezghia, who is also named) and Yahya Aryeh and three of his sons, Moussa, Ouziel and Ayahou.

46. The Tribunal notes first that the Respondent has not contested that the disputed property formed part of a common land holding by various members of the Aryeh family. In fact, the Respondent's expert states, based on an inspection of the property records at the Registration Department for his September 1994 valuation report, that the property was "joint" rather than partitioned. This is confirmed by the title deeds in the record, which show that all 17 pieces of land involved in Moussa Aryeh's claim are registered as "undivided" shares of larger pieces of land, implying that the property was held in common. In addition, the title deeds reveal that three of the Vardavard properties were transferred to the Claimant from Mahindokht Aryeh. Similarly, five of the pieces of property claimed by the Claimant's brothers, Ouziel and Eliyahou, as acquired under the Will of their father, Yahya Aryeh, were purchased from Mahindokht Aryeh.<sup>10</sup> In sum, this evidence is consistent with the Claimant's contention that he and his brothers were involved in a common land holding with other members of the Aryeh family.

47. Logically, then, there are two possibilities as to the fate of these pieces of "undivided" land: either they could have been partitioned or they could have remained undivided. There is no evidence that any of the properties was ever divided; nor does the Respondent argue that such a partition took place. Indeed, the Respondent's valuation expert, who maintains that he inspected the actual site of the land, reduced his assessment of the value of the land based on his assertion that "[p]artition of Claimant's share out of those lands involves carrying out of administrative formalities, spending of a lot of time, . . . as well as spending of substantial amounts of money." Such a reduction obviously would have been unnecessary if a partition – which apparently would have involved an onerous procedure – had occurred. The Tribunal considers it extremely unlikely that any partition of the Vardavard lands took place and therefore concludes that the land remained undivided.

48. As noted above, the names of Mahindokht Aryeh, Homa Aryeh Hakimzadeh and Esther Hezghia Aryeh, the other owners of the property, appear on several expropriation lists. The Respondent does not deny that it expropriated the real property belonging to them. Given the high probability that the Respondent expropriated the land belonging to Mahindokht, Homa and Esther, it is thus likely that it also expropriated the property at issue in this Case and thereby the Claimant's interest in the property.<sup>11</sup> In conclusion, the

<sup>10</sup> See Cases Nos. 839-840.

<sup>11</sup> To be sure, there is a remote possibility that the Claimant presently owns land jointly with the Government of Iran. This would only be possible, however, if – in the midst of the revolutionary turmoil – the IRI effected a partial transfer of the land (involving the interests of Mahindokht and Homa Aryeh and Esther Hezghia) and left the Claimant's interests untouched. The Respondent has not made this contention and, in any event, has not indicated whether joint

fact that the Claimant's properties formed part of a family landholding strongly supports the Claimant's contention that his property was taken by the Respondent.

49. The Tribunal considers that the evidence presented by the Claimant, taken together, strongly suggests that the entire Aryeh family had been targeted by the Revolutionary government. In addition, the evidence demonstrates that the Claimant's property formed part of a common landholding with other members of the Aryeh family who were individually named in expropriation decrees. Accordingly, in light of the evidence in its entirety, the Tribunal concludes that the Claimant's real properties were expropriated by the Respondent on 14 May 1979.

50. In light of the Tribunal's conclusion on expropriation, it is unnecessary to examine the Claimant's arguments that his property rights were infringed by actions attributable to the Respondent constituting other measures affecting property rights. The Tribunal therefore turns to the Respondent's contention that this claim should be barred by the application of the *caveat* in *Case No. A18*.

### C. The A18 Caveat

51. In *Case No. A18*, the Full Tribunal decided that the Tribunal has jurisdiction over claims by dual Iran-United States nationals with dominant and effective United States nationality against the Government of Iran (and vice versa), adding an "important *caveat*" to its decision: "[W]here 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."<sup>12</sup> This issue has been discussed extensively by the Parties in the pleadings and at the Hearing.

#### 1. The Respondent's Contentions

52. One of the Respondent's central arguments in this Case is that because the Claimant claims before the Tribunal as a United States national and because his claim involves benefits limited by Iranian law to sole Iranian nationals, his claim is barred by the *A18 caveat*. The Respondent contends that mere ownership by a dual national of real property in Iran in itself bars the

ownership with the IRI would even be possible. Moreover, in considering the possibility of joint ownership with the IRI, it is worth reiterating that the Claimant was a member of a prominent wealthy Jewish family with close links to the former Shah.

The Tribunal thus finds the notion that the Islamic Republic of Iran currently owns land jointly with the first cousin of those whose property it indisputably expropriated to be too improbable to warrant serious consideration.

*Case No. A18*, Decision No. DEC 32-A18-FT, 5 IRAN-U.S. C.T.R. at 265-66.

claim from compensation by the Tribunal and thus that the *caveat* filters out, at the threshold of the merits, claims "incapable of proceeding to the stage of consideration of the substance." This assertedly occurs through the application of the international law principles of abuse of rights, good faith, clean hands, misrepresentation, concealment of material facts, estoppel and state responsibility.

53. The Respondent contends that Iranian law prohibits foreigners from owning real estate in Iran, except in certain limited situations that are not relevant to this Case. It argues further that the property claimed was acquired and held exclusively on the basis of the Claimant's Iranian nationality, and under the international law rule of estoppel he cannot now bring a claim before the Tribunal on the basis of his American nationality. In addition, the Respondent argues that because the Claimant allegedly concealed his United States citizenship, even if his property had been expropriated, no state responsibility would have attached to the IRI, which thought it was dealing with an exclusive national of Iran.

## 2. *The Claimant's Contentions*

54. In response, the Claimant contends that neither dual nationality nor the ownership of real property in Iran by dual nationals was or is illegal under Iranian law. He argues that Article 989 of the Iranian Civil Code contains nothing that prohibits the taking of a foreign nationality by an Iranian national; nor does it make illegal the purchase and continued ownership of real estate in Iran by an Iranian national who has taken another nationality without renouncing his Iranian nationality.

55. The Claimant argues rather that, according to Article 989, acquisition of dual nationality by an Iranian citizen results merely in the foreign nationality being disregarded within Iran. The Claimant argues further that for those dual nationals who own real estate in Iran, upon the acquisition of a second nationality, the only legal consequence is that their real estate becomes subject to sale by the Public Prosecutor. In that event, however, Article 989 expressly provides that the proceeds of the sale are to be paid to the former owner. Thus, Article 989 assertedly confirms a dual national's right to receive compensation when the government exercises its statutory authority to sell the real estate.

56. The Claimant also argues that the international law principles cited by the Respondent – abuse of rights, good faith, clean hands and estoppel – are not relevant to the facts and circumstances of this case and have moreover already been rejected by the Full Tribunal in *Case No. A18*.

57. The Claimant argues further that it was the practice of the Iranian government to accept the dual national status of its citizens. Indeed, the

Claimant contends that "Gabriel Aryeh informed Iranian registrars and government banking officials at the time that he was acting for his brother who was an American." In support of this contention, he presents an affidavit by Gabriel Aryeh (the Claimant's brother), who alleges that prior to the 1979 Revolution, high-ranking officials were generally aware of and encouraged investment in Iran by dual nationals. The Claimant denies that he concealed his United States nationality from any Iranian government authority.

58. In response to this latter point, the Respondent alleges that the Claimant must have concealed his United States nationality in order to acquire the property. It argues further that the Claimant has provided no evidence that government officials encouraged dual nationals to invest in real estate, and it asserts that, in any event, "statements of officials who had no competence on the subject can never lend legality to Claimant's unlawful act."

59. At the Hearing, the Claimant invoked both legal and equitable considerations in contesting the Respondent's interpretation of the *caveat*. He pointed out that in the *Protiva* Award<sup>13</sup> the Tribunal had held that in evaluating whether particular rights were reserved by Iranian law to sole Iranian nationals, the controlling statute was Article 961 of the Iranian Civil Code. This Article provides that foreigners are entitled to the same civil rights in Iran as Iranians, except where the right is explicitly reserved by law to Iranian nationals or explicitly denied to foreign nationals.<sup>14</sup> The Claimant concluded that as there was no explicit provision reserving to sole Iranian nationals the right to own real property in Iran, the Claimant's ownership was not illegal.

60. Also at the Hearing, the Claimant referred to the Tribunal's decision in the *Karubian* case and submitted that "[i]f you believe that the precedent in *Karubian* is persuasive or binding, then you should dismiss this case." He argued, however, that the *Karubian* Award contained "errors" and was wrongly decided. These "errors" would include: that it did not use the standard set out in Article 961 of the Iranian Civil Code and that Iranian law did not restrict the right to own real property to sole Iranian nationals; and

<sup>13</sup> *Edgar Protiva, et al. v. The Government of the Islamic Republic of Iran*, Award No. 566-316-2 (14 July 1995), reprinted in 31 IRAN-U.S. C.T.R. 89.

<sup>14</sup> Article 961 of the Iranian Civil Code reads:

*Foreign nationals are also entitled to the enjoyment of civil rights except in the following cases:*

- 1) *In respect of the rights which the law has expressly recognized for the Iranian nationals only, or has expressly denied . . . to foreign nationals.*
- 2) *In respect of the rights concerning personal status where these are not accepted by the law of the government of the foreign national.*
- 3) *In respect of the special rights that have been created solely from the point of view of the Iranian society (emphasis added).*

that it relied incorrectly on a putative 1906 Iranian Royal Decree that was not a valid law in 1979. The Claimant argued that any state choosing to restore ownership of property should do so by means of "unambiguously worded publicly available laws that ordinary people can rely on." He concluded that no such laws exist or they would have been produced by the Respondent.

### 3. *The Tribunal's Findings on the Caveat in Case No. A18*

61. An appropriate starting point for a discussion of the caveat in *Case No. A18* is the Tribunal's decision in the *Saghi* case, which held 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, . . . the equitable principle expressed by this rule can, in principle, 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.<sup>15</sup>

After having renounced his Iranian nationality at the age of 18, one of the claimants in that case re-applied for Iranian nationality solely in order to own shares that he believed could only be owned by Iranian nationals. Applying the *caveat* to the facts of that case, the Tribunal held that to permit him to recover for the expropriation of the shares by using his American nationality would be to permit an abuse of right.<sup>16</sup> The Tribunal therefore dismissed those parts of his claim "where the equitable considerations giving rise to the application of the *caveat* are present."<sup>17</sup>

62. The *Saghi* decision identifies two separate situations where the *caveat* may come into play. The first situation is where the Claimant has enjoyed a benefit reserved to sole Iranian nationals. The second situation is where there has been some other abuse of nationality that might invoke the *caveat*. It is in this second category that *Saghi* applied the *caveat*. Unlike Allan Saghi, who deliberately manipulated his citizenship in an attempt to obtain certain advantages that he believed were reserved for Iranian nationals, the Claimant in the present Case has in no way abused his nationality. "Use" is not the same as "abuse." The Claimant's mere use of an Iranian identity card, even if he had not disclosed his second nationality, simply does not rise to the level of an "abuse of nationality" within the meaning of *Saghi*. The Respondent's argument to this effect is thus unavailing. In addition, the Tribunal finds no

<sup>15</sup> *James M. Saghi et al. v. The Islamic Republic of Iran*, Award No. 544-298-2, para. 54 (22 January 1993), reprinted in 29 IRAN-U.S. C.T.R. 20, 37 ("*Saghi*").

<sup>16</sup> *Saghi*, Award No. 544-298-2, paras. 45-64, reprinted in 29 IRAN-U.S. C.T.R. at 33.

<sup>17</sup> *Saghi*, Award No. 544-298-2, para. 60, reprinted in 29 IRAN-U.S. C.T.R. at 40.

evidence that would support the Respondent's contentions that the claim should be barred on the basis of the theories of clean hands, estoppel, misrepresentation, good faith or state responsibility (*see paras. 52-53, supra*). The pertinent question in this Case is therefore whether the Claimant enjoyed a benefit reserved to sole Iranian nationals. Central to the Tribunal's inquiry is the question whether Iranian law did, in fact, restrict ownership of immovable property to sole Iranian nationals.

63. Of direct relevance in this regard is the *Karubian Award*,<sup>18</sup> as the facts regarding the *caveat* in that case were substantially similar to those in the present Case. *Karubian* involved a dual Iran-United States national living in the United States who purchased property after he had acquired American nationality – that is, after he had become a dual national. Chamber Two of the Tribunal unanimously held that under Iranian law the right to purchase real estate, apart from certain limited exceptions, is a benefit reserved for sole Iranian nationals. It noted that the claimant had purchased all the properties at issue in his capacity as an Iranian national after acquiring United States nationality. The Tribunal therefore held that if it were to allow him to recover against the Respondent in those circumstances, it would be permitting an abuse of right. Consequently, it decided that the *A18 caveat* barred the claimant's recovery.

64. The Tribunal now turns to the present Case. As a preliminary point, the Tribunal notes that the evidence provided by the Claimant in the present Case is not sufficient to establish that Iranian government officials encouraged him, as a dual national, to purchase immovable property in Iran. The evidence provided consists merely of the Claimant's own allegations, supported only by the affidavit of his brother, Gabriel Aryeh. Moreover, there is no indication whether the persons named in Gabriel Aryeh's affidavit were acting in their official capacities or implementing government policy. The Tribunal therefore cannot accept the Claimant's contention that the Respondent should be estopped from arguing that he illegally purchased real property in Iran as a dual national. *See also Karubian*, Award No. 569-419-2, para. 153, *reprinted in* 32 IRAN-U.S. C.T.R. at 38.

65. The Tribunal now turns to the question whether the right to purchase and own immovable property in Iran is a benefit limited by Iranian law to sole Iranian nationals. The starting point for this inquiry is Article 988 and Article 89 of the Iranian Civil Code.

66. Article 988 of the Iranian Civil Code sets out the conditions under which Iranian nationals may renounce their nationality (in order, presumably, to acquire a new one). Most relevant for present purposes is subparagraph 3,

<sup>18</sup> Award No. 569-419-2, *reprinted in* 32 IRAN-U.S. C.T.R. at 3.

which provides that a person seeking to renounce his or her Iranian nationality must undertake

to transfer to Iranian nationals, by one means or another and within one year from the date of their renunciation of [Iranian] nationality, their rights to immovable properties in Iran which they possess or which they may acquire through inheritance, even if Iranian law permits foreign nationals to own them.<sup>19</sup>

67. Iranian nationals who “acquire[ ] foreign nationality . . . without the observance of the provisions of law” fall within the scope of Article 989 of the Iranian Civil Code, which provides that the foreign nationality of such an individual “will be considered null and void and he will be regarded as an Iranian subject.” Significantly, Article 989 further provides that “[n]evertheless, all his landed properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale.”

68. The Respondent bases its *caveat* argument on these two Articles of the Iranian Civil Code, contending that they render the acquisition of ownership of real property by a dual national or the continued ownership of real property after the acquisition of a second nationality illegal under Iranian law. In addition, the Respondent points to several other pieces of Iranian legislation that allegedly show that dual nationality was inimical to Iranian law and that ownership of immovable property was restricted to sole Iranian nationals, with very limited exceptions for foreign nationals. Indeed, the Respondent suggests that Iranian nationals who acquired a second nationality had even fewer rights to own real estate in Iran than foreign nationals who do not have Iranian nationality.

69. The earliest piece of legislation relied on by the Respondent is the “Law of Nationality of Iran,” which appears to be a decree issued by Naseruddin Shah Qajar in approximately 1896 and published in a booklet of laws dealing with nationality and passports in approximately 1908 (the “pre-1929 Decree”).<sup>20</sup> In addition to setting out the criteria under which an

<sup>19</sup> English translations of Iranian legislation have been provided by the Tribunal's Language Services Division or the 1995 M.A.R. Taleghany translation of the Iranian Civil Code.

<sup>20</sup> The Respondent does not state clearly when this Decree was issued. Its date was erroneously said to be 1906 in *Karubian*, Award No. 569-419-2, at para. 157, reprinted in 32 IRAN-U.S. C.T.R. at 38. Dr. Mohammad Mossadegh, a former Iranian Prime Minister, in his article “Nationality in Iran” (published in 1926-27) puts 1896 (1313 Islamic lunar year) as the date of the Decree. Two other sources date the Decree from 1894. See A.H. Oakes and W. Maycock, eds., *British and Foreign State Papers. 1893-1894*, 180-82 (1899); and R.W. Flournoy, Jr. and M.O. Hudson, eds., *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties*, 473 (1929).

Iranian national may acquire a foreign nationality, the Decree contains, *inter alia*, the following provisions:

Section Nine: Change of Iranian nationality, in spite of compliance with the stipulated requirements, is still subject to the permission and decision of the King. If an Iranian national living abroad acquires foreign nationality without obtaining such permission, he or she shall be barred entry into Iran. *If he or she owns real estate or other property in Iran, he or she shall be forced to give up such property.*

Section Twelve: Iranian women who lose their Iranian nationality on account of their marriage with foreign nationals shall, *like other foreign nationals, be prohibited from owning villages and real estate in Iran*, and shall be deprived of the privileges of Iranian nationality, except those privileges allowed under treaties.

Section Fourteen: Those who came to Iran from foreign countries and during their residence in Iran concealed their nationality and were treated in all matters as Iranian nationals, or *purchased real estate in Iran, which privilege is exclusively available to nationals of Iran*, shall be treated as nationals of the State of Iran, and their claim to foreign nationality will not be accepted (emphasis added).

70. The status of this Decree at the time the claim in this Case arose is unclear, as subsequent laws and regulations also addressed the issue of foreign ownership of real property in Iran. Also relevant, though not conclusive, is that the Decree was issued before the transition from monarchy to parliamentary democracy in Iran in 1906, whereas subsequent legislative provisions were approved by the Iranian parliament, as required by Iran's 1906 Constitution. These facts would suggest that the pre-1929 Decree was no longer in force during the relevant period. Nevertheless, it also suggests that there was at one time in Iran a prohibition on foreign ownership of real property. An article entitled "Nationality in Iran" written by the former Iranian Prime Minister, Dr. Mossadegh, and published in 1926-27 suggests that these provisions were still in force at that time. *See Ayandeh Magazine*, second term 1305 (1926-27) at pp. 261-65.

71. The next piece of relevant legislation is the 7 September 1929 Law on Nationality, which appears to have incorporated many of the provisions of the pre-1929 Decree and thereby superseded the pre-1929 Decree. For instance, Article 14 of the Law on Nationality seems to supersede Section 9 of the pre-1929 Decree, stating that

Any Iranian national who acquires foreign nationality without observing the legal requirements referred to above will have his foreign nationality considered null and void and will be regarded as an Iranian national. But at the same time, all his immovable properties will be sold under the supervision of the local public prosecutor and the proceeds will be paid to him after the deduction of the expenses of sale.

# ANNEX 275



**In the proceedings pursuant to the Agreement between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic Concerning the Encouragement and Reciprocal Protection of Investments, dated January 31, 1993, and the UNCITRAL Arbitration Rules, as revised in 2010**

between

**SANUM INVESTMENTS LIMITED**

Claimant

and

**THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC**

Respondent

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**AWARD**

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*Tribunal*

Dr. Andrés Rigo Sureda, Presiding Arbitrator  
Professor Bernard Hanotiau  
Professor Brigitte Stern

*Registry*

Permanent Court of Arbitration

*Secretary to the Tribunal*

Fedelma C. Smith

**6 August 2019**

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## FREQUENTLY USED ABBREVIATIONS AND ACRONYMS

Abbreviation	Meaning
BIT or Treaty	Agreement between the Government of the People's Republic of China and the Government of the Lao People's Democratic Republic Concerning the Encouragement and Reciprocal Protection of Investments, dated 31 January 1993
BIT II Proceedings	Proceedings between <i>Lao Holdings N.V. v. Lao People's Democratic Republic</i> (ICSID Case No. ARB(AF)/16/2)/ <i>Sanum Investments Limited v. Lao People's Democratic Republic</i> (ICSID Case No. ADHOC/17/1)
C(B)-[XX]	Claimants' Exhibits
C(S)-[XX]	Claimant Sanum's Exhibits
CLA(B)-[XX] or CLA-[XX]	Claimants' Legal Authorities
Claimant's Memorial	Claimant's Memorial dated 22 July 2013
Claimant's Reply	Claimant's Reply and Opposition to Respondent's Counterclaims dated 9 May 2014
Claimant	Sanum Investments Limited
Claimants	Sanum Investments Limited and Lao Holding NV
Decision on the Second Material Breach	Tribunal's Decision on the Merits of the Claimant's Second Material Breach Application, dated 15 December 2017
E&Y	Ernst & Young
First Material Breach Application	Claimant's First Material Breach Application dated 4 July 2014
FTA	Flat Tax Agreement between Laos and Savan Vegas dated 21 September 2009
Gaming Assets	Savan Vegas Casino, Lao Bao Slot Club and Savannakhet Ferry Terminal Slot Club
Government or Respondent	Respondent Government of The Lao People's Democratic Republic
Hearing	Hearing on the Merits of the Second Material Breach Application held from 3 to 7 September 2018 in Singapore
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID-AF Rules	Arbitration Rules (Additional Facility) of the International Centre for Settlement of Investment Disputes

ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
LHNV	Lao Holdings NV
Reply	Claimant's Reply and Opposition to Respondent's Counterclaims dated 9 May 2014
SRE-[XX]	Respondent's Exhibits
SRA-[XX]	Respondent's Legal Authorities
MaxGaming	MaxGaming Consulting Services Limited (Macau)
MIC	Ministry of Information and Culture
Paksong PDA	Project Development Agreement by and between The Lao People's Democratic Republic, Sanum Investments, Nouansavanh Construction Co. Ltd., and Mr. Sittixay Xaysana dated 10 August 2007
Paksong Vegas	Paksong Vegas Hotel and Casino
Participation Agreement	Participation Agreement for Thanaleng by and between Sanum and ST Holdings dated 4 October 2008
PCA	Permanent Court of Arbitration
PCA Proceeding	PCA proceeding between <i>Sanum Investments Limited (People's Republic of China) v. the Government of the Lao People's Democratic Republic</i> – PCA Case No. 2013-13, chaired by Dr. Andrés Rigo Sureda
PDA	Savan Vegas Project Development Agreement
Respondent's Counter-Memorial	Respondent's Counter-Memorial on the Merits dated 20 February 2014
Respondent's Rejoinder	Respondent's Rejoinder (Amended) dated 4 June 2014
RMC	RMC Gaming Management LLC
Sanum or Claimant	Sanum Investments
Savan Vegas	Savan Vegas Hotel and Casino
Settlement	Deed of Settlement dated 15 June 2014 and Side Letter dated 18 June 2014
SIAC	Singapore International Arbitration Centre
ST	ST Holdings
Thanaleng	Thanaleng Slot Club
Amended Transcript, [Day], p. [page], [lines]	Transcript of the Hearing, as amended on the basis of corrections agreed by the Parties
UNCAC	United Nations Convention Against Corruption
UNCITRAL Rules	UNCITRAL Arbitration Rules, as revised in 2010

VCLT

Vienna Convention on the Law of Treaties

also to the investor's subsequent conduct in relation to the investment in the host country.<sup>31</sup>

97. The difference is that corruption in the making of the investment will raise issues of jurisdiction for the Tribunal, whereas subsequent acts of corruption will go to a claimant's entitlement for relief under the BIT.<sup>32</sup>
98. In particular, the Respondent relies on the analysis in *Metal-Tech v. Uzbekistan*:

While reaching the conclusion that the claims are barred as a result of corruption, the Tribunal is sensitive to the ongoing debate that findings on corruption often come down heavily on claimants, while possibly exonerating defendants that may have themselves been involved in the corrupt acts. It is true that the outcome in cases of corruption often appears unsatisfactory because, at first sight at least, it seems to give an unfair advantage to the defendant party. The idea, however, is not to punish one party at the cost of the other, but rather to ensure the promotion of the rule of law, which entails that a court or tribunal cannot grant assistance to a party that has engaged in a corrupt act.<sup>33</sup> (emphasis added)

99. The Respondent also relies, more generally, on the doctrine of "clean hands". The Claimants' misconduct is sufficient, it is said, to deny them the assistance of investor-state arbitration.

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<sup>31</sup> Referencing ICC Dossier: *Addressing Issues of Corruption in Commercial and Investment Arbitration*, Chapter 11, at para. 31, LHRA-155 (citing *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Award, 18 November 2014, at paras. 129-132):

31. The approach to bribery is different in investment arbitrations, where jurisdiction does not derive from a contract, but rather from an investment treaty. In these cases, validity of contracts is not the question. The issue is whether an investor who has incurred in corrupt practices when making or performing the investment can still enjoy protection under the relevant investment treaty. And the answer is no. (38) Investment arbitration has initiated and led the movement of zero tolerance towards corruption.

<sup>32</sup> *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, at para. 345, LHRA-29:

If, at the time of the initiation of the investment, there has been compliance with the law of the host state, allegations by the host state of violations of its law **in the course of the investment**, as a justification for state action with respect to the investment, **might be a defence** to claimed *substantive* violations of the BIT, but could not deprive a tribunal acting under the authority of the BIT of its jurisdiction. (emphasis added)

<sup>33</sup> Respondent's Opening Submission, Slide 143, citing *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, at para. 389, Exhibit LHRA-157.

### 6.1.2. The Claimant's Argument

100. The Claimants point out that the Tribunal's jurisdiction is founded on the BIT and neither the Netherlands nor the Chinese BIT contains a provision authorizing a tribunal to deny the treaty's protection on the basis that the claimant/investor engaged in corruption. If the BITs provide no authority to dismiss, the Tribunal would have to base its decision on customary international law. However, the lack of "clean hands" is neither a recognized rule of customary international law nor a general principle of international law and thus affords no authority to dismiss.<sup>34</sup>
101. The Claimants acknowledge that corruption in **the establishment of an investment** can render a claim inadmissible because treaty protections are only available for valid investments recognized under the treaty (based upon either an explicit or implied legality requirement).<sup>35</sup> The Claimants deny corruption but in any event deny any causal connection between the acts of *alleged* corruption and these claims. The Respondent only concocted its corruption allegations **after** the arbitrations were commenced and in any event has failed to govern itself in a manner consistent with its international obligations, including due process and good faith, and the prosecution of bribe-takers as well as alleged bribe-givers.<sup>36</sup>
102. The Claimants' principal, Mr. John Baldwin, denied the applicability of the "red flags" approach to the investments in issue here:

Q. Is it possible that when you enter into a consulting contract like this, that if the event is achieved, the consultant is sent the money and the consultant then is instructed to pay it to certain government ministers so that it keeps the company one step removed from proof of the bribe? Isn't that how it works, Mr Baldwin?

A. That's a possibility, although it didn't happen here.<sup>37</sup>

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<sup>34</sup> Citing *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL PCA Case No. AA 227, Award, 18 July 2014, at paras. 1362-1363, CLA(B)-395.

<sup>35</sup> Claimant's Closing Submission, Slide 3.

<sup>36</sup> Claimant's Opening Submission on Respondent's Corruption Allegations, Slide 4.

<sup>37</sup> Amended Transcript, 5 September 2018, p. 91, 16-25.

### 6.1.3. The Tribunal's Analysis

103. The Tribunal considers that proof of corruption at any stage of the investment may be relevant depending on the circumstances. While the UNCAC applies to States rather than private parties, it embodies what has become a principle of customary international law applicable, according to the OECD, to root out corruption used “to **obtain or retain business** or other undue advantage **in relation to the conduct** of international business.”<sup>38</sup>
104. The Respondent also relies on a generalized doctrine of “clean hands” which is a metaphor employed as a defence to equitable relief in common law jurisdictions. Incorporation of such a general doctrine into investor-State law without careful boundaries would risk opening investment disputes to an open-ended, vague and ultimately unmanageable principle. However, putting aside the label, serious financial misconduct by the Claimants incompatible with their good faith obligations as investors in the host country (such as criminality in defrauding the host Government in respect of an investment) is not without Treaty consequences, both in relation to their attempt to rely on the guarantee of fair and equitable treatment, as well as their entitlement to relief of any kind from an international tribunal.

---

<sup>38</sup> *UN Convention Against Corruption, Article 16(1), LHRA-16. See also OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Article 1(1), Exhibit LHRA-136:*

Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business. (emphasis added) .

See also ICC Dossier: *Addressing Issues of Corruption in Commercial and Investment Arbitration*, Chapter 11, at para. 34, Exhibit LHRA-155:

It is now undisputed that a finding of corruption when making or performing an investment will lead to dismissal of claimant's claims and to a loss of any protection afforded by the treaty. (emphasis added)

Respondent's Opening Statement, Slide 146.

# ANNEX 276



**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

In the arbitration proceeding between

**GLENCORE INTERNATIONAL A.G. AND  
C.I. PRODECO S.A.**

(Claimants)

**and**

**REPUBLIC OF COLOMBIA**

(Respondent)

**ICSID Case No. ARB/16/6**

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**AWARD**

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***Members of the Tribunal***

Juan Fernández-Armesto, President of the Tribunal

Oscar M. Garibaldi, Arbitrator

J. Christopher Thomas QC, Arbitrator

***Secretary of the Tribunal***

Alicia Martín Blanco

***Assistant to the Tribunal***

Krystle M. Baptista

*Date of dispatch to the Parties: 27 August 2019*

## **V.1. ILLEGALITY OBJECTION**

553. Colombia argues that Claimants' claims are tainted by illegality, because Claimants engaged in acts of corruption and bad-faith conduct. Respondent submits that Claimants' illicit conduct deprives Claimants' investments of the protection of the Treaty and that the Centre lacks jurisdiction and the Tribunal competence over such claims (1).<sup>511</sup>
554. Claimants counter that Respondent's illegality allegations are devoid of any support or substance.<sup>512</sup> Claimants argue that Respondent has failed to satisfy the standard of proof required for corruption allegations, and that Respondent's characterization of Prodeco's actions cannot deprive the Centre of its jurisdiction and the Tribunal of its competence (2).<sup>513</sup>
555. The Tribunal will devote separate sections to the allegation of corruption (3) and of bad faith (4), and will finally summarize its decisions (5).

### **(1) RESPONDENT'S POSITION**

556. Respondent says that Claimants' investment made in connection with the Eighth Amendment cannot be protected by the Treaty, because such investment was secured in contravention of Colombian law, and is tainted by Claimants' illegal and disloyal behaviour, including corruption and bad-faith conduct.<sup>514</sup>
557. According to Respondent, Arts. 2 and 4(1) of the Treaty expressly exclude from protection investments made in violation of the laws and regulations of the recipient State.<sup>515</sup> Respondent argues that if an investment was made on an illicit basis, contrary to principles of good faith, or by way of corruption, fraud or deceitful conduct, it cannot benefit from the substantive protection of the Treaty.<sup>516</sup>
558. Respondent explains that it is part of the general consensus in international investment law that:
- Tribunals cannot exercise jurisdiction over illegal, illicit or improperly acquired investments,<sup>517</sup> and

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<sup>511</sup> R II, paras. 385 and 389.

<sup>512</sup> C II, para. 175.

<sup>513</sup> C III, paras. 11 and 49.

<sup>514</sup> R I, para. 269; R II, para. 389.

<sup>515</sup> R I, paras. 270-272; R II, paras. 424-431.

<sup>516</sup> R I, paras. 276-278, referring to *Hamester*, para. 123; R II, paras. 447-449.

<sup>517</sup> R I, paras. 273-274.

- The purpose of the international mechanism of protection of investments through ICSID arbitration is not to defend investments which are illegal or secured through improper means, but only *bona fide* investments.<sup>518</sup>
559. Respondent submits that if the Tribunal were to exercise jurisdiction over claims based on illegal or illicit conduct, it would be condoning and encouraging such misconduct.<sup>519</sup>
560. Respondent considers that Claimants' conduct in securing the Eighth Amendment falls within the type of illegal and improper behaviour which cannot be protected by the ICSID arbitration system, for two main reasons:<sup>520</sup> in order to secure the execution of the Eighth Amendment, Claimants engaged in illicit acts (A) and in bad faith conduct (B).

**A. Claimants Obtained the Eighth Amendment Through Illicit Means**

561. Colombia submits that Claimants caused Ingeominas to execute the Eighth Amendment through corruption: Claimants acquired the 3ha Contract from Mr. Maldonado, thereby securing Director Ballesteros' support for the Commitment to Negotiate. According to Respondent, Claimants cannot deny that they made an outsized payment to an associate of Director Ballesteros.<sup>521</sup>
562. Respondent argues that the Tribunal should follow the approach set out by the *Metal-Tech*, *Spentex*, and *World Duty Free* tribunals for evaluating evidence of corruption.<sup>522</sup>
563. According to Respondent, the Tribunal has a duty to inquire about the reasons for the payment of a substantial sum made by Claimants to Mr. Maldonado, an associate of Director Ballesteros. In this endeavour, the Tribunal should depart from traditional rules on the burden of proof, and rather assess the evidence as whole, given that it is almost impossible to prove bribery and corruption. The Tribunal should "connect the dots" and identify "red flags" of corruption, in particular the following:<sup>523</sup>
- Prodeco paid a very high compensation of USD 1.75 M for the 3ha Contract;
  - The price increased exponentially between December 2008 and April 2009 and was disproportionate to the consideration received, which was a small plot of land;
  - Prodeco hid the documentation underlying the 3ha Contract; Prodeco did not disclose the price of the transaction to Ingeominas until two years thereafter, in

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<sup>518</sup> R I, paras. 279-280, referring to *Phoenix*, para. 100.

<sup>519</sup> R I, para. 275, referring to *World Duty Free*, para. 157.

<sup>520</sup> R I, para. 281.

<sup>521</sup> R I, para. 283; R II, paras. 390, 422 and 434.

<sup>522</sup> R II, paras. 395 and 398-407.

<sup>523</sup> R II, paras. 408-422.

the wake of the corruption scandal at Ingeominas; in addition, Prodeco has produced almost no evidence concerning the 3ha Contract in this arbitration;

- Prodeco failed to produce evidence of the account to which the payment for the 3ha Contract was made;
- Finally, the payment was made directly to a former employee of Ingeominas' predecessor, Mr. Maldonado, and as such, closely connected to the Director of that State agency; only ten days after CDJ's acquisition of the 3ha Contract was approved, Director Ballesteros caused Ingeominas to execute the Commitment to Negotiate.

564. Colombia contends that as a result of this undue influence, Claimants induced Ingeominas to execute the Eighth Amendment in complete disregard of the legal framework applicable to the amendment of mining contracts. Claimants caused Ingeominas to bypass the necessary authorizations and to breach the procedure for the renegotiation of the Mining Contract.<sup>524</sup> In particular:<sup>525</sup>

- The *Consejo Directivo* of Ingeominas was not kept properly informed of the negotiations;
- The advice of Ingeominas' Contracting Committee and external consultants was not sought, nor were the required ministerial approvals;
- No viability assessments were carried out prior to the execution of the Eighth Amendment;
- The final version of the Eighth Amendment was negotiated over the span of five days only, in an informal context.

565. Colombia argues that the above leads to the conclusion that the Eighth Amendment was procured through illicit acts and in contravention of Colombian law; hence, Claimants' investment is tainted with illegality and cannot benefit from the protection of the Treaty.<sup>526</sup>

#### Hearing

566. In the course of the Hearing, Colombia reiterated its position that an illegal investment does not deserve legal protection, since the investor does not have "clean hands":<sup>527</sup>

- First, because Arts. 2 and 4(1) of the Treaty restrict the jurisdiction of the Tribunal to investments "made in accordance with [the Contracting Party's] laws

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<sup>524</sup> R I, para. 282; R II, para. 390.

<sup>525</sup> R I, para. 282; R II, para. 390.

<sup>526</sup> R I, para. 282.

<sup>527</sup> HT, Day 2, p. 467, l. 7 – p. 468, l. 4, referring to *Al Warraq*.

and regulations”, and under Colombian law, corruption is illegal under Art. 411 A of the Criminal Code;

- Second, Respondent says that the evidence in the present case meets the standard of proof for an illegality objection, and this follows from the application of the red-flag methodology as used by the tribunals in *Metal-Tech* and *Spentex*;<sup>528</sup>
- Third, tribunals confronted with illegality objections and corruption allegations have a duty to take affirmative action and inquire as to the true reasons behind suspicious payments;<sup>529</sup>
- Fourth, if explanations are not provided by the party who made the suspicious payment, then tribunals must draw the only logical adverse inference, namely that the payments have been made with the purpose of corrupting public officials;
- Fifth, tribunals must not ignore red flags on the issue of corruption, and when these red flags appear, a tribunal must connect the dots and conclude that the investment was tainted with corruption;<sup>530</sup>
- Sixth, tribunals should not apply strictly the *actori incumbit probatio* rule, or a heightened standard of proof, but instead they must look to the entirety of the evidence in the record – otherwise they run the risk of making it almost impossible to prove bribery.<sup>531</sup>

567. Respondent also reiterated the red flags which – in its submission – prove corruption:<sup>532</sup>

- The payment,
- The fact that Mr. Maldonado was a former employee of Minercol (the Republic’s prior mining agency),
- The timing of such payment,
- Claimants’ concealment of the transaction,
- Claimants’ decision to restrict knowledge of the transaction to three members of its top management,

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<sup>528</sup> HT, Day 2, p. 469, ll. 9-15, referring to *Metal-Tech*, para. 241 and *Spentex* (quoted by K. Betz, Proving Bribery, Fraud, and Money Laundering in International Arbitration: on Applicable Criminal Law and Evidence, 2017, Doc. RL-149).

<sup>529</sup> HT, Day 2, p. 469, l. 20 – p. 470, l. 3, referring to *Metal-Tech*.

<sup>530</sup> HT, Day 2, p. 471, ll. 12-18, referring to *Spentex*.

<sup>531</sup> HT, Day 2, p. 474, ll. 1-22.

<sup>532</sup> HT, Day 2, p. 476, l. 14 – p. 477, l. 14.

- The fact that the Eighth Amendment was executed in open disregard of the applicable law and regulations.

**B. Claimants Acted in Bad Faith**

568. According to Colombia, Claimants provided false and misleading information to Ingeominas, while withholding other important information, so as to induce Ingeominas to execute the Eighth Amendment. Colombia finds that this bad-faith conduct in securing the Eighth Amendment is sufficient to deprive the investment of the protections of the Treaty.<sup>533</sup> In particular:<sup>534</sup>

- Claimants misrepresented the economic situation of the project, in order to persuade Ingeominas that expanding production beyond 8 MTA, under the current conditions, was not economically feasible;
- Claimants presented misleading figures, aimed at showing the alleged lack of profitability of the project's expansion under the existing Compensation Scheme;
- Claimants deliberately withheld geological, technical and accurate pricing information from Ingeominas;
- Claimants improperly sought to justify delaying the submission of the 2010 PTI;
- Claimants sought to exert undue influence over Ingeominas through questionable means.

569. Respondent rejects Claimants' argument that Colombia would be estopped from raising an illegality objection in the present case, given that the execution of the Eighth Amendment would be attributable to Colombia. Respondent argues that the responsibility for the misconduct surrounding the negotiations of the Eighth Amendment cannot be placed solely on Ingeominas. Through corruption and bad faith, Claimants willingly caused and shaped the negotiations that led to the execution of the Eighth Amendment.<sup>535</sup>

\* \* \*

570. In sum, Respondent submits that, in securing the Eighth Amendment, Claimants did not act in good faith, but rather acted deceitfully and illegally. The Eighth Amendment was procured through acts of corruption, which is prohibited under both international and Colombian law. This means that Claimants' claims are tainted with illegality and fall outside the Tribunal's jurisdiction.<sup>536</sup>

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<sup>533</sup> Referring to *Plama*, para. 144.

<sup>534</sup> R I, paras. 285-286; R II, paras. 390, 446 and 451.

<sup>535</sup> R I, paras. 287-288; R II, paras. 432-444.

<sup>536</sup> R I, para. 289; R II, paras. 445 and 453.

# ANNEX 277



**GPF GP SÀRL**

CLAIMANT

**v.**

**THE REPUBLIC OF POLAND**

RESPONDENT

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**FINAL AWARD**

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**The Arbitral Tribunal:**

Prof. Gabrielle Kaufmann-Kohler (Presiding Arbitrator)

Sir David A R Williams, KNZM QC

Prof. Philippe Sands, QC

**Secretary of the Tribunal:**

Ms. Eva Kalnina

favourably than the Claimant, which constitutes discrimination in breach of Article 3.1 of the Treaty.<sup>196</sup>

**c. Request for relief**

195. For all these reasons, the Claimant requested the following relief in its Amended Statement of Claim:

On the basis of the foregoing, [REDACTED] respectfully requests the following relief:

(i) DISMISS the Republic of Poland's new objections to jurisdiction formulated following the Award on Jurisdiction and the 2 March 2018 decision of the High Court of Justice in London;

(ii) DECLARE that the Republic of Poland has breached the Treaty and international law, and in particular, that it has:

(i) expropriated [REDACTED]'s investments without compensation, in breach of Article 4.1 of the Treaty;

(ii) failed to accord [REDACTED]'s investments fair and equitable treatment and impaired [REDACTED]'s investments through unjustified and discriminatory measures, in breach of Article 3.1 of the Treaty;

(iii) ORDER the Republic of Poland to compensate [REDACTED] for the Republic of Poland's breaches of the Treaty and international law in an amount no less than EUR 16,350,384.49, or such other amount that the Tribunal will deem appropriate, plus pre-award and post-award interest at a rate of 13% annually between 18 December 2014 and 23 December 2014, 8% annually between 24 December 2014 and 31 December 2015, and 7% annually subsequently, compounded quarterly until full payment of the Award is made (or any such other interest rate and/or compounding period as the Tribunal will deem appropriate);

(iv) ORDER the Republic of Poland to pay the full costs of this arbitration, including the fees and expenses of the Tribunal, the fees and expenses of the SCC, the fees and expenses relating to [REDACTED]'s legal representation, and the fees and expenses of any experts appointed by the Claimant or the Tribunal, if any, plus interest at the rate of 7% annually since the date of the Award; and

(v) AWARD such other relief as the Tribunal considers appropriate.<sup>197</sup>

196. The Claimant confirmed its Request for Relief in the C-PHB.<sup>198</sup>

**2. Respondent**

197. As a preliminary observation, the Respondent underlines that the Claimant failed to comply with Polish laws and regulations and acted in a manner manifestly prejudicial to the public interest by demolishing the Barracks. For this reason, the Respondent

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<sup>196</sup> *Ibid.*, §§ 450-456.

<sup>197</sup> *Ibid.*, § 589.

<sup>198</sup> C-PHB, § 112.

requests the Tribunal to find that the Claimant deserves no Treaty protection on the grounds of the clean hands doctrine.<sup>199</sup>

**a. Expropriation (Article 4(1) of the Treaty)**

198. In its defense against the expropriation claim, the Respondent distinguishes between the 2014 WCA Judgment and the measures adopted before the 2014 WCA Judgment.

*The 2014 WCA Judgment*

199. The Respondent's primary position is that only the 2014 WCA Judgment could at all constitute expropriation.<sup>200</sup> In its view, an asset cannot be expropriated twice. Thus, even if the Respondent's measures adopted before the 2014 WCA Judgment "had a deferred expropriatory potential, such effects never materialized because of the supervening acts in the form of the judicial termination of the Perpetual Usufruct Agreement".<sup>201</sup> Consequently, only the 2014 WCA Judgment could be considered as an expropriatory act.
200. That said, the Respondent underlines that the 2014 WCA Judgment does not amount to expropriation for the following three reasons. First, expropriatory acts of state courts are unlawful only if they qualify as denial of justice,<sup>202</sup> and the 2014 WCA Judgment does not qualify as such.<sup>203</sup> In other words, the absence of denial of justice precludes a finding of expropriation.<sup>204</sup>
201. Second, the Respondent argues that the risk of termination of the PUA was already present at the time the investment was made, and it is GPF which failed to act diligently.<sup>205</sup> Thus the termination of the PUA by the Polish courts was not expropriatory.
202. Third, the 2014 WCA Judgment was not expropriatory, because it was adopted in the valid exercise of the Respondent's police powers. The 2014 WCA Judgment pursued

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<sup>199</sup> Amended SoD, § 407.

<sup>200</sup> *Ibid.*, §§ 408-416.

<sup>201</sup> *Ibid.*, § 411.

<sup>202</sup> *Ibid.*, § 419.

<sup>203</sup> *Ibid.*, §§ 420-429.

<sup>204</sup> *Ibid.*, § 430.

<sup>205</sup> *Ibid.*, § 438.

a legitimate public purpose and complied with the requirements of non-discrimination, proportionality and due process.<sup>206</sup>

203. In any event, even if the Tribunal were to decide that the 2014 WCA Judgment amounted to expropriation, Poland contends that it complied with Article 4(1) of the Treaty, as the 2014 WCA Judgment was non-discriminatory, proportional, adopted for a public purpose and in compliance with due process.<sup>207</sup>

Measures adopted prior to the 2014 WCA Judgment

204. In the event that the Tribunal were to decide that the measures adopted before the 2014 WCA Judgment can also have expropriatory effect, the Respondent argues that they do not amount to expropriation within the meaning of Article 4(1) of the Treaty for the following two reasons. First, the measures did not prevent the development of the Property,<sup>208</sup> were non-discriminatory,<sup>209</sup> and “did not breach any special commitments” vis-à-vis the Claimant’s investment.<sup>210</sup> In addition, they were adopted in the valid exercise of the Respondent’s police powers.<sup>211</sup>
205. Second and alternatively, the Respondent contends that the actions and omissions of the City of Warsaw relating to the performance of the PUA, including the negotiations with respect to extending the development deadlines, are not attributable to the Respondent.<sup>212</sup>

**b. FET (Article 3(1) of the Treaty)**

206. It is the Respondent’s position that the Treaty does not guarantee FET beyond the international minimum standard.<sup>213</sup> Thus, unless the Claimant demonstrates that Poland’s conduct was “wilfully and blatantly wrong, actually malicious, totally arbitrary, evidently discriminatory, or so far beyond the pale that it cannot be defended among

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<sup>206</sup> *Ibid.*, §§ 469–483.

<sup>207</sup> *Ibid.*, § 468.

<sup>208</sup> *Ibid.*, §§ 498–520.

<sup>209</sup> *Ibid.*, §§ 530–535.

<sup>210</sup> *Ibid.*, §§ 521–529.

<sup>211</sup> *Ibid.*, §§ 484–520.

<sup>212</sup> *Ibid.*, § 512.

<sup>213</sup> *Ibid.*, §§ 536–546.

# ANNEX 278



**PCA CASE No. 2020-21**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION  
RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL  
TRADE LAW 1976**

**AND**

**PURSUANT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF  
THE REPUBLIC OF INDIA AND THE REPUBLIC OF MOZAMBIQUE FOR  
THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT  
BETWEEN:**

**PATEL ENGINEERING LTD.**

**Claimant**

**-and**

**REPUBLIC OF MOZAMBIQUE**

**Respondent**

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**RESPONDENT'S MOTION FOR BIFURCATION**

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## **I. INTRODUCTION**

Respondent Republic of Mozambique (“Mozambique”) requests that the Tribunal bifurcate this UNCITRAL proceeding and adopt “Scenario A – Bifurcated Proceedings” in the Procedural Timetable in Procedural Order No. 1. Bifurcation of the jurisdictional questions from the merits and damages is the efficient, economical and sensible approach to proceed. There are substantial jurisdictional questions to be decided, which can be dispositive of this proceeding.

First, there are substantial jurisdictional questions whether Claimant Patel Engineering Ltd. (“Patel”) has made any investment. Patel asserts that it entered into a 2011 Memorandum of Interest (“MOI”) with Mozambique, whereby Patel was allegedly provided a right of first refusal to negotiate and enter into a concession to build a railroad/port in Mozambique. A dispute arose whether Mozambican law required the public tender of the project. To resolve the matter, Patel organized a consortium and agreed to participate in a 2013 public tender and was provided a point bidding advantage to account for the MOI. After Patel’s consortium did not win, Patel abandoned the consortium and reverted to insisting instead on its alleged right of first refusal.

Applying the *Salini* factors, this is a pre-concession, pre-investment contractual dispute involving the validity of the MOI and Patel’s belated claims (7 years later) over a completed public tender. Because Patel – a disappointed bidder – never entered into a concession agreement with Mozambique and did not make any investment in Mozambique, there is a substantial question whether this Tribunal has jurisdiction. Indeed, a mere contractual right of first refusal, and for that matter an MOI, do not constitute investments under the BIT and international law.

Second, there is a substantial jurisdictional question whether, in the MOI, the parties contractually agreed to arbitration of this dispute under ICC Arbitration Rules in Mozambique. The MOI contains an arbitration agreement that is valid, enforceable and severable. It broadly

requires that “any dispute arising out of this memorandum between the parties shall be referred to arbitration” under ICC Arbitration Rules and the seat of arbitration shall be in Mozambique. This is the parties’ contractual bargain. Patel has violated the arbitration agreement and filed this UNCITRAL arbitration. The arbitration agreement in the MOI is not a “judicial forum selection clause” or a local arbitration clause limited to contractual disputes. As this Tribunal is aware, the ICC Arbitration Rules are broad enough to permit arbitration of investment treaty claims, and investment treaty claims are regularly administered by the ICC. The MOI requires Patel to bring its investment treaty claims in an ICC arbitration in Mozambique. This Tribunal must respect and give effect to the parties’ arbitration agreement and their selection of the Mozambique seat.

Third, there is a substantial jurisdictional question whether, in the MOI, the parties have made a contractual election, in accordance with the India-Mozambique BIT, to proceed pursuant to ICC Arbitration Rules instead. The BIT permits parties to select particular procedures for dispute resolution in lieu of the defaults in the treaty. In the MOI, the parties agreed to dispute resolution by arbitration under the ICC Arbitration Rules, and ICC arbitration is broad enough to include investment treaty claims. The ICC does administer investment treaty arbitrations.

Fourth, there is a substantial jurisdictional question whether this UNCITRAL proceeding should be dismissed or stayed in deference to the pending ICC arbitration among the parties in Mozambique. In accordance with the arbitration agreement in the MOI, Mozambique, as well as the Mozambican Ministry of Transport and Communications (“MTC”) (the entity that allegedly contracted with Patel), initiated an arbitration against Patel pursuant to the ICC Arbitration Rules which the ICC has concluded has its seat in Mozambique. In that ICC arbitration, Mozambique and the MTC have placed at issue both the contractual and the investment treaty disputes. Patel has appeared and is participating in that ICC arbitration, and has requested affirmative relief.

This UNCITRAL proceeding should be dismissed in favor of the ICC arbitration, which can determine all contract and investment treaty disputes among the parties, including the MTC that signed the MOI. At a minimum, this UNCITRAL arbitration should be suspended until after the ICC arbitration determines the underlying contractual rights of Patel, if any, the existence of which are governed by Mozambican law. If Patel has no contractual rights under the MOI, then Patel has no claims under the BIT and its investment treaty claims would be rendered moot.

Fifth, there is a substantial jurisdictional question whether Patel has failed to exhaust its remedies in Mozambique. Mozambique law provides disappointed bidders with certain recourse, and the MOI requires arbitration in Mozambique. Patel failed to exhaust its remedies.

Sixth, these jurisdictional questions are not intertwined with the questions related to the merits and damages. The jurisdictional questions relate to whether a right of first refusal and the MOI constitute an investment, and whether this Tribunal should respect and enforce the parties' arbitration agreement. These jurisdictional questions are distinct from the questions related to the merits, such as whether the MOI is valid, what are the substantive rights under the MOI, whether there was a breach of the MOI, whether Patel's participation in the public tender superseded the MOI, whether there are investment treaty substantive claims, and whether there are damages.

Seventh, bifurcation of the jurisdictional questions is the most efficient and economical approach to resolve this dispute. The investigations, research, analysis, drafting of memorials and hearing on the merits and damages will involve substantial work, time and expense, that will be completely unnecessary if this Tribunal determines that it lacks jurisdiction or this UNCITRAL proceeding should be dismissed or suspended and yield to the ICC arbitration. Therefore, the bifurcation of the jurisdictional stage of these proceedings from the merits and damages stages will prevent a potential significant waste of resources and potentially conflicting awards.

## **II. BACKGROUND**

On 6 May 2011, Patel (also referred to as “PEL”) and the MTC purported to enter into a “Memorandum of Interest” (“MOI”). *See* Exhibit R-1 and R-2 (Portuguese and English versions of the MOI). As its name confirms, the MOI is a preliminary document expressing “interest.”

The MOI states that Patel is “interested” in a potential public-private-partnership project in Mozambique: “MTC *is interested* in developing a Port in and around the Zambebian coast line with a corresponding railway line of 500 (five hundred) kilometers from the corridor of Tete to the proposed port through a Public Private Partnership (PPP).” MOI at Recital (a) (emphasis added). “PEL has shown keen interest in the development of said Project by forming a JV with the Gov’t of Mozambique on a Built Operate and Transfer (BOT) basis.” *Id.* at Recital (d).

Patel agreed to undertake a prefeasibility study at its own cost and expense under the MOI: “PEL agrees to undertake *at its own cost and expense* an initial prefeasibility study for the Project to identify a probable area for the port and the railway line with the assistance of MTC.” MOI at Recital (f) (emphasis added). The parties made clear that “[t]he *objective of the present memorandum is to undertake the prefeasibility study the expense of which will be entirely borne by PEL*, for the development of a port infrastructure and a railway line ... defining the basic terms and conditions for the granting of a concession by the Gov’t of Mozambique to PEL for the construction and operation of the project.” MOI at Clause 1 (emphasis added). Later, the MOI reiterates that “[t]he direct costs necessary to conduct the feasibility study *shall be entirely borne by PEL*.” MOI at Clause 4 (emphasis added).

The MOI purports to provide Patel with a “first right of refusal” for implementation of the project: “PEL shall carry out a prefeasibility study (PFS) within 12 months and will submit to the government for the respective approval.” MOI at Clause 2(1). “After the approval of the

prefeasibility study PEL shall have *the first right of refusal* for the implementation of the project on the basis of the concession which will be given by the Government of Mozambique.” *Id.* at Clause 2(2) (emphasis added). Therefore, the MOI does not obligate Patel to enter into any concession agreement with the MTC – it merely and purportedly provides Patel with an option, so long as certain conditions specified in the MOI are satisfied. These conditions never came to fruition and, importantly, Patel lacked clean hands. Indeed, there is much more to this story.

Mozambique contends that, after the MOI was signed by the MTC and Patel, the following events followed, which are summarized herein only to generally inform the Tribunal of Mozambique’s contentions in this dispute – since they relate to the merits.

In response to the MOI, Patel submitted an initial feasibility proposal. However, Patel is not innocent and lacks clean hands. Patel concealed from the MTC that Patel was blacklisted by the Government of India (Patel is incorporated in India) in connection with a similar government infrastructure project for India. While the parties were engaged in discussions related to the MOI, the Supreme Court of India upheld the Indian government’s blacklisting of Patel and specifically held that Patel was “not commercially reliable and trustworthy.” Patel had misrepresented to the Indian Government the price of its bid on a project in order to fraudulently win the bid contest. Based on said concealment, the MTC was fraudulently induced into accepting Patel’s feasibility study, rather than declaring the MOI void as it had the right to do under Mozambican law.

Further, the MOI imposed conditions precedent on granting a concession, including forming a joint venture. Patel was unable to satisfy the conditions. A dispute also arose regarding whether the project was subject to public tender under Mozambican law. Because Mozambican law required that the project be submitted to open and transparent public bidding, the MOI was unauthorized, illegal and could not bind the government. To resolve that dispute, Patel agreed to

participate in a 2013 public tender as part of a consortium and was provided a point bidding advantage to account for the MOI. That was a settlement and satisfaction extinguishing Patel's rights under the MOI. After the Patel consortium was not the winning bidder, Patel abandoned its consortium partners and reverted to insisting on a right of first refusal. Years later, after finding a third-party financier, Patel raced to file this UNCITRAL arbitration seeking a windfall.

The foregoing contentions are set forth in Mozambique's and the MTC's Request for Arbitration, dated 20 May 2020 (R-3), ICC Case No. 25344/JPA, against Patel, pursuant to the MOI's arbitration agreement and Arbitration Rules of the International Chamber of Commerce ("ICC Rules"). The ICC arbitration is now pending in Mozambique. A copy of the Request for Arbitration is attached so this Tribunal may compare it with Patel's Statement of Claim here, and appreciate that this UNCITRAL arbitration is subsumed within the scope of the ICC arbitration.

The ICC arbitration was duly filed pursuant to the arbitration agreement in the MOI, which is severable from the MOI and requires arbitration under ICC Rules in Mozambique:

*"The present document constitutes a memorandum of interest between the parties. Any dispute arising out of this memorandum between the parties shall be referred to arbitration. The arbitration will be governed by Mozambique law and the rules of the International Chamber of Commerce shall be followed. Each party will appoint one arbitrator and both of these appointed arbitrators will in turn appoint the presiding arbitrator. The venue of the arbitration shall be at the Republic of Mozambique."*

MOI at Clause 10 (emphasis added). In the ICC arbitration, both the contractual and investment treaty disputes are at issue, and the parties also have nominated international arbitrators with substantial investment treaty arbitration experience, Eduardo Silva Romero and Stephen Anway.<sup>1</sup>

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<sup>1</sup> Finally, the arbitration agreement and MOI are expressly governed by Mozambican law. See MOI at Clause 8 ("The implementation of a project shall be done within the laws approved by the Gov't of Mozambique"), Clause 9 (applying the Mozambican procurement law, No. 6/2004) and Clause 10 ("The arbitration will be governed by Mozambique law ...").

### III. DISCUSSION

#### A. The Standard for Analysis on a Motion for Bifurcation.

On a motion for bifurcation, the Tribunal need not decide the jurisdictional questions. It determines whether there are substantial jurisdictional questions, and whether bifurcation of the jurisdictional questions is the efficient, economical and sensible manner in which to proceed.

The 1976 UNCITRAL Arbitration Rules (RL-1) empower the Tribunal to bifurcate jurisdictional questions. Article 15(1) states that “the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.”

In connection with a request for bifurcation of jurisdiction objections, tribunals inquire whether the jurisdictional objections are “*prima facie* serious and substantial,” can “be examined without prejudging or entering the merits,” and, “if successful, [would] dispose of all or an essential part of the claims made.” *Philip Morris Asia Ltd. v. Commonwealth of Australia*, PCA Case No. 2012-12 (Procedural Order No 8 on Bifurcation, 14 April 2014) at ¶ 109 (RL-2).

Under the first factor, a liberal standard is applied in favor of finding that a jurisdictional objection is *prima facie* serious and substantial. “The determination of ... whether an objection is ‘*prima facie* serious and substantial’ should not, in the Tribunal’s view, entail a preview of the jurisdictional arguments themselves. Rather, at this stage the Tribunal is only required to be satisfied that the objections are not frivolous or vexatious.” *Resolute Forest Products, Inc. v. Government of Canada*, PCA Case No. 2016-13 (Procedural Order No. 4 on Bifurcation, 18 November 2016) at ¶ 4.4 (RL-3). An objection is not frivolous if it is “credible and brought in good faith and cannot be excluded on a *prima facie* basis. The Tribunal emphasizes however that such an assessment should in no way be understood to prejudice how the Tribunal will resolve

the substance of the preliminary objections themselves ....” *Id.* Even if the claimant puts forward “serious reasons” why the “objection is not justified,” that would be insufficient to “*prima facie* exclude” that the objection “may be successful.” *Philip Morris, id.* at ¶ 111.

Under the second factor, the issue is whether “the facts involved in determining the objection in issue are distinct from those likely to be involved in determining the merits of the claims.” *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17 (Procedural Order No. 2 on Bifurcation, 18 January 2013) at ¶ 20 (RL-4).

Under the third factor, where an objection, “if it were to succeed, ... is likely to at least narrow the scope of issues to be briefed at the merits stage,” and “[b]ifurcating the proceedings may thus result in a reduction in the time and costs of any future phase of the proceedings,” the “Respondent would not be put to the burden of defending the entire case on the merits.” *Mesa Power, id.* at ¶ 19. These factors favor bifurcation of jurisdiction in these proceedings.

**B. There are Substantial Jurisdictional Questions Whether Patel Made an Investment.**

There are substantial jurisdictional questions regarding whether Patel has made an investment in Mozambique. Patel asserts that it “invested” in the MOI and its purported “right of first refusal,” which Patel basically treats as an option to receive a no-bid direct award of a long-term concession to design, build and operate a railway and port valued at USD \$3 billion. Patel asserts that it prepared an initial feasibility study and thus had the right to receive the concession. Patel claims it made expenditures in connection with the preparation of the feasibility study. Patel seeks speculative profits on this unrealized concession, claiming Mozambique breached its treaty obligations by not awarding it the concession, and conducting a public tender, in which Patel participated through a consortium that was not the winning bidder, despite a point bidding advantage provided to Patel to account for the MOI. Before reaching the merits of Patel’s claims,

this Tribunal must determine whether the purported right of first refusal or option, MOI and expenditures constitute an “investment” sufficient for *ratione materiae*. They do not.

First, there is a substantial jurisdictional question whether the MOI and its right of first refusal are an investment. According to various tribunals, an MOI which is merely an expression of interest, and a mere right of first refusal or option, are not investments under international law.

For example, in *PSEG Global*, the dispute involved a memorandum of understanding that provided an option to invest in a project company involved in a mining project in Turkey. See *PSEG Global Inc., The North American Coal Corp., and Konya Ilgin Elektrik Üretim ve Ticaret Ltd. Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5 (Decision on Jurisdiction, 4 June 2004) at ¶ 176 (RL-5). Respondent Turkey argued that the memorandum of understanding was not an investment, even if the claimants had incurred expenses in connection therewith:

“In Respondent’s view, the Memorandum in question is not valid because it is a *preliminary agreement* which is not binding until the parties’ intention to be bound materializes, a *situation that never happened*. The instrument was conceived as the expression of a desire to ‘explore an arrangement’, the terms of which were never formalized or even agreed to. However broad the definition of ‘investment’ might be, it does not include mere options and, therefore, this Memorandum does not qualify either as an investment under the Treaty or in any other way. Even if some expenses were made by NACC in connection with the Revised Mine Plan, these are not an investment subject to recovery.”

*Id.* at ¶ 176 (emphasis added).

The *PSEG Global* Tribunal agreed with the Republic of Turkey, and concluded that the memorandum of understanding was not an investment:

“Whether the Memorandum is valid and in force is immaterial for the purpose of the Tribunal’s decision. The Tribunal considers that the Respondent’s argument that the definition of investment does not include an option is persuasive as a general approach. Broad as many definitions of investment are in treaties of this kind, there is a limit to what they can reasonably encompass as an investment. Options such as this particular

*one cannot, in the view of the Tribunal, be interpreted as an ‘investment’.* The Tribunal acknowledges that different circumstances from those which obtain in the present case may lead to a different conclusion.”

*Id.* at ¶ 189 (emphasis added).

Here too, the MOI on its face does not obligate Patel, or for that matter the MTC, to enter into a concession. The MOI contains various conditions precedent that must be satisfied and also required that the parties reach agreement on the specific terms of a concession, before there was any binding commitment to any concession. The MOI is like the memorandum of understanding in *PSEG Global*, which was an “expression of a desire to ‘explore an arrangement.’” Patel undertook to explore by preparing an initial feasibility study expressly at its own cost and expense. Undoubtedly, Patel was free to walk away, not enter into a concession and not exercise the right of first refusal. The MOI is thus completely uncharacteristic of an “investment.”

Second, there is also a substantial jurisdictional question whether expenditures made by Patel in connection with the MOI, including those incurred in preparation of the feasibility study, constitute an investment. For example, in *Mihaly Int’l*, the Tribunal explained that it “has been asked to consider whether or not, *the undoubted expenditure of money, following upon the execution of the Letter of Intent*, in pursuit of the *ultimately failed enterprise to obtain a contract*, constituted ‘investment’ for the purpose of the Convention.” *Mihaly Int’l Corp. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2 (Award, 15 March 2002) at ¶ 48 (RL-6) (emphasis added). The Tribunal explained that:

“if the negotiations during the period of exclusivity, or for that matter, without exclusivity, had come to fruition, it may well have been the case that the moneys expended during the period of negotiations might have been capitalised as part of the cost of the project and thereby become part of the investment. By capitalising expenses incurred during the negotiation phase, the parties in a sense may retrospectively sweep

those costs within the umbrella of an investment.”

*Id.* at ¶ 50. However, the Tribunal concluded that the expenditures were not an investment:

“The facts of the case point to the opposite conclusion. The Respondent clearly signaled, in the various documents which are relied upon by the Claimant, that *it was not until the execution of a contract that it was willing to accept that contractual relations had been entered into and that an investment had been made*. It may be and the Tribunal does not have to express an opinion on this, that during periods of lengthy negotiations even absent any contractual relationships obligations may arise such as the obligation to conduct the negotiations in good faith. These obligations if breached may entitle the innocent party to damages, or some other remedy. *However, these remedies do not arise because an investment had been made, but rather because the requirements of proper conduct in relation to negotiation for an investment may have been breached. That type of claim is not one to which the Convention has anything to say. They are not arbitrable as a consequence of the Convention.*”

*Id.* at ¶ 51 (emphasis added). Similarly, whatever expenses Patel incurred in connection with the feasibility study under the MOI are not an investment, because the concession never came to fruition. Patel may have a contract claim under local law that Mozambique and the MTC would oppose, but “[t]hat type of claim is not one to which the Convention has anything to say.” *Id.*

Third, considering the typical *Salini* factors, there is a substantial jurisdictional question whether there was any investment by Patel in Mozambique. An investment requires a substantial contribution by the investor, of a certain duration in time, the existence of an operational risk to the investor, a certain regularity of profit to the investor, and a contribution to the economic development of the host State. *Salini Construttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4 (Decision on Jurisdiction, 23 July 2001) at ¶ 52 (RL-7).

The MOI and expenditures incurred by Patel in connection therewith do not satisfy the *Salini* factors. The preparation of an initial feasibility study is not a substantial contribution by Patel to Mozambique, lacks sufficient duration, contains no operational risk (even if the MOI

gave Patel an option on the concession, by its very nature an option did not obligate Patel to accept it – again, Patel could walk away), there is no profit arising from the MOI itself since no concession had been negotiated, and the MOI did not provide a contribution to Mozambique’s economic development. This substantial jurisdictional question, whether the MOI – a mere six-page, negotiation-phase, pre-concession expression of “interest” – can be deemed an investment, must be resolved prior to expensive, time-consuming consideration of the merits or quantum.

Fourth, there is a substantial jurisdictional question whether the MOI is an investment as defined by the subject bilateral investment treaty between India and Mozambique (“India-MZ BIT”) (RL-8). Article 1(b)(iii) defines an investment as “rights to money or to any performance under contract having a financial value,” but the MOI is exploratory and conditional, and not a “right” to money nor has a financial value. Further, Article 1(b)(v) specifies when a concession constitutes an investment. Investments include “business concessions conferred by law or under contract,” but no concession was conferred by Mozambique to Patel by law or under contract.

Fifth, as noted, the MOI is governed by Mozambican law. Article 22 (“Registration of Direct Foreign Investment”), Section 1, of the Mozambique Investment Law expressly requires that a “foreign investor, within one hundred and twenty (120) days counted from the date of notification of the decision authorizing the investment project, shall register the undertaking involving direct foreign investment with the authority responsible for monitoring the inflow of capital, and register subsequently each actual capital import operation that takes place.” Patel never registered as a foreign investor, and cannot be considered to be an investor under the India-MZ BIT, because the treaty at Article 1(d) defines investments as those made “in accordance with the national laws of the Contracting Party in whose territory the investment is made.”

**C. There is a Substantial Jurisdictional Question Whether the Parties Contractually Agreed to ICC Arbitration.**

There is a substantial jurisdictional question whether, in the MOI, the parties contractually agreed to arbitration of this dispute under the ICC Rules in Mozambique.

Although Patel “fired first” and filed this UNCITRAL arbitration, that cannot avoid that the MOI contains an express arbitration agreement that is valid, enforceable and severable from the question of the MOI’s validity. The MOI’s arbitration agreement broadly states that “[a]ny dispute arising out of this memorandum between the parties shall be referred to arbitration. The arbitration will be governed by Mozambique law and the rules of the International Chamber of Commerce shall be followed.” R-1 at Clause 10 (emphasis added). “The venue of the arbitration shall be at the Republic of Mozambique.” *Id.* This is the parties’ binding, contractual bargain.

Patel has intentionally violated the MOI’s arbitration agreement and instead filed this UNCITRAL arbitration. The MOI’s arbitration agreement is not a “judicial forum selection clause” or local arbitration clause limited to contractual disputes. As this learned Tribunal is aware, *the ICC Arbitration Rules are broad enough to permit arbitration of investment treaty claims and investment treaty claims are regularly brought before the ICC.*<sup>2</sup> The MOI requires Patel to bring its BIT claims in an ICC arbitration in Mozambique. This Tribunal must respect and give effect to the parties’ arbitration agreement and their selection of the Mozambique seat, without second-guessing the parties’ selection of Mozambique as the place of arbitration.

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<sup>2</sup> Because bringing investment treaty claims in the ICC has been a reality for years, the 2021 ICC Rules have added two provisions that expressly related to investment treaty arbitration. “The 2021 ICC Rules ... include two new provisions *applying specifically to investment treaty arbitrations. This reflects the growing number of such cases involving States and State-owned parties administered by the ICC in recent years.*” Shearman & Sterling, Newly Revised ICC Arbitration Rules, 13 November 2020, <https://www.jdsupra.com/legalnews/newly-revised-icc-arbitration-rules-68080/> (emphasis added). There is no doubt that investment treaty arbitration claims can be brought, and have been brought for years, before the ICC. The ICC is fully capable of administering investment treaty arbitration claims.

**D. There is a Substantial Jurisdictional Question Whether, in the MOI, the Parties Made an Election Under the BIT to Proceed before the ICC.**

There is a substantial jurisdictional question whether, in the MOI, the parties made a contractual election under the India-MZ BIT to proceed under the ICC Arbitration Rules in Mozambique, given that BIT claims are administered by the ICC. In this regard, Article 9(2)(a) of the India-MZ BIT states that the parties may agree to a particular mode of dispute resolution:

*“Any such dispute which has not been amicably settled within a period of six months may, if both Parties agree, be submitted: (a) for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party’s competent judicial, arbitral or administrative bodies.”*

India-MZ BIT at Article 9(2)(a) (RL-8) (emphasis added). The ICC is a recognized arbitration body in Mozambique. The MOI provides that “[t]he arbitration will be governed by Mozambique law and the rules of the International Chamber of Commerce shall be followed.” R-1 at Clause 10. Therefore, as permitted by the India-MZ BIT, a contractual election was made by the parties to submit their disputes to arbitration pursuant to ICC Rules in Mozambique. Patel is bound by its contractual election in the MOI, and violated it by filing this UNCITRAL proceeding.

**E. There is a Substantial Jurisdictional Question Whether this UNCITRAL Proceeding Should Yield to the ICC Arbitration.**

There is a substantial jurisdictional question whether this UNCITRAL proceeding should be dismissed or stayed in deference to the pending ICC arbitration in Mozambique.

For example, in *Fraport AG*, the Tribunal was faced with somewhat overlapping ICSID and ICC arbitrations. The Tribunal noted the dangers of proceeding with two arbitrations:

*“[w]hile the present ICSID arbitration and the ICC arbitration are not strictly speaking, parallel arbitrations, the Tribunal accepts Claimant’s representations that the underlying issues in both arbitrations are, in substantial part, overlapping. In the circumstances, there exists a real possibility that the two arbitral tribunals, presented with and asked to consider similar facts, could render conflicting or inconsistent decisions regarding those*

facts. *This is not a desirable outcome.*”

*Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25 (Award, 23 July 2007) at ¶ 19 (RL-9) (emphasis added). The Tribunal accepted the objection to ICSID jurisdiction, holding that since the investment was contrary to local law, there was no investment under the subject bilateral investment treaty. *Id.* at ¶¶ 404 and 46.

Mozambique and the MTC have initiated an arbitration against Patel under the ICC Rules in Mozambique, Request for Arbitration (R-3), in which international arbitrators with substantial investment treaty experience have been designated. This UNCITRAL proceeding is subsumed within the ICC arbitration. In the ICC arbitration, Mozambique and the MTC have placed at issue both the contractual and investment treaty disputes, and seek the following relief, which is substantially broader and more detailed than the issues raised in this UNCITRAL proceeding:

“Based on the foregoing, Mozambique and the MTC are entitled to and seek an Award:

5.1. declaring that:

- a. the correct Portuguese and English versions of the MOI are those submitted herein by the MTC and Mozambique, and the governing version is the one in Portuguese;
- b. the MOI is governed by the laws of the Republic of Mozambique;
- c. the MOI is void, voidable and voided, invalid, not legally binding and/or legally unenforceable, for the various reasons discussed herein;
- d. the purported first right of refusal provisions in Clause 2(2) of the MOI are void, voidable and voided, invalid, not binding and/or unenforceable, for the various reasons discussed herein;
- e. the purported exclusivity provisions in Clause 6 of the MOI are void, voidable and voided, invalid, not binding and/or unenforceable, for the various reasons discussed herein;
- f. the MOI was induced by PEL’s fraudulent concealment; and

- g. notwithstanding the foregoing, the Arbitration Agreement contained in Clause 10 of the MOI is severable and enforceable, and is governed by the laws of the Republic of Mozambique;
- 5.2. in the alternative, declaring that:
- a. the MOI is a preliminary, vague and nonbinding document, and, in the alternative, any purported right of first refusal, exclusivity, or direct award thereunder were preliminary, vague and nonbinding;
  - b. PEL did not comply with the conditions precedent and/or requirements of, and/or has breached, the MOI, and/or has waived its rights under the MOI, is estopped from asserting rights under the MOI and/or entered into an accord and satisfaction superseding and voiding any prior rights under the MOI;
  - c. a right of first refusal never arose under the MOI, and/or any purported right of first refusal, exclusivity, or a direct award were superseded by the PPP Law and PPP Regulations applicable to the Project, concession, and procurement process;
  - d. the subject project as proposed by PEL was not viable and/or feasible, which renders futile and moot any claim by PEL pursuant to the MOI, and makes PEL's alleged damages speculative and illusory;
  - e. Mozambique and the MTC have not breached the MOI;
  - f. PEL breached the MOI and/or anticipatorily repudiated the MOI release Mozambique and the MTC of any obligations thereunder and causing damages to Mozambique and the MTC, by concealing its blacklisting and/or other material facts; by failing to disclose the impediments to its participation in the project and fraudulently concealing the same; by violating Mozambican law; by violating the confidentiality clause; and by violating the arbitration clause;
  - g. PEL is obligated under the MOI to bear the costs incurred in connection with its feasibility study;
  - h. the MOI does not provide for the recovery of any lost profits, consequential and/or incidental damages by PEL;
  - i. any and all obligations of Mozambique and the MTC under the MOI have been satisfied, released and/or excused; and
  - j. any claims by PEL under the MOI are barred by the applicable statutes of limitation (prescription periods) under Mozambican law.
- 5.3. declaring that PEL lacks standing to bring any claims under or related to the public tender because the consortium of PEL, Grindrod and SPI is not asserting claims against the MTC or Mozambique and/or is not participating jointly with PEL in the international arbitration PEL has commenced;

- 5.4. declaring that PEL is not entitled to any rights, relief or any damages whatsoever, including but not limited to lost profits, consequential and/or incidental damages, under the MOI against Mozambique and the MTC;
- 5.5. declaring that PEL is not entitled to any rights, relief or any damages whatsoever, including but not limited to lost profits, consequential and/or incidental damages, under the public tender process, or under any other dealings or transactions that PEL had or was supposed to have with the MTC or Mozambique, against Mozambique and the MTC, because PEL's participation and said dealings and transactions was induced by PEL's fraudulent concealments, and PEL's acts and omissions violated Mozambican law and regulations, for the various reasons discussed herein;
- 5.6. declaring that even if PEL is entitled to damages, it is limited to the reasonable cost of preparing the prefeasibility study, in an amount to be submitted by Mozambique and the MTC in this arbitration;
- 5.7. enjoining PEL from proceeding with any other legal proceeding, court action and/or arbitration against Mozambique and the MTC that refers or relates to any dispute arising out of the MOI, including the international arbitration initiated by PEL pursuant to the India-MZ BIT. In the alternative, the request injunction should be granted and remain in place until after this Tribunal finally adjudicates the issues within its jurisdiction;
- 5.8. declaring that PEL lacks standing and cannot assert any claims under the India-MZ BIT, Mozambique and the MTC did not violate the India-MZ BIT, and that PEL is not entitled to any rights, relief or any damages whatsoever, including but not limited to lost profits, consequential and/or incidental damages, under the India-MZ BIT against Mozambique and the MTC;
- 5.9. declaring that PEL has engaged in defamation of Mozambique and the MTC;
- 5.10. declaring that PEL engaged in fraudulent concealment of, and indeed defrauded Mozambique and the MTC, for the reasons discussed herein;
- 5.11. declaring that PEL engaged in ethics and professional violations under Mozambican law, including procurement and PPP law, for the reasons discussed herein;
- 5.12. awarding compensatory, actual, *per se* and/or punitive damages to Mozambique and the MTC to be paid by PEL for its fraud and defamation of Mozambique and the MTC, breach of the MOI if it is valid, ethics and professional violations, and other wrongful conduct described herein, in an amount according to proof to be presented by Mozambique and the MTC in this arbitration;
- 5.13. ordering PEL to pay Mozambique's and the MTC's attorneys' fees and costs incurred in connection with this arbitration; and
- 5.14. granting Mozambique and the MTC such further or other relief as the Tribunal shall deem to be just and appropriate."

See Request for Arbitration (R-3) at ¶ 280.

Patel is participating in the ICC arbitration and requesting relief on the merits, including an award that Mozambique and the MTC “have violated their obligations under the MOI.”

This UNCITRAL proceeding should be dismissed in favor of the ICC arbitration, which can determine all contract and BIT disputes among all parties, including the MTC that signed the MOI. At a minimum, this UNCITRAL arbitration should be suspended until after the ICC arbitration determines the validity of the MOI and contractual rights thereunder, the existence of which are governed by Mozambican law. In addition, as in *Fraport AG*, if the MOI violated Mozambican procurement law, there was no investment to protect under the India-MZ BIT, and this Tribunal would lack jurisdiction. Patel’s Statement of Claim, at ¶ 16, asserts that “PEL expressly exercised its right of first refusal under the MOI.” Similarly, at ¶¶ 30 and 40 of its Notice for Arbitration, Patel asserted that it “expressly exercised its right of first refusal” and was granted “in the MOI” a “right of first refusal and its right to a direct award of a concession.” Patel’s asserted treaty rights, if any, are dependent on a valid MOI and right of first refusal.

Bifurcation allows this Tribunal to timely assess whether or how this proceeding should proceed relative to the ICC arbitration, which may be dispositive to Patel’s international claims herein that rely on the MOI’s purported “rights” for jurisdiction, entitlement, and quantum.

**F. There is a Substantial Jurisdictional Question Whether Patel Exhausted its Remedies in Mozambique.**

The MOI requires compliance with Mozambican law. Clause 8 (project implementation). PPPs are governed by Law No. 15/2011, which at Article 39 states that disputes must be resolved pursuant to the terms of the parties’ contract. In the alternative, even if the Tribunal concluded the ICC arbitration did not encompass BIT claims, the UNCITRAL arbitration must be dismissed or suspended because the contract dispute has not yet been resolved in the ICC arbitration.

In addition, Patel’s bid dispute should have been timely resolved utilizing the bid protest procedures in Mozambican procurement law. By seeking to belatedly turn a procurement dispute into an investment treaty case, Patel seeks to impermissibly expand the scope of investor-state arbitration and raises substantial jurisdictional questions in the process. There would be a chilling effect on State receptiveness to investment and investment treaty arbitration if a contractor could lie in wait for years after a public tender, and bring a BIT claim bypassing local law, project-specific dispute resolution clauses, and public bid protest mechanisms, and seek millions in illusory lost profits – on a “speculative history” of what may have happened if its losing bid had won. Lax policing of jurisdictional limits risks a decision that opens the way to any disappointed bidder for a PPP concession forgoing dedicated, efficient, established bid protest procedures and procurement law (that exist in all States to balance the interests of taxpayers and state entities), in favor of amorphous, *ad hoc* and expensive resolution through generalist, less-developed “fair and equitable” BIT standards. This would be “open hunting season” on public financing. What would stop five disappointed bidders in a PPP megaproject from each separately claiming millions in 30-year lost profits if a State allegedly failed to “fairly” evaluate their bid and feasibility studies? These jurisdictional questions, and related policies, are serious and warrant bifurcated attention.

**G. The Jurisdictional Questions Are Not Intertwined with the Merits or Damages.**

As held in *PSEG Global* at ¶ 189, contractual issues such as “[w]hether the Memorandum is valid and in force [are] immaterial for the purpose of the Tribunal’s [jurisdictional] decision.”

Indeed, the aforementioned jurisdictional questions are not inextricably intertwined with the merits or damages. The jurisdictional questions here relate to whether the MOI and related expenditures constitute an investment, and whether this Tribunal should respect and enforce the parties’ arbitration agreement. These jurisdictional questions are distinct from the merits (such as

whether the MOI is valid, what are the substantive rights under the MOI, whether there was a breach of the MOI, whether there are investment treaty claims, and whether there are damages).

**H. Bifurcation of the Jurisdictional Questions is Most Efficient and Economical.**

Bifurcation is the appropriate procedural means to resolve these important, threshold jurisdictional matters efficiently, before Mozambique is forced to expend considerable resources engaging in merits discovery, hiring experts and briefing a dispute in which the Tribunal lacks jurisdiction. Similarly, it would be a waste of resources for the Tribunal to analyze the complex and various merits and damages issues without determining first whether there is jurisdiction.

**IV. CONCLUSION**

Thus, Mozambique requests that the Tribunal bifurcate the jurisdictional issues and adopt “Scenario A – Bifurcated Proceedings” in the Procedural Timetable in Procedural Order No. 1.

Dated: 20 November 2020.

Respectfully submitted,



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