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State Responsibility for Constructive Wrongful Expulsion of Foreign Nationals

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Ruth L. Cove

Abstract

This Note argues that constructive wrongful expulsion can result from state-inspired propaganda implemented by mobs that evolve into a successful revolutionary movement. Part I discusses the recent decisions of the Tribunal. Part II examines the generally-accepted principles of international law used in determining what constitutes unlawful conduct by a state and in attributing that conduct to a state. Part III proposes that the elements of state responsibility can be fulfilled under circumstances similar to those created during the Islamic Revolution.

STATE RESPONSIBILITY FOR CONSTRUCTIVE WRONGFUL EXPULSION OF FOREIGN NATIONALS

INTRODUCTION

In February 1979, the events of the Islamic Revolution in Iran led to the departure of thousands of U.S. nationals from the country.¹ The Iran-United States Claims Tribunal ("the Tribunal") was established² to address claims arising out of the Islamic Revolution, including small claims³ resulting from the alleged expulsion of U.S. nationals.⁴ Approximately 1500 small claims have been filed with the Tribunal in which U.S. nationals allege that they were wrongfully expelled from Iran.⁵

Each of the three Chambers⁶ of the Tribunal recently decided a wrongful expulsion case.⁷ The claimants in these cases

1. *The Khomeini Era Begins*, TIME, Feb. 12, 1979, at 33, 38-39; *1,350 Americans Evacuated*, N.Y. Times, Feb. 1, 1979, at A12, col. 2.

2. Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, 81 Dep't St. Bull. 3 [hereinafter Claims Settlement Agreement], reprinted in 20 I.L.M. 230.

3. Small claims are claims of less than US\$250,000, which are presented by the claimants' government on their behalf. Claims Settlement Agreement, *supra* note 2, art. III(3), 81 Dep't St. Bull. at 4, reprinted in 20 I.L.M. at 231.

4. Claims Settlement Agreement, *supra* note 2, arts. II(1), III(3), 81 Dep't St. Bull. at 3, 4, reprinted in 20 I.L.M. at 230-31.

5. Letter from Charles N. Brower to Jacqueline O. LiCalzi (Nov. 30, 1987) (available at the *Fordham International Law Journal* office) (discussing the recent awards by the Tribunal in wrongful expulsion cases).

6. The Tribunal is composed of nine members who are distributed among three "Chambers" or panels of arbitrators. Claims Settlement Agreement, *supra* note 2, art. III(1), 81 Dep't St. Bull. at 4, reprinted in 20 I.L.M. at 231. Pursuant to the Claims Settlement Agreement, the United States and Iran appointed three arbitrators each. *Id.* Those six appointees then chose three third-country arbitrators. *Id.*; see also Fagre, *International Agreements: Settlement of Claims Outstanding Between the United States and Iran*, 22 HARV. INT'L L.J. 443, 446-47 (1981) (discussing the composition of the Tribunal and how it may adjudicate claims). The Tribunal is divided into three Chambers to arbitrate private and official claims, with a U.S. arbitrator, an Iranian arbitrator, and a third-country arbitrator in each. Stewart & Sherman, *Developments at the Iran-United States Claims Tribunal: 1981-1983*, 24 VA. J. INT'L L. 1, 7 (1984). Article III(1) of the Claims Settlement Agreement provides that "[c]laims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine." 81 Dep't St. Bull. at 4, reprinted in 20 I.L.M. at 231.

7. Rankin v. Islamic Republic of Iran, Award No. 326-10913-2 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database); Yeager v. Islamic Republic of Iran, Award No. 324-10199-1 (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW,

sought to hold the Islamic Republic of Iran responsible for their alleged expulsions, which they claim resulted from circumstances created by the Revolution's anti-American policy.⁸ The majority decisions held that the anti-American actions of the revolutionary movement did not cause the expulsion of U.S. nationals.⁹ The Tribunal found the Islamic Republic responsible only in the situation where it was established that an identifiable agent of the revolutionary movement caused the claimant's departure.¹⁰ Judge Brower,¹¹ however, argued in dissent to one of the cases that an individual could be constructively expelled by circumstances resulting from the anti-American policy promulgated by Ayatollah Khomeini, the leader of the revolutionary movement.¹²

This Note argues that constructive wrongful expulsion can result from state-inspired propaganda implemented by mobs that evolve into a successful revolutionary movement. Part I discusses the recent decisions of the Tribunal. Part II examines the generally-accepted principles of international law used in determining what constitutes unlawful conduct by a state

INT-IRAN database); *Short v. Islamic Republic of Iran*, Award No. 312-11135-3 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database). Chamber Two of the Tribunal recently issued a decision in a case in which the claimant sought reparation for damages incurred as a result of her alleged wrongful expulsion from Iran in January 1979. *Hilt v. Islamic Republic of Iran*, Award No. 354-10427-2 (Iran-U.S. Claims Trib. Mar. 16, 1988) (WESTLAW, INT-IRAN database). This decision will not be discussed in the body of this Note.

8. See *Rankin*, Award No. 326-10913-2, slip. op. at 2, 13 (claimant seeks compensation for his wrongful expulsion that allegedly resulted from the anti-American tone of the Revolution); *Yeager*, Award No. 324-10199-1, slip. op. at 13-14 (claimant alleges that the increasing anti-American tone promulgated by the Ayatollah, caused the "de facto" expulsion of U.S. nationals from Iran); *Short*, Award No. 312-11135-3, slip. op. at 13-14 (claimant relies on the anti-American declarations of the Ayatollah as the cause of his expulsion).

9. See *Rankin*, Award No. 326-10199-1, slip. op. at 23 (claimant did not prove that the implementation of the anti-American policy of the Islamic Revolution caused his departure); *Short*, Award No. 312-11135-3, slip. op. at 14 (the revolutionaries' actions did not cause Short's departure).

10. See *Yeager*, Award No. 324-10199-1, slip. op. at 15-19. The Iranian arbitrator issued a separate opinion in which he dissented in part and concurred in part. This opinion is unavailable to the author.

11. The Honorable Charles N. Brower was the United States arbitrator in Chamber Three of the Tribunal. He is at present with the law firm of White & Case in Washington, D.C.

12. See *Short*, Award No. 312-11135-3, slip. op. at 13-14 (Brower, J., dissenting). There was no dissent by the U.S. arbitrator in Chamber Two of the Tribunal, in *Rankin*, another case in which a U.S. national was denied any recovery.

and in attributing that conduct to a state. Part III proposes that the elements of state responsibility can be fulfilled under circumstances similar to those created during the Islamic Revolution.

I. *WRONGFUL EXPULSION CASES BEFORE THE IRAN-UNITED STATES CLAIMS TRIBUNAL*

On February 1, 1979, Ayatollah Ruhollah Khomeini, "symbol and architect of the Iranian Revolution,"¹³ returned to Iran in triumph after fifteen years of exile.¹⁴ The Ayatollah's return, on the heels of Shah Reza Pahlavi's departure, marked the end of the Pahlavi dynasty.¹⁵

The Ayatollah had announced the formation of a Council of the Islamic Revolution while in exile, and on February 11, ten days after his return to Iran, he appointed a provisional revolutionary government.¹⁶ He made it clear, however, that final victory would come only when Iran had rid itself of all foreign domination.¹⁷ Thus, he continued to promulgate anti-American rhetoric designed to effect the removal of all U.S. nationals.¹⁸ Consequently, the vast majority of U.S. citizens still in Iran after February 1 either were forcibly removed from the country or chose to leave before they were compelled to do so.¹⁹

Relations between Iran and the United States continued to deteriorate throughout 1979.²⁰ On November 4, 1979, after statements by the Ayatollah and his Foreign Minister urging

13. *The Shah Takes His Leave*, *TIME*, Jan. 29, 1979, at 48.

14. Apple, *Bakhtiar Warns foe*, *N.Y. Times*, Feb. 1, 1979, at A1, col. 6.

15. U.S. HOUSE OF REPRESENTATIVES COMM. ON FOR. AFFAIRS, 97TH CONG., 1ST SESS., CONGRESS AND FOREIGN POLICY—1979, at 72-73 (Comm. Print 1980) [hereinafter CONGRESS AND FOREIGN POLICY].

16. *Id.* at 74.

17. Apple, *Khomeini Threatens To Arrest Bakhtiar if He Stays in Post*, *N.Y. Times*, Feb. 2, 1979, at A1, col. 6; Apple, *Bakhtiar Warns foe*, *N.Y. Times*, Feb. 1, 1979, at A1, col. 6; *The Shah Takes His Leave*, *TIME*, Jan. 29, 1979, at 48, 49.

18. *1979 U.S. Embassy Occupation 'Divine Chapter'*, Foreign Broadcast Information Service Daily Report, South Asia, at I3 (Nov. 4, 1986) (the Ayatollah's statements reveal that from its inception, the United States was the true foe of the Islamic Revolution); see also B. RUBIN, *PAVED WITH GOOD INTENTIONS: THE AMERICAN EXPERIENCE AND IRAN* 252, 279, 280, 283, 290 (1980) (discussing Ayatollah's statements and the resulting radicalization of the Revolution from February 1979 on).

19. *The Khomeini Era Begins*, *supra* note 1, at 38-39.

20. CONGRESS AND FOREIGN POLICY, *supra* note 15, at 74.

action against the United States, student militants seized the United States Embassy in Teheran and took U.S. citizens and Embassy employees hostage.²¹ When it later appeared that the Islamic Republic intended to withdraw its assets in the United States, those assets were frozen by Executive Order.²² In January 1981, the United States and the Islamic Republic concluded the Algiers Accords, whereby the Islamic Republic agreed to release the hostages and the United States agreed to return the assets to Iran.²³

The Tribunal was established as part of these agreements to ensure the resolution of claims of U.S. nationals against the Islamic Republic.²⁴ The Tribunal recently issued decisions in

21. *Id.*; see also Stewart & Sherman, *supra* note 6, at 1 (the settlement between the United States and Iran led to the release of 52 American hostages). See generally W. CHRISTOPHER, *AMERICAN HOSTAGES IN IRAN* (1985).

22. Exec. Order No. 12,170, 44 Fed. Reg. 65,279 (1979), reprinted in 50 U.S.C. § 1701 note, at 148 (1982). The Government froze assets in the United States and abroad worth approximately US\$12 billion. Stewart & Sherman, *supra* note 6, at 2 & n.8 (discussing the President's freeze on Iranian assets).

23. The Algiers Accords include the Claims Settlement Agreement and the Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, 81 Dep't St. Bull. 1 [hereinafter General Declaration], reprinted in 20 I.L.M. 224. The General Declaration provided, *inter alia*, for the release of the hostages in exchange for the assets frozen in the United States. 81 Dep't St. Bull. at 1-2, reprinted in 20 I.L.M. at 224-25. See generally, Fagre, *supra* note 6, at 443-46 (discussing the settlement between the United States and Iran that involved the establishment of the Tribunal); Stewart & Sherman, *supra* note 6, at 4 (discussing the two agreements).

24. Claims Settlement Agreement, *supra* note 2, art. II(1), 81 Dep't St. Bull. at 3, reprinted in 20 I.L.M. at 230-31. U.S. nationals originally pursued their claims against Iran in U.S. and foreign courts. Stewart & Sherman, *supra* note 6, at 2-3. As a result, a large portion of Iranian assets were judicially attached. *Id.* at 3. Thus, the assets could not be returned to Iran in exchange for the hostages by simply lifting the Freeze Order. *Id.* The resolution of the crisis, therefore, had to include provisions for adequate compensation to U.S. claimants. *Id.* The Iranians agreed to the establishment of an international tribunal to ensure adjudication and payment of U.S. nationals' claims against Iran. *Id.* at 4. The Tribunal was established when Iran and the United States entered into the Algiers Accords. *Id.* A security account was funded with US\$1 billion of the frozen assets to assure payments to successful U.S. claimants. General Declaration, *supra* note 23, ¶¶6-7, 81 Dep't St. Bull. at 2, reprinted in 20 I.L.M. at 226. Iran must replenish the account when its balance falls below U.S. \$500 million. *Id.* ¶7, 81 Dep't St. Bull. at 2, reprinted in 20 I.L.M. at 226; see also Jones, *The Iran-United States Claims Tribunal: Private Rights and State Responsibility*, 24 VA. J. INT'L L. 259, 269 ("The Tribunal is one part of a larger scheme which was intended to restore a measure of normality in international relations between Iran and the United States."); Note, *Authority of United States Bankruptcy Courts to Stay International Arbitral Proceedings*, 11 FORDHAM INT'L L.J. 148, 155 n.47 (1987) (discussing the resolution of

three wrongful expulsion cases.²⁵ In two of the cases, *Short v. Islamic Republic of Iran* and *Rankin v. Islamic Republic of Iran*, the Tribunal did not hold Iran responsible for expelling U.S. nationals because it found that the actions that allegedly caused the claimants' departures either were not attributable to the state or were not the cause of their departures.²⁶ In the third, *Yeager v. Islamic Republic of Iran*, the Tribunal found that the claimant had been wrongfully expelled by agents of the Islamic Republic.²⁷ The Tribunal limited the award of damages, however, to those injuries that were a direct result of the agents' actions.²⁸ Judge Brower dissented from the decision in *Short*

the hostage crisis, private claims against Iran, and the return of the frozen assets to Iran).

The Tribunal is empowered to "decide all cases on the basis of respect for the law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." Claims Settlement Agreement, *supra* note 2, art. V, 81 Dep't St. Bull. at 4, *reprinted* in 20 I.L.M. at 232. The sources of international law generally followed by arbitral tribunals are set forth in article 38(I)(c) of the Statute of the International Court of Justice, which is "regarded as a complete statement of the sources of international law." I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 3 (3d ed. 1979). That article includes: "international conventions," "international custom," and "general principles of law recognized by civilized nations." *Id.*; *see also id.* at 1-32 (discussing the sources of international law in detail).

25. *See supra* note 7 and accompanying text. In December 1983, the Tribunal chose test cases designed to facilitate the resolution of small claims involving similar issues. *United States ex rel. Hernandez v. Islamic Republic of Iran*, Case No. 11762 (Iran-U.S. Claims Trib. June 4, 1986) (Brower, J., sep. opinion), *reprinted* in *Iranian Assets Litig. Rep.* 12,403 (June 13, 1986). These cases were among those distributed to the three Chambers as representative of issues involved in wrongful expulsion cases. *See id.*; *Short v. Islamic Republic of Iran*, Award No. 312-11135-3, slip. op. at 15 n.10 (Brower, J., dissenting) (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database). Unfortunately, the test case procedure has not been followed. *Hernandez*, Case No. 11762, slip. op. at 3, *reprinted* in *Iranian Assets Litig. Rep.* at 12,404. Subsequent to the adoption of the test case plan, the Tribunal selected cases "virtually without regard" to that plan. *Id.* Moreover, a body of precedent may not expedite the resolution of the pending small claims cases because Iran may be unwilling to agree to a lump-sum settlement. Prywes, *The "Small" Iran Claims: Present Status and Future Prospects*, 10 MIDDLE E. EXECUTIVE REP. 9, 20 (1987); *see also* Stewart & Sherman, *supra* note 6, at 13-14 (discussing the test case approach and lump-sum settlement of small claims).

26. *See Short*, Award No. 312-11135-3, slip. op. at 14; *Rankin*, Award No. 326-10913-2, slip. op. at 24 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database).

27. Award No. 324-10199-1, slip. op. at 21 (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW, INT-IRAN database).

28. *Id.* at 23, 26-29.

and argued that U.S. nationals were constructively expelled by the circumstances created by the revolutionary movement in the implementation of a policy promulgated by the Ayatollah and designed to effect the departure of U.S. nationals.²⁹

A. Short: *Actions Not Attributable to the State*

In *Short v. Islamic Republic of Iran*,³⁰ Chamber Three of the Tribunal refused to find that the claimant was wrongfully expelled because he did not establish that his departure was caused by wrongful conduct attributable to Iran.³¹

Alfred Short began employment with Lockheed Aircraft Service Company in April 1977 under a two-year contract.³² Short claimed that after the onset of the Islamic Revolution in late 1978 he lived under increasing stress caused by anti-American threats and violence that were instigated by statements of the Ayatollah Khomeini.³³ Following the departure of the Shah in January 1979, attacks on U.S. nationals and anti-American sentiment escalated.³⁴ Although Short accepted an extension of his employment in Iran on January 22, 1979, he alleged that the tumultuous situation after the return of the Ayatollah forced his departure in February 1979.³⁵

The Tribunal held that the actions that caused Short's departure could not be attributed to the Islamic Republic because there was no state action.³⁶ The Tribunal accepted in principle that an alien can be wrongfully expelled "in the absence of any order or *specific* state action."³⁷ It added, however, that an alien must then prove that he had "no other choice than to leave," and that the acts leading to his departure "were attributable to the State."³⁸ The Tribunal agreed that a state would be responsible for the actions imputable to the revolu-

29. *Short*, Award No. 312-11135-3, slip. op. at 2 (Brower, J., dissenting).

30. Award No. 312-11135-3 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database). Short sought reparation for lost employment income and benefits and abandoned personal property. *Id.* at 2.

31. *Id.* at 14.

32. *Id.* at 5.

33. *Id.* at 6.

34. *Id.* at 7.

35. *Id.* at 7-8.

36. *Id.* at 13-14.

37. *Id.* at 11 (emphasis added).

38. *Id.*

tionary movement that established the state, but it held that Short had failed to impute the cause of his departure to the Islamic Republic.³⁹ The Tribunal found that Short did not "identify any agent of the revolutionary movement, the actions of which compelled him to leave Iran."⁴⁰ Moreover, the Tribunal was not persuaded that the general statements of the Ayatollah caused anti-American actions by revolutionaries or even that any action by revolutionaries caused Short's departure.⁴¹

B. *Judge Brower's Dissent in Short: Constructive Expulsion*

In his dissent from the Tribunal's decision, Judge Brower argued that expulsion can occur constructively in the absence of a specific state actor or action when the state engages "in discrete acts or omissions collectively designed to bring about [an alien's] departure."⁴²

Judge Brower found that the statements of Ayatollah Khomeini were part of a studied policy, implemented by his followers, that was designed to expel all U.S. nationals from Iran.⁴³ According to Judge Brower, the Ayatollah's statements clearly reveal that he believed that "to rid Iran of the Shah for certain one had also to cleanse it completely of Americans and their influence in every form."⁴⁴ Judge Brower further found a direct correlation between the Ayatollah's verbal attacks on the United States and anti-American violence in Iran.⁴⁵ In other words, the Ayatollah's supporters decided as a matter of policy to expel U.S. nationals.⁴⁶

Judge Brower argued that the anti-American actions of the

39. *Id.* at 12-13.

40. *Id.* at 13.

41. *Id.* at 14.

42. *Id.* at 2 (Brower, J., dissenting).

43. *Id.* at 13. Judge Brower stated that the general declarations of the Ayatollah can "be seen to have caused the more general, less cataclysmic and rather complete exodus of Americans from Iran." *Id.* at 12-13 n.8.

44. *Id.* at 6.

45. *Id.* at 11. "The fact that virtually every last American had given it all up in Iran by (or soon after) the end of February 1979 strongly suggests that something more than general revolutionary disorder was at play." *Id.* at 15. Judge Brower did not suggest that all U.S. citizens left Iran because of the Ayatollah's anti-American policy. However, he found that this policy was the cause of some departures. *Id.* at 13-16.

46. *Id.* at 16.

supporters of the Ayatollah were attributable to the Islamic Republic.⁴⁷ He stated that the fact that the revolutionary movement was not in a conventional military form did not negate the accepted principle that the acts of a successful revolutionary movement are attributable to the new government.⁴⁸ Indeed, Judge Brower argued, a successful movement of loosely organized adherents is no less responsible for its actions than a conventional military unit.⁴⁹

Moreover, Judge Brower contended that the "determinedly anti-American stance" of the revolutionary movement caused the expulsion of some U.S. nationals.⁵⁰ He found no basis for Iran's assertion that U.S. nationals were ordered out by the U.S. government.⁵¹ Judge Brower reasoned that the fact that all but 5000 of the 45,000 U.S. nationals who had lived in Iran prior to 1978 had left Iran by February 1979 and the fact that only 1500 U.S. nationals have since brought wrongful expulsion claims indicated that the Revolution had caused the departure of at least that small percentage.⁵²

Judge Brower concluded that the Tribunal should establish a rebuttable presumption⁵³ that the departure of any U.S. national after the return of the Ayatollah to Iran on February 1 was "very likely due to the applied anti-Americanism of the Ayatollah and his followers."⁵⁴ Thus, the Islamic Republic would be responsible for the wrongful expulsion of U.S. nationals from the country.⁵⁵

47. *Id.* at 19. "It would be emphasizing form over substance, and failing to adapt the traditional concepts of international law to evolving political developments, to say that acts of unorganized or loosely organized adherents of the successful Revolution are not attributable to the ensuing government." *Id.*

48. *Id.* at 18-19.

49. *Id.* at 19.

50. *Id.* at 15.

51. *Id.* at 14 n.9.

52. *Id.* at 15. Judge Brower further found that the circumstances underlying the 1500 claims filed indicate that the Islamic Revolution caused the departure of U.S. nationals. *Id.* at 15-16. Of the 1500 claims filed, over half of them appeared to arise in February 1979. *Id.* Moreover, many of the claims after February 1 involved mistreatment of U.S. nationals by Revolutionary Guards. *Id.* at 16.

53. *Id.* at 22.

54. *Id.* at 21.

55. *Id.* at 21-22.

C. Rankin: *State's Actions Did Not Cause the Departure of U.S. Nationals*

In *Rankin v. Islamic Republic of Iran*,⁵⁶ Chamber Two of the Tribunal found that this claimant had also failed to prove that his departure was caused by actions attributable to the Islamic Republic.⁵⁷ The Tribunal focused on whether or not Rankin intended to leave Iran voluntarily.⁵⁸ It found that the "generally chaotic conditions" during the Revolution were the motivation for his departure and could not be attributed to the new government.⁵⁹

Rankin was under contract with Bell Helicopter International, Inc. ("BHI"), through February 1980.⁶⁰ Nevertheless, on February 12, 1979, Rankin and his wife went to the Teheran Hilton Hotel, where terminated BHI employees had gathered to prepare for departure.⁶¹

Shortly after the Rankins' arrival, members of an armed group gained control of the hotel.⁶² They took senior BHI representatives to the revolutionary headquarters of the Ayatollah Khomeini, where the representatives claim they met with Dr. Yazdi, a leading figure in the revolutionary movement.⁶³ Dr. Yazdi allegedly told the BHI representatives that the new government wanted nothing to do with U.S. nationals and that all BHI employees would have to leave Iran.⁶⁴ After five days of confinement, the Rankins and fellow employees were taken to the airport and they then left the country.⁶⁵

The Tribunal held that Rankin failed to prove that he did not intend to leave Iran when he went to the Hilton on February 12.⁶⁶ Thus, he failed to prove that the Ayatollah's policy of

56. Award No. 326-10913-2, slip. op. (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database). Rankin sought compensation from Iran for loss of personal property and property rights arising from his alleged wrongful expulsion. *Id.* at 2.

57. *Id.* at 24.

58. *Id.* at 20-23.

59. *Id.* at 23-24.

60. *Id.* at 3.

61. *Id.* at 3-4.

62. *Id.* at 4.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 23.

ridding the country of foreigners, as evidenced by Dr. Yazdi's statement, "was a substantial causal factor in his departure from Iran."⁶⁷

The Tribunal stated that it would find Iran liable only if Rankin could prove two facts: one, that he was compelled to leave by wrongful acts attributable to the Islamic Republic; and two, that such wrongful expulsion caused losses to his property or property interests.⁶⁸ The Tribunal reasoned that an action is wrongful if it is "arbitrary, discriminatory, or in breach of the expelling State's treaty obligations."⁶⁹ Even in the absence of an order that directs an individual to leave, expulsion is wrongful if the action creates a situation in which an individual's "continued presence in the host country is made impossible because of conditions generated by wrongful acts of the State or attributable to it."⁷⁰

The Tribunal found that the statements of the Ayatollah were attributable to the Islamic Republic.⁷¹ Furthermore, it stated that the Ayatollah's policy of ridding the country of foreigners, particularly U.S. nationals, could violate the obligations of the Treaty of Amity⁷² between the United States and

67. *Id.*

68. *Id.* at 10.

69. *Id.* at 11.

70. *Id.*

71. *Id.* at 17.

72. *Id.* at 17-18. The provisions of the Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853, 284 U.N.T.S. 93 (*entered into force* June 16, 1957) [hereinafter Treaty of Amity] are applicable to the cases before the Tribunal. *See, e.g.*, Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, 28 (although the operation of the Treaty has been impaired by the rupture of diplomatic relations between the U.S. and Iran, "its provisions remain part of the corpus of law applicable between the U.S. and Iran"); *Sedco, Inc. v. National Iranian Oil Co.*, Award No. ITL 59-129-3, slip. op. at 3 (Brower, J., sep. opinion) (Iran-U.S. Claims Trib. Mar. 27, 1986), *reprinted in* Iranian Assets Litig. Rep. 12,103, 12,104 (Apr. 11, 1986) (the Treaty of Amity has not been terminated because Iran has not given notice of termination under either the provisions of the Treaty or general principles of international law); *Phelps Dodge Corp. v. Islamic Republic of Iran*, Award No. 217-99-2, slip. op. at 15-16 (Iran-U.S. Claims Trib. Mar. 19, 1986), *reprinted in* Iranian Assets Litig. Rep. 12,044, 12,051 (Mar. 28, 1986) (the Tribunal did not find it necessary to determine whether the Treaty remained in force at the hearing date as it was clearly applicable at the time the claim arose); *see also* *Clark v. Allen*, 331 U.S. 503, 508-514 (1947) (discussing governmental actions that may suspend or abrogate all or part of a treaty); *Charlton v. Kelly*, 229 U.S. 447, 475 (1913) (although the other nation has violated a treaty with the United States, it remains in force until the United States elects to declare its abrogation).

Iran.⁷³ The Tribunal held, however, that Rankin did not prove that the Ayatollah's statements caused his departure because he failed to prove that he did not intend to leave Iran voluntarily.⁷⁴ Therefore, his departure was not caused by actions of the state.⁷⁵

D. Yeager: *The Introduction of Revolutionary Guards*

In *Yeager v. Islamic Republic of Iran*,⁷⁶ Chamber One of the Tribunal found that the claimant had been wrongfully expelled but held that only some of his alleged injuries were a result of his expulsion.⁷⁷ The additional element that sparked liability in this case was the specific action of Revolutionary Guards,⁷⁸ whom the Tribunal found to have caused Yeager's departure from Iran.⁷⁹ The Tribunal, however, did not hold Iran responsible for any losses beyond those that were a direct result of the Guards' actions.⁸⁰

Yeager began employment in Iran in January 1978 with BHI under a two-year contract.⁸¹ He alleged that, beginning in October 1978, U.S. nationals were subject to threats and intimidation instigated and supported by the Ayatollah, and that such intimidation eventually caused the de facto expulsion of U.S. nationals.⁸² Yeager contended that he was harassed by his

73. *Rankin*, Award No. 326-10913-2, slip. op. at 18. The Treaty of Amity provides in relevant part that Iran can expel U.S. citizens only as "necessary to maintain public order, and to protect public health, morals and safety." Treaty of Amity, *supra* note 72, art. II(3), 8 U.S.T. at 902, T.I.A.S. No. 3853, at 2, 284 U.N.T.S. at 112.

74. *Rankin*, Award No. 326-10913-2, slip. op. at 23.

75. *Id.* at 23-24.

76. Award No. 324-10199-1 (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW, INT-IRAN database). Yeager sought compensation for damages in the amount of US\$134,147.14 for his alleged wrongful expulsion. *Id.* at 2.

77. *Id.* at 30-31.

78. The term "Revolutionary Guards" has been used to describe groups loyal to the Ayatollah since February 1979. *Id.* at 16. These groups were also referred to as "Komitehs," which were neighborhood revolutionary committees that formed during the early stages of the Revolution. *Id.* at 15. In May 1979, Komitehs were recognized by an official decree under the name Revolutionary Guard. *Id.* at 16. The Tribunal found that the terms "Revolutionary Komitehs" and "Revolutionary Guards" were used to describe the same group of revolutionaries. *Id.* The Tribunal stated that, at some point from February to May 1979, they had apparently changed their name but not their composition. *Id.*

79. *Id.* at 14.

80. *Id.* at 22-29.

81. *Id.* at 3.

82. *Id.*

neighbors, who stated that "trouble would come" to him and his wife.⁸³ On February 13, 1979, two men, identified as Revolutionary Guards by distinctive arm bands indicating association with the new government, came to his apartment armed with rifles.⁸⁴ They announced that he and his wife would have to leave within thirty minutes.⁸⁵ The Guards then took them to the Hilton Hotel, where they were forced to stay until they left Iran on February 17.⁸⁶ Yeager and his wife were searched at the airport by Guards, who seized their cash.⁸⁷

The Tribunal held that Yeager had been wrongfully expelled by Revolutionary Guards who were acting on behalf of the new government.⁸⁸ It stated that an act can be attributed to a state if the claimant can identify "with reasonable certainty the actors and their association with the State."⁸⁹ Although the Tribunal recognized that the ongoing turmoil in Iran made such identification difficult, it concluded "that there were identifiable groups associated with the new government that . . . acted for Iran immediately after the victory of the Revolution."⁹⁰ Expulsion by such groups constituted wrongful state action.⁹¹

The Tribunal then found that the actions of the Revolutionary Guards were attributable to the government because, at least after February 11, 1979, the Guards were acting for the new government, or "exercised elements of governmental authority in the absence of official authorities, in operations of which the new Government must have had knowledge and to which it did not specifically object."⁹² Thus, because the government did not establish that it could not control the Guards' actions, the Tribunal held it responsible for those actions.⁹³ In contrast, the Tribunal did not find a sufficient causal link be-

83. *Id.* at 4.

84. *Id.*

85. *Id.* at 4-5.

86. *Id.* at 5.

87. *Id.*

88. *Id.* at 18-19, 21.

89. *Id.* at 15.

90. *Id.*

91. *Id.* at 15-17.

92. *Id.* at 18. The Tribunal also found evidence to suggest that the new government supported the Guards' actions. *Id.* at 19.

93. *Id.* at 19-21.

tween the statements of Yeager's neighbors and the sale of his property at below its value.⁹⁴

The Tribunal further found that the Guards' actions caused Yeager's departure.⁹⁵ Although BHI had started to evacuate its personnel in late 1978, its employees were not obligated to leave Iran.⁹⁶ Nor were they bound by U.S. Embassy recommendations to leave.⁹⁷ Therefore, the Tribunal reasoned that the Guards had forced Yeager to leave Iran and that this conduct constituted a "*de jure* expulsion by virtue of an express or implied order."⁹⁸ Moreover, the Tribunal considered the expulsion wrongful because it violated the Treaty of Amity and because it did not give Yeager "sufficient time to wind up his affairs," as required by accepted principles of international law.⁹⁹

Accordingly, the Tribunal held the Islamic Republic of Iran responsible for all of the losses that were a direct result of Yeager's wrongful expulsion.¹⁰⁰ Those losses included the value of the property Yeager was forced to leave behind¹⁰¹ and the cash seized at the airport.¹⁰² Because it did not attribute the statements of Yeager's neighbors to the Islamic Republic, the Tribunal denied compensation for losses allegedly sustained as a result of those statements.¹⁰³ The Tribunal further found that Yeager's employment contract was terminated because BHI ceased operations in Iran.¹⁰⁴ Thus, the Tribunal denied Yeager's claim for compensation for loss of salary and employment benefits.¹⁰⁵

II. STATE RESPONSIBILITY FOR INJURIES TO ALIENS

Under general principles of international law, an alien claimant seeking to hold a state responsible for certain conduct

94. *Id.* at 23.

95. *Id.* at 21.

96. *Id.* at 19-20.

97. *Id.* at 20.

98. *Id.* at 21.

99. *Id.* at 21-22.

100. *Id.* at 23, 27.

101. *Id.* at 23.

102. *Id.* at 27.

103. *Id.* at 23.

104. *Id.* at 26.

105. *Id.*

must prove three facts: that the conduct was unlawful, that it was attributable to the state, and that it resulted in injury.¹⁰⁶

A. Unlawful Conduct

A state has the right to expel aliens as an incident of its sovereignty.¹⁰⁷ That right, however, must not be exercised in

106. *Dickson Car Wheel Co. v. United Mexican States (U.S. v. Mex.)*, 4 R. Int'l Arb. Awards 669, 678 (1931); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 711 (1987) (a state is responsible for injuries sustained by foreign nationals as a result of an official act or omission in violation of international law); B. CHENG, GENERAL PRINCIPLES OF LAW 170 (1987) ("International responsibility is immediately incurred by a State which, by an act imputable to it, has violated a rule of international law."); Christenson, *The Doctrine of Attribution in State Responsibility*, in R. LILICH, INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS 321, 324 (1983) (a state is responsible when acts or omissions attributed to it breach an international obligation).

Unlawful conduct may result from a breach of an international obligation under either a treaty stipulation or general principles of international law. B. CHENG, *supra*, at 173. Such a breach can occur through either an act or an omission. *Id.* at 174; see C.F. AMERASINGHE, STATE RESPONSIBILITY FOR INJURIES TO ALIENS 43 (1967) (the issue is whether a breach of international law has arisen from either acts or omissions of the state); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 206 comment e (1987) (a state is responsible when it breaches its duties under either international law or international agreement); L. OPPENHEIM, INTERNATIONAL LAW 337 (8th ed. 1955) (an international delinquency results from every breach of an international legal duty).

An "omission" in breach of an international obligation occurs when a state fails to act when it has a duty to do so. B. CHENG, *supra*, at 174. Such a breach occurs when, for example, a state fails to prosecute one of its citizens who has committed a crime against a foreigner. See, e.g., *Chevreau Case (Fr. v. Gr. Brit.)*, 2 R. Int'l Arb. Awards 1113, 1123 (1927) (Great Britain breached its international obligations when it failed to make a proper investigation after an otherwise lawful arrest of a French citizen); *Stephens v. United Mexican States (U.S. v. Mex.)*, 4 R. Int'l Arb. Awards 265, 268 (1927) (when a U.S. national was shot by a Mexican soldier, the Mexican Government was held responsible for both the act of the soldier and for failing to prosecute an official who allowed the soldier to escape).

Additionally, it is essential that the unlawful act or omission caused injury to the foreign national. C.F. AMERASINGHE, *supra*, at 55 (1967); see Straus, *Causation as an Element of State Responsibility*, 16 LAW & POL'Y INT'L BUS. 893, 923-25 (1984) (discussing principles that should be applied in determining whether state actions caused injuries to foreign nationals).

107. *Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893) (the right to expel aliens is "an inherent and inalienable right of every sovereign"); *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) (every nation has, as an incident of its sovereignty, the right to forbid the entrance of foreigners to its territory or to admit them only on certain conditions); accord *Boffolo Case (Italy v. Venez.)*, 10 R. Int'l Arb. Awards 528, 534 (c.1903) ("[a] state possesses the general right of expulsion"); *Maal Case (Netherlands v. Venez.)*, 10 R. Int'l Arb. Awards 730, 731 (c.1903) (the right to expel foreigners is an attribute of the state's sovereignty); *Paquet Case (Belg. v. Venez.)*, 9 R. Int'l Arb. Awards 323, 325 (c.1903) (the right to expel foreigners dan-

an arbitrary manner.¹⁰⁸ An expulsion must be exercised in good faith and must be justified, generally, as being in the public interest of the state.¹⁰⁹ Thus, Venezuela was held responsible for damages sustained by an Italian citizen who was expelled because he published newspaper articles that were critical of the Venezuelan government.¹¹⁰ The umpire of the Italian-Venezuelan Commission found that freedom of speech

gerous to the public order is generally recognized); *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 206 (1987) ("Under international law, a state has . . . sovereignty over its territory."); E. BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 48 (1915) ("[t]he power to expel aliens rests upon . . . the sovereignty of the state"); B. CHENG, *supra* note 106, at 32 (a state has the right to expel aliens in the interests of its welfare and security); G. GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* 203 (1978) (a state has the competence to expel aliens as an incident of its sovereignty); L. OPPENHEIM, *supra* note 106, at 691 (a state's right to expel aliens is generally recognized); M. PELLONPÄÄ, *EXPULSION IN INTERNATIONAL LAW* 8 (1984) (a state's right to expel aliens is based upon its sovereignty).

Expulsion is an action by the state that secures the removal of an alien from the state either forcibly or under threat of forcible removal. G. GOODWIN-GILL, *supra*, at 201; M. PELLONPÄÄ, *supra*, at 4. It is commonly effected through an order or proclamation of a state official. *See* E. BORCHARD, *supra*, at 54 ("In many countries expulsion is carried out by administrative order of the minister of interior or other executive officer."); *see also* 4 J. MOORE, *HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY* 3333-59 (1898) (discussing cases wherein individuals claimed damages for expulsions ordered by a state).

108. E. BORCHARD, *supra* note 107, at 49, 51 (the right of expulsion is limited by a state's obligations under international law and cannot be exercised arbitrarily); B. CHENG, *supra* note 106, at 36 (the discretionary right of expulsion must not be exercised arbitrarily); L. OPPENHEIM, *supra* note 106, at 692 ("Although a State may exercise its right of expulsion according to discretion, it must not abuse its right by proceeding in an arbitrary manner."); *see Chevreau Case*, 2 R. Int'l Arb. Awards at 1123 (the arbitrary arrest, detention, or deportation of a foreigner may give rise to a claim under international law) (author's translation). Expulsion has been described as an exercise of controlled discretion by the state. G. GOODWIN-GILL, *supra* note 107, at 204.

109. *Maal Case*, 10 R. Int'l Arb. Awards at 731 (the power of expulsion is rightfully exercised only in proper defense of the country from anticipated or actual danger); *Paquet Case*, 9 R. Int'l Arb. Awards at 325 (the state has the right to expel a foreigner only if the state considers him to be dangerous to the public order); E. BORCHARD, *supra* note 107, at 51 (a general justification for an expulsion "may be summed up in the words 'the public interests of the state'"); B. CHENG, *supra* note 106, at 36 (a state has the right to expel aliens as a measure of self-protection but it must be exercised in good faith); G. GOODWIN-GILL, *supra* note 107, at 203 (the power of expulsion is frequently justified as in the public interests of the state). Whether an expulsion has been rightfully exercised must be determined in light of the state's international obligations. G. GOODWIN-GILL, *supra* note 107, at 21.

110. *Boffolo Case*, 10 R. Int'l Arb. Awards at 537. One article was critical of the judiciary and the president of Venezuela, and another encouraged the reading of a socialist paper. *Id.* at 536-37.

and press were guaranteed by the Venezuelan Constitution, and thus the expulsion could not be justified as being in the public interest of the state.¹¹¹

When an expulsion is in bad faith or clearly unreasonable it is also an unlawful abuse of a state's discretion.¹¹² Thus, a state is considered responsible for damages resulting from an expulsion based on personal enmities¹¹³ or used as a means of expropriation.¹¹⁴ The same is true of an expulsion used as a method of racial discrimination¹¹⁵ or as a reprisal against the expellee's state.¹¹⁶

These principles may also be applicable to expulsions of aliens en masse.¹¹⁷ For example, in 1972 President Idi Amin

111. *Id.* at 537.

112. B. CHENG, *supra* note 106, at 134; *see* Concerning Rights of Nationals of the United States in Morocco (Fr. v. U.S.), 1952 I.C.J. 176, 212 (preliminary objection) (when Morocco instituted import controls that discriminated against the United States, it was held that Morocco had the power to regulate its imports but that that power had to be exercised "reasonably and in good faith").

113. J. MOORE, *supra* note 107, at 3333-34 (Case of Santangelo).

114. G. GOODWIN-GILL, *supra* note 107, at 212-13.

115. E. BORCHARD, *supra* note 107, at 61; *see also* Sharma & Wooldridge, *Some Legal Questions Arising from the Expulsion of Ugandan Asians*, 23 INT'L & COMP. L.Q. 397, 405 (1974) (suggesting that the collective expulsion of British subjects of Asian descent was unlawful because it was in breach of the law of the United Nations regarding racial discrimination).

116. Portugal v. Germany (The Naulilaa Case), 4 Ann. Dig. 526, 527 (Special Arb. Trib. 1928). Germany was held responsible for destroying outposts in Portuguese Territory as a means of reprisal against Portugal after Portuguese officers accidentally shot German officers. *Id.* at 526-27. The tribunal held that a right of reprisal is legitimately exercised only when: (1) there is a violation of international law by the state against which the reprisal is directed and (2) the reprisal is preceded by a request to remedy the alleged violation. *Id.* at 527. The tribunal in this case found that Portugal had not violated international law because the deaths were accidental and that Germany had not preceded its action with a request for reparation. *Id.* The tribunal also stated that a reprisal that is disproportionate to the act that prompted it is "excessive and therefore illegal." *Id.*; *see also* Arbitrage Entre le Portugal et l'Allemagne (Port. v. Germ.), 2 R. Int'l Arb. Awards 1035, 1057 (1930) (reprisals are not permissible except against the provoking state) (author's translation); *cf.* B. CHENG, *supra* note 106, at 97-99 (discussing reprisals as a measure of self-help against prior unlawful acts by another state).

117. There is a prohibition against collective expulsions expressed in article 7 of the Draft Declaration on the Human Rights of Individuals Who Are Not Citizens of the Country in Which They Live, *reprinted in* D. ELLES, INTERNATIONAL PROVISIONS PROTECTING HUMAN RIGHTS OF NON-CITIZENS 54, U.N. Doc. E/CN.4/Sub.2/392/Rev.1 (1980); *see also* Sharma & Wooldridge, *supra* note 115, at 404-05 (discussing why then-President Idi Amin's actions could be unlawful).

It was also argued that an order by Indonesia for the mass expulsion of Netherlands citizens could be a fortiori an unlawful international act. G. SCHWAR-

of Uganda ordered the expulsion of all British subjects of Asian descent because they were allegedly "sabotaging the economy."¹¹⁸ It seems clear that Amin's action violated general principles of international law. Amin's allegations that British Asians were "sabotaging the economy" were never substantiated.¹¹⁹ Furthermore, it has been suggested that the expulsion was unlawful because many expellees were subject to unjustifiable harassment and because the measure was purely a disguised method of racial discrimination.¹²⁰

A state must provide legitimate reasons for an expulsion to the expellee's state.¹²¹ When a state refuses to provide such

ZENBERGER, *INTERNATIONAL LAW AND ORDER* 275 (1971). The order was allegedly a reprisal against the Netherlands. *Id.* It was argued that ordering the expulsion of aliens en masse as a reprisal would be in violation of "general principles of good neighbourliness" required by article 74 of the Charter of the United Nations. *Id.* at 276. It was also argued that such a measure would be in violation of article 2 of the Charter, which requires members of the United Nations to settle their international disputes by peaceful means. *Id.* Thus, Indonesia should have exhausted the peaceful means available for the resolution of her dispute with the Netherlands. *Id.* Indonesia did bring a resolution in the General Assembly of the United Nations but it failed to carry. *Id.* It could have attempted, however, to settle the dispute before the World Court. *Id.*

118. Sharma & Wooldridge, *supra* note 115, at 405. Great Britain initially requested that the United Nations General Assembly address this issue. *Id.* at 403. It withdrew its request, however, after Uganda indicated a willingness to discuss an extension of its deadline for the departure of British nationals. G. GOODWIN-GILL, *supra* note 107, at 214. Thereafter Uganda refused to extend the deadline and repeatedly refused to enter into negotiations regarding compensation to the expellees for expropriated property. *Id.* at 214 n.2; Sharma & Wooldridge, *supra* note 115, at 403-04. Once out of Uganda, the victims had no local remedies and no other legal means of securing a review of the measure. Sharma & Wooldridge, *supra* note 115, at 406.

119. G. GOODWIN-GILL, *supra* note 107, at 215; Sharma & Wooldridge, *supra* note 115, at 410. Moreover, the expulsion probably could not have been substantiated because it is "impossible to believe that all the British Asians in Uganda were sabotaging the economy." M. PELLONPÄÄ, *supra* note 107, at 70 (emphasis in original). The action was also challenged as unlawful because the expellees were not allowed to have their cases reviewed, and they were not granted adequate time to arrange their affairs. Sharma & Wooldridge, *supra* note 115, at 405.

120. G. GOODWIN-GILL, *supra* note 107, at 215.

121. *Boffolo Case (Italy v. Venez.)*, 10 R. Int'l Arb. Awards 528, 534 (c.1903); see also E. BORCHARD, *supra* note 107, at 51, 56 (a government must, on demand, provide evidence that an expulsion was based on a legitimate fear that the public interests of the state were in danger); G. GOODWIN-GILL, *supra* note 107, at 208 (a state's exercise of its right to expel aliens is subject to the requirement of justification); L. OPPENHEIM, *supra* note 106, at 693 (discussing the legitimate reasons for an expulsion).

The expelling state must provide explanations to the expellee's state because an individual who is injured by a foreign state must ordinarily rely upon his sovereign to

reasons for an expulsion, the action can be held to be arbitrary and the state can be held responsible for any resulting injuries.¹²² For example, Venezuela was held responsible for the direct damages sustained by a Belgian national as a result of his expulsion when Venezuela refused to explain the reasons for the expulsion.¹²³ The Belgian-Venezuelan Commission stated that "when such explanations are refused . . . the expulsion can be considered as an arbitrary act of such a nature as to entail reparation."¹²⁴

An expulsion is also unlawful if it is in violation of a state's treaty obligations.¹²⁵ Thus, Mexico was held responsible for

present a claim against that state. C.F. AMERASINGHE, *supra* note 106, at 172; see L. SOHN & T. BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 19 (1973) (only the entity to which an international obligation is owed can bring a claim for breach of that obligation); Christenson, *supra* note 106, at 329. (when a state's nationals are injured abroad in violation of international law, the state itself seeks reparation). An individual must first, however, exhaust the remedies available within the state in which he was injured before he can seek reparation in an international tribunal. C.F. AMERASINGHE, *supra* note 106, at 169; see also *Finnish Vessels Case* (Fin. v. Gr. Brit.), 3 R. Int'l Arb. Awards 1479, 1501 (1934) (the function of the local remedies rule is to permit the state to discharge responsibility in its own tribunals). An individual need not pursue those remedies that would be ineffective. C.F. AMERASINGHE, *supra* note 106, at 240. He must pursue only those that would ensure an impartial determination of his dispute. *Id.* at 191. In some cases, this requirement may be waived by treaties between states that provide for resolution of claims in international tribunals. See B. CHENG, *supra* note 106, at 179 n.65 (listing claims conventions in which the local remedies rule has been eliminated); Jones, *supra* note 24, at 277 (with respect to the Iran-United States Claims Tribunal, "the traditional framework of State responsibility claims appears to have been modified in that the requirement of exhaustion of local remedies has been waived").

122. *Boffolo Case*, 10 R. Int'l Arb. Awards at 537; see also *Paquet Case* (Belg. v. Venez.), 9 R. Int'l Arb. Awards 323, 325 (c.1903) (when a state refuses to provide explanations to the expellee's government, the expulsion may be considered an arbitrary act and the expellee entitled to reparation); E. BORCHARD, *supra* note 107, at 57 ("An expulsion without cause or based on insufficient evidence has been held to afford a good title to indemnity."); cf. *In re Hochbaum*, 7 Ann. Dig. 325, 326-27 (Upper Silesian Arb. Trib. 1934) (when a state sets forth reasons for an expulsion that are supported by facts stated in sufficient detail, the reasonableness of the conclusion that the expellee was dangerous to the public interests of the state is not subject to review); B. CHENG, *supra* note 106, at 133 ("In cases concerning the expulsion of aliens, an international tribunal would normally accept as conclusive the reasons of a serious nature adduced by the state as justifying such action.").

123. *Paquet Case*, 9 R. Int'l Arb. Awards at 325. Paquet's expulsion occurred when Venezuelan authorities refused to allow him to disembark at one of its ports when he returned to the country. *Id.* at 324.

124. *Id.* at 325. Apparently, if a state refuses to justify an expulsion, it is presumed to have no rational basis for the action.

125. C.F. AMERASINGHE, *supra* note 106, at 40; see, e.g., *Phosphates in Morocco*,

damages sustained by U.S. merchants when they were expelled on short notice in violation of a treaty that allowed the merchants at least six months to settle their affairs.¹²⁶

Moreover, an otherwise lawful expulsion may give rise to liability if it is carried out in a manner that is unnecessarily detrimental to the expellee.¹²⁷ Consequently, a state may be held responsible if an expulsion is executed with undue haste¹²⁸ or the expellee is subjected to unnecessary hardship.¹²⁹ For example, Venezuela was required to compensate a Dutch citizen for the indignities he suffered when he was publicly stripped of all of his clothing, searched, and then expelled from the country.¹³⁰ The umpire of the Netherlands-Venezuelan Commission stated that he would have disallowed the claim if the claimant had been expelled without "unnecessary indignity."¹³¹ In this case, however, the umpire found no possible reason for a public or private strip-search of the claimant.¹³²

B. Attribution

Once a claimant establishes unlawful conduct, he must

1938 P.C.I.J. (ser. A/B) No. 74, at 28 (if an act that is attributable to a state is contrary to the treaty rights of another state, international responsibility is established between the two states).

126. J. MOORE, *supra* note 107, at 3334-35, 3344.

127. E. BORCHARD, *supra* note 107, at 60 (an expulsion should be carried out with as little injury to the individual and his property interests as possible); *see also* M. PELLONPÄÄ, *supra* note 107, at 419 (an expulsion should not be carried out in a humiliating manner because its purpose is not to humiliate the expellee but to protect the state from damages resulting from the expellee's continued residence in the state).

128. M. PELLONPÄÄ, *supra* note 107, at 420 (traditionally, aliens must be afforded sufficient time to "wind up their affairs").

129. E. BORCHARD, *supra* note 107, at 59 (any "unnecessary harshness" occurring during an expulsion is grounds for a claim by the expellee against the expelling state); P. JESSUP, *A MODERN LAW OF NATIONS* 82 (1968) (the manner of expulsion must be one that avoids undue hardship); *see* Chevreau Case (Fr. v. Gr. Brit.), 2 R. Int'l Arb. Awards 1113, 1123 (1931) (the detainee must be treated in a manner appropriate to his situation, and if this rule is not observed, a claim may be justified) (author's translation); Boffolo Case (Italy v. Venez.) 10 R. Int'l Arb. Awards 528, 534 (c.1903) (expulsion must be effected "in the manner least injurious to the expellee"); Maal Case (Neth. v. Venez.), 10 R. Int'l Arb. Awards 730, 732-33 (c.1903) (holding Venezuela responsible for an expulsion that subjected the expellee to unnecessary indignity).

130. *Maal Case*, 10 R. Int'l Arb. Awards at 732-33.

131. *Id.* at 732.

132. *Id.*

prove that the conduct is attributable to the state.¹³³ It has long been recognized that the actions of a successful revolutionary movement are attributable to the resulting state because the leaders of the movement become those of the state.¹³⁴ In fact, whether the actions of revolutionaries are attributable to the state "depends entirely upon [the revolution's] ultimate success."¹³⁵ If the revolutionary movement does not succeed, those involved in the insurgency cannot be considered agents of the state.¹³⁶ Consequently, a state is not held responsible for the actions of unsuccessful revolutionaries.¹³⁷

133. C. DEVISSCHER, *THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW* 289 (1968).

134. *Draft Articles on State Responsibility*, [1975] 2 Y.B. INT'L L. COMM'N 47, 99-102, U.N. Doc. A/10010/REV.1 [hereinafter *1975 Draft Articles*]; see *Williams v. Bruffy*, 96 U.S. 176, 186 (1877) (the state is responsible for the actions of successful revolutionaries); *Bolivar Ry. Co. Case (Gr. Brit. v. Venez.)*, 9 R. Int'l Arb. Awards 445, 452-53 (c.1903) (the government is responsible for the actions of successful revolutionaries because they represent the same nation); *French Co. of Venezuela R.Rs. (Fr. v. Venez.)*, 10 R. Int'l Arb. Awards 285, 354 (1903) ("since the revolution was successful, the . . . Government is properly chargeable" with the damages it caused); *Pomeroy's El Paso (U.S. v. Mex.)*, 4 R. Int'l Arb. Awards 551, 563 (1930) ("[i]nternational tribunals have repeatedly held a government responsible for acts of successful revolutionists"); *Russel (U.S. v. Mex.)*, 4 R. Int'l Arb. Awards 805, 831 (1931) ("a government is responsible for the acts of successful revolutionists"); *Draft Articles on State Responsibility*, [1980] 2 Y.B. INT'L L. COMM'N 30, U.N. Doc. A/CN.4/SER.A/1980/Add.1 ("The act of an insurrectional movement which becomes the new government of a State shall be considered as an act of that State."); C.F. AMERASINGHE, *supra* note 106, at 54 (the acts or omissions of successful revolutionaries are attributable to the state from the beginning of the revolution); E. BORCHARD, *supra* note 107, at 241-42 (the government created through the efforts of successful revolutionaries is liable for their actions from the inception of the revolution); see also *Dix Case (U.S. v. Venez.)*, 9 R. Int'l Arb. Awards 119, 120 (c.1903) (the actions of a successful revolutionary movement are to be treated as those of a de facto government and if those actions include the taking of property then the owner has a right to demand compensation from the movement); *Kummerow Case (Germ. v. Venez.)*, 10 R. Int'l Arb. Awards 369, 371 (c.1903) (the state is responsible for the actions of revolutionaries if they can be considered the government de facto because of the means at their command); *Puerto Cabello, Etc. Ry. (Gr. Brit. v. Venez.)*, 9 R. Int'l Arb. Awards 510, 513 (c.1903) (the claims might have been allowed if the injuries had been inflicted by successful revolutionaries).

135. *Williams*, 96 U.S. at 186.

136. *Id.* at 186 (if the revolution perishes all of its acts perish with it); *accord Sambiaggio Case (Italy v. Venez.)*, 10 R. Int'l Arb. Awards 499, 513 (c.1903) (unsuccessful revolutionaries cannot be considered agents of the government).

137. *Guastini Case (Italy v. Venez.)*, 10 R. Int'l Arb. Awards 561, 578 (c.1903) (the state is not legally responsible for the actions of unsuccessful revolutionaries); *1975 Draft Articles, supra* note 134, at 100 ("acts of insurgents are not considered to be

Generally, a state is also not responsible for the actions of mobs that do not mature into successful revolutions if the mob's actions are beyond the control of the state.¹³⁸ The state is responsible, however, if it failed to exercise due diligence to suppress mob violence,¹³⁹ or instigated the mob's actions.¹⁴⁰ For example, Panama was held responsible when a U.S. soldier

acts of the state when the final outcome of the civil war is unfavourable to them"); *see also* *British Property in Spanish Morocco* (Spain v. Gr. Brit.), 2 R. Int'l Arb. Awards 615, 642 (1925) (the state is not responsible for damages caused by popular riots, revolts, and wars) (author's translation); *Aroa Mines (Ltd.)* (Gr. Brit. v. Venez.), 9 R. Int'l Arb. Awards 402, 439 (c.1903) (the state is not responsible for injuries to aliens caused by the actions of private persons that it is temporarily unable to control); *Kummerow Case* (Germ. v. Venez.), 10 R. Int'l Arb. Awards 369, 379 (c.1903) (the "rule" is that the state is not liable for the actions of individuals outside the scope of its authority); *Padrón Case* (Spain v. Venez.), 10 R. Int'l Arb. Awards 741, 743 (c.1903) (the state is not responsible for damages incurred by foreigners as a result of the actions of persons in revolt against the constituted government); *Puerto Cabello*, 9 R. Int'l Arb. Awards at 513 (the Venezuelan Government was not held responsible for property destroyed by unsuccessful insurgents); *Sambiaggio Case* (Italy v. Venez.), 10 R. Int'l Arb. Awards 499, 507 (c. 1903) (if revolutionaries have escaped the government's control, the state cannot be held responsible).

138. *See* sources cited *supra* note 137.

139. *British Property in Spanish Morocco*, 2 R. Int'l Arb. Awards at 642. It is accepted that a state has a duty to extend a certain degree of protection to aliens that it has admitted to its territory. *Barcelona Traction Light & Power Co., Ltd. (Belg. v. Spain)*, 1970 I.C.J. 1, 32 (Judgment of Feb. 5, 1970). When a state neglects to extend this protection, it may be held responsible for the injuries that result. *Id.* at 32-33; *see also* *United States v. Arjona*, 120 U.S. 479, 484 (1887) ("[t]he law of nations requires every national government to use 'due diligence' to prevent a wrong being done within its own dominion to another nation . . . or to the people thereof"); *British Property in Spanish Morocco*, 2 R. Int'l Arb. Awards at 642 (the state is held to a certain vigilance) (author's translation); E. BORCHARD, *supra* note 107, at 220-21, 223-24 (the state is not responsible when foreigners are injured as a result of mob violence, unless it failed to exercise due diligence to prevent the violence); L. OPPENHEIM, *supra* note 106, at 366 (a state will be responsible only if it could have prevented a riot by exercising due diligence); *cf.* *Home Missionary Soc'y Case*, 1 Ann. Dig. 173, 174 (British-Am. Claims Arb. Trib. 1920) (the British Government was not responsible for the murder of missionaries and destruction of missions in Sierra Leone because there was no evidence that it "had failed in its duty to afford adequate protection for life and property"); *Kummerow Case*, 10 R. Int'l Arb. Awards at 371 (the state is not liable for the actions of persons outside the scope of its authority unless it was negligent in providing timely protection); *Trochel v. State of Tunisia*, 20 I.L.R. 47, 48 (Tunisia Trib. Civ. of Tunis 1953) (Tunisia was not responsible for injuries sustained by a foreigner during a series of riots because the authorities were not derelict in their duty to maintain law and order).

140. *See, e.g., Guastimi Case*, 10 R. Int'l Arb. Awards at 566-67 (Venezuela was held responsible for failing to exercise due diligence to protect foreigners because it did not use the means at its disposal to control an insurrection but instead encouraged the damages charged); *see also* *Lestoque v. Reich*, 28 I.L.R. 189, 191 (Federal Republic of Ger. Sup. Restitution Ct. 2d Div. 1959) (the Reich was not responsi-

was shot during a mob uprising because the police failed to maintain order and "aggravated the situation by firing on the soldiers instead of dispersing the civilians."¹⁴¹

Even if a state did exercise due diligence in controlling mob violence, it can be held responsible for mob violence that is directed specifically at foreigners.¹⁴² The state's responsibility may be invoked because mob violence directed at nationals of a particular country is usually regarded as an attack upon the nationals' state.¹⁴³ Thus, the Greco-Bulgarian Mixed Arbitral Tribunal held Bulgaria responsible for damage suffered by a Greek citizen during riots directed particularly at Greek nationals.¹⁴⁴

It is well settled that a state is responsible for the actions of ultimately successful revolutionaries from the inception of the revolution.¹⁴⁵ This principle has been justified on the grounds that the revolutionary movement constituted a de facto government or that the movement represented a changing national will.¹⁴⁶

ble for the actions of students because it had not instigated those actions and was not negligent in preventing them).

141. Hunt, *The United States-Panama General Claims Commission*, 28 AM. J. INT'L L. 61, 69 (1934). In fact, the award in this case was described as punitive in nature because the deceased had no relatives and thus there was no basis for compensatory damages. *Id.* The Commission fixed damages at an amount considered necessary to express the reparations "due by one State to another on account of its responsibility for the death of the latter's citizen." *Id.*

142. *Sarropoulos v. Bulgarian State*, 4 Ann. Dig. 245 (Greco-Bulgarian Mixed Arb. Trib. 1927).

143. E. BORCHARD, *supra* note 107, at 227-28 (the Institute of International Law considered that aliens "have the right to compensation when injured in person or property during mob violence where the fury of the mob is directed against aliens as such or as subjects of a certain state"); see *Sarropoulos*, 4 Ann. Dig. at 245 (holding Bulgaria absolutely responsible when riots were directed against foreigners as citizens of Greece); Goebel, *The Int'l Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars*, 8 AM. J. INT'L L. 802, 812-13 (1914) (a state is responsible for mob violence directed at foreigners as citizens of a certain state, regardless of the care the state exercised, because such violence can be regarded as an attack upon the alien's state).

144. *Sarropoulos*, 4 Ann. Dig. at 245. The tribunal also found that Bulgaria failed to exercise due diligence in protecting Greek subjects. *Id.* The tribunal stated, however, that the state would be liable if the riots were directed against foreigners as such or if the state failed to exercise due diligence. *Id.*

145. See sources cited *supra* note 134.

146. 1975 *Draft Articles*, *supra* note 134, at 102 ("there is no divergence of views, no doubt whatsoever, as to the validity of the principle" that a state is responsible for the actions of a successful revolutionary movement); see also E. BORCHARD, *supra* note

A de facto government has been described as an organization that commands the support of the majority of the population.¹⁴⁷ Thus, the movement can be held responsible because of the control it exercises over the state.¹⁴⁸ For example, Venezuela was held responsible for the actions of an ultimately successful revolutionary movement on the theory that they were actions of a de facto government.¹⁴⁹ The revolutionaries confiscated cattle belonging to a U.S. national over the course of several months after they had successfully routed government forces.¹⁵⁰ The American-Venezuelan Commission found that during this time the "officers" of the revolutionary movement were carrying out the policy of that movement at the direction of its leader.¹⁵¹ The Commission then stated that a successful revolutionary government is responsible for injuries to the same extent as "any other de facto government."¹⁵² The Commission held the resulting government responsible for the value of cattle it had confiscated.¹⁵³

Revolutions have also been held to represent "a changing national will, crystallizing in the finally successful result."¹⁵⁴ For example, in holding Venezuela responsible for the value of services rendered by a railway company to ultimately successful revolutionaries, the American-Venezuelan Commission stated that the state was responsible because "it is the same nation."¹⁵⁵

Whether actions are attributed to a state seems to depend on the connection between the members of the revolutionary

107, at 241 (a revolution represents a changing national will and a successful revolution's acts may be considered at least those of a de facto government for which the state is responsible from the beginning of the revolution).

147. B. CHENG, *supra* note 106, at 189 (quoting the *Garrison Case*). It has also been stated that, to be considered a de facto government, the forces must be recognized as the ruling power and not as merely temporarily in control. *J.N. Henriquez Case (Neth. v. Venez.)*, 10 R. Int'l Arb. Awards 713, 716 (c.1903).

148. B. CHENG, *supra* note 106, at 189-90.

149. *Dix Case (Am. v. Venez.)*, 9 R. Int'l Arb. Awards 119, 120-21 (c.1903).

150. *Id.* at 119-20.

151. *Id.* at 120.

152. *Id.*

153. *Id.* at 120-21.

154. *Bolivar Ry. Co. Case (Gr. Brit. v. Venez.)*, 9 R. Int'l Arb. Awards 445, 453 (c.1903).

155. *Id.* at 452.

movement and those of the resulting government.¹⁵⁶ The state has not been held responsible when losses are the result of the "confusion and havoc of war" that is not traceable to actions of contending military units.¹⁵⁷ Thus, Venezuela was not responsible for damages sustained by a French company in the course of insurrections in Venezuela because there was no evidence that the government was the sole cause of the company's losses or that the government intended to injure the company in any way.¹⁵⁸ The government was responsible, however, for the "natural and consequential damages" caused by the successful revolutionary movement.¹⁵⁹

C. Causation

To hold a state responsible, a claimant's injuries must be a proximate and natural consequence of the state's wrongful conduct.¹⁶⁰ The state is not responsible for those injuries that were not foreseeable when it acted wrongfully.¹⁶¹ For example, Great Britain was not held responsible for a "widespread and murderous revolt" that occurred after the imposition of a tax in Sierra Leone, a British Protectorate, because the government had no reason to believe that a revolt would result.¹⁶²

Causation has not been found where the damages alleged

156. *1975 Draft Articles*, *supra* note 134, at 100.

157. *French Co. of Venezuelan Rys. Case (Fr. v. Venez.)*, 10 R. Int'l Arb. Awards 285, 353-54 (c. 1903).

158. *Id.* at 353.

159. *Id.* at 354.

160. *Dix Case (Am. v. Venez.)*, 9 R. Int'l Arb. Awards 119, 121 (c. 1903); *see also* B. CHENG, *supra* note 106, at 241 (only those damages that are immediate and direct results of an action can be considered damages caused by that action).

161. *Dix Case*, 9 R. Int'l Arb. Awards at 121; *see Arbitrage Entre le Portugal et l'Allemagne (Port. v. Germ.)*, 2 R. Int'l Arb. Awards 1035, 1068-76 (1930) (discussing the immediate and direct causes of damage and the non-immediate and indirect causes of damage) (author's translation); B. CHENG, *supra* note 106, at 244 ("In order that a loss may be regarded as the consequence of an act for purposes of reparation, either the loss has to be the proximate consequence of the act complained of, or the act has to be the proximate cause of the loss."); Straus, *supra* note 106, at 924 (when a government departs from the standards of international conduct, it will be liable for the foreseeable injuries that result from such a breach).

162. *Home Missionary Soc'y Case*, 1 Ann. Dig. 173, 174 (British-Am. Claims Arb. Trib. 1920). Similarly, Italy was not held responsible for the theft of a U.S. national's property during World War II. *Hoffman Claim*, 22 I.L.R. 330 (Italian-U.S. Conciliation Comm'n 1952). The Commission found that the theft could not be considered an act of war and that Italy could not be held responsible for a loss that was not a foreseeable consequence of the war. *Id.* at 331.

are remote to a state's actions. Hungary, for instance, was not held responsible for losses sustained by a creditor after the debtor's property was nationalized.¹⁶³ The creditor's losses were held to be "too remote or indirect" to hold Hungary responsible because the creditor did not establish that the debtor would have paid his debt but for Hungary's actions.¹⁶⁴ Similarly, Venezuela was held responsible only for the value of cattle that its revolutionary movement confiscated and not for damages paid for breach of a contract to sell the cattle to a third party because those damages were too remote to the confiscation of the claimant's cattle.¹⁶⁵

III. *CONSTRUCTIVE WRONGFUL EXPULSION AS A BASIS OF STATE RESPONSIBILITY*

There are two factual differences between claims arising out of the Islamic Revolution and cases in which states have been held responsible for injuries to foreign nationals. First, the expulsion of U.S. nationals was not specifically ordered by the state.¹⁶⁶ Second, the expulsions were carried out through the actions of a loosely organized revolutionary movement.¹⁶⁷ A state is usually held responsible for an unlawful expulsion when it issues an order, in breach of an international obligation, directing the expulsion of a foreign national.¹⁶⁸ In addi-

163. *European Mortgage Series B Corp. Claim*, 30 I.L.R. 122, 124-125 (U.S. Foreign Claims Settlement Comm'n 1959).

164. *Id.* at 125-26. *But see id.* at 127 (Pace, Comm'r, dissenting) ("There is nothing remote or indirect, in my opinion, about the loss sustained by a mortgagee when the property securing his mortgage was nationalized under conditions which have prevailed in Hungary since 1946.").

165. *Dix Case*, 9 R. Int'l Arb. Awards at 121; *see also* *French Co. of Venezuela Rys. Case (Fr. v. Venez.)*, 10 R. Int'l Arb. Awards 285, 354 (c.1903) (there is unquestioned responsibility of the respondent Government for all the necessary and consequential injuries that resulted from the use of either the successful revolutionary forces or then-contending governmental forces).

166. *See Short v. Islamic Republic of Iran*, Award No. 312-11135-3, slip. op. at 11 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database) (an alien is usually expelled "by a legal order issued by the State authorities").

167. *Short*, Award No. 312-11135-3, slip. op. at 19 (Brower, J., dissenting) (the Revolution succeeded without a military structure).

168. *Short*, Award No. 312-11135-3, slip. op. at 11; *see* E. BORCHARD, *supra* note 107, at 54 ("In many countries expulsion is carried out by administrative order of the minister of interior or other executive officer."); J. MOORE, *supra* note 107, at 3333-59 (discussing cases in which individuals are claiming damages for expulsions ordered by Mexico and Cuba).

tion, a state may be held responsible for the actions of revolutionaries who are ultimately successful.¹⁶⁹ A state has usually been held responsible, however, when the forces were identifiable military units.¹⁷⁰

Although the claims arising out of the Islamic Revolution are factually different from cases in which a state has been held responsible, the principles of state responsibility remain applicable.¹⁷¹ Under these principles the Islamic Republic should be held responsible for injuries sustained by U.S. nationals as a result of their expulsion from Iran.

A. *Unlawful Act*

Expulsion has been described as either forcible removal of an alien from a state or a "voluntary" departure under the threat of forcible removal.¹⁷² A state has the right to expel aliens from its territory.¹⁷³ That right is ordinarily exercised through an order of the state.¹⁷⁴ It seems clear, however, that an expulsion that is an ostensibly "voluntary" departure, under the threat of forcible removal, can occur in the absence of an official order when the circumstances are such that an alien has no choice but to leave.¹⁷⁵ Indeed, in *Short v. Islamic Republic of Iran* and *Rankin v. Islamic Republic of Iran*, the Tribunal stated that an expulsion can occur in these circum-

169. See sources cited *supra* note 134.

170. See, e.g., sources cited *supra* note 134.

171. *Short*, Award No. 312-11135-3, slip. op. at 10; see also *Rankin v. Islamic Republic of Iran*, Award No. 326-10913-2, slip. op. at 9 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database) (the Tribunal has adopted the International Law Commission's criteria "as the most recent and authoritative statement of current international law in this area"). See generally *supra* notes 20, 61 (discussing the corpus of law applicable to cases before the Tribunal).

172. G. GOODWIN-GILL, *supra* note 107, at 201; M. PELLONPÄÄ, *supra* note 107, at 4.

173. See *supra* note 107 and accompanying text.

174. See sources cited *supra* note 168.

175. *Short*, Award No. 312-11135-3, slip. op. at 2 (Brower, J., dissenting) ("a State's expulsion of aliens can . . . occur constructively as well as by express act or decree . . . [A]n alien [may] be expelled from a country by the host government engaging in discrete acts or omissions collectively designed to bring about his departure."); cf. G. GOODWIN-GILL, *supra* note 95, at 218 ("there may be little difference between forcible expulsion in brutal circumstances, and 'voluntary removal' promoted by laws which declare continued residence illegal and encouraged by threats as to the consequences of continued residence").

stances.¹⁷⁶ It refused, however, to find that the Ayatollah's statements created such circumstances.¹⁷⁷

1. Anti-American Propaganda

The facts indicate that the Ayatollah's statements were part of a policy designed to effect the removal of all U.S. nationals from Iran.¹⁷⁸ His statements reveal that "from its very inception, the Islamic Revolution saw the forces of world oppression, led by the United States, as its true foe."¹⁷⁹ On the day of the Shah's departure, the Ayatollah congratulated the Iranian people for having forced the Shah to leave, but stated that this was only a preface to final victory.¹⁸⁰ He stated that the U.S. government had become an "enemy" of the Iranian people and that the presence of U.S. military bases and advisors in Iran had impoverished the country.¹⁸¹ That same day

176. *Short*, Award No. 312-11135-3, slip. op. at 11; *Rankin v. Islamic Republic of Iran*, Award No. 326-10913-2, slip. op. at 11 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database). This principle was also stated in *International Technical Product Corp. v. Iran*, 9 Iran-U.S. Claims Trib. Rep. 10, 18 (1985).

177. *See Short*, Award No. 312-11135-3, slip. op. at 13-14 (the Tribunal found that the Ayatollah's statements "were of a general nature and did not specify that Americans should be expelled *en masse*"). In *Rankin*, the Tribunal stated that the pronouncements of the Ayatollah could reasonably have been expected to cause harassment and violence toward U.S. nationals and that such statements were violative of international law. Award No. 326-10913-2, slip. op. at 17. The Tribunal found, however, that Rankin's departure was attributable to the revolutionary turmoil that followed the return of the Ayatollah to Iran, and thus Rankin did not establish the necessary link between the Ayatollah's statements and his departure. *Id.* at 23-24. The Tribunal reached a similar result in *Hilt v. Islamic Republic of Iran*, Award No. 324-10427-2 (Iran-U.S. Claims Trib. Mar. 16, 1988) (WESTLAW, INT-IRAN database). It held that the claimant's departure in January 1979 was caused by the revolutionary turmoil and thus not attributable to the Islamic Republic. WESTLAW at 14.

178. *Short*, Award No. 312-11135-3, slip. op. at 6 (Brower, J., dissenting) (the Ayatollah's pronouncements reflect that "to rid Iran of the Shah for certain one had also to cleanse it completely of Americans and their influence in every form"); *see id.* at 6-10 (discussion of Ayatollah's statements from January 9, 1978 to November 10, 1986); *see also* B. RUBIN, *supra* note 18, at 234 (hostility toward the United States was at the center of the Khomeinists' thinking); W. CHRISTOPHER, *supra* note 21, at 46 (the United States was seen by some as "the Great Satan").

179. *U.S. Embassy Occupation 'Divine Chapter'*, Foreign Broadcast Information Service Daily Report, South Asia, at 13 (Nov. 4, 1986).

180. Lewis, *Shah's Departure Hailed in Message by Ayatollah*, N.Y. Times, Jan. 17, 1979, at A8, col. 5.

181. *Khomeyni: U.S. Leaders Are 'Enemies' of Iranians*, Foreign Broadcast Information Service Daily Report, Middle East & North Africa, at R16 (Jan. 17, 1979). One commentator has described the Ayatollah's view of the United States as "the richest,

the Iranian people took to the streets chanting, "The shah is gone. Now it's the Americans' turn."¹⁸² On February 1, when the Ayatollah returned to Iran, he proclaimed that final victory would come only with the expulsion of all foreigners.¹⁸³ In the middle of February, the Ayatollah stated that "the revolution was only beginning and that all forms of American influence must still be eliminated."¹⁸⁴ These proclamations indicate that the Ayatollah intended to effect the departure of U.S. nationals.¹⁸⁵ Indeed, the Tribunal stated that the Ayatollah's statements were expressly anti-American and that the circumstances in Iran made it difficult for U.S. nationals to remain in the country.¹⁸⁶ The Tribunal still refused, however, to find that U.S. nationals were expelled by these circumstances.¹⁸⁷

2. Breaches of the Treaty of Amity and International Law

The resulting expulsions were unlawful under the Treaty of Amity and under general principles of international law. The Treaty of Amity provides that U.S. nationals may be expelled only if necessary to protect the public interest of Iran.¹⁸⁸ In addition, general principles of international law require that an expulsion be in the public interest of the state.¹⁸⁹ The expelling state has the right to determine whether the continued

most oppressive, most savage, and bloodthirsty country in the world, an international plunderer and Satan." B. RUBIN, *supra* note 18, at 277.

182. B. RUBIN, *supra* note 18, at 243.

183. Apple, *Bakhtiar Warns Foe*, N.Y. Times, Feb. 1, 1979, at A1, col. 6.

184. B. RUBIN, *supra* note 18, at 283.

185. *Short v. Islamic Republic of Iran*, Award No. 312-11135-3, slip. op. at 11, 16 (Brower, J., dissenting) (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database).

186. *Rankin v. Islamic Republic of Iran*, Award No. 326-10913-2, slip. op. at 3, 14-17, (Iran-U.S. Claims Tribunal Nov. 3, 1987) (WESTLAW, INT-IRAN database); *Short*, Award No. 312-11135-3, slip. op. at 10, 12; see also *Yankee We've Come To Do You In*, TIME, Feb. 26, 1979, at 28, 28 ("Anti-American violence has been steadily on the rise in Iran."); *The Khomeini Era Begins*, TIME, Feb. 12, 1979, at 38, 38-39 (U.S. officials feared a "tide of anti-American sentiment"); *The Shah Compromises*, TIME, Jan. 8, 1979, at 24, 25 ("for the first time the rioting took on a strongly anti-American tone").

187. See *supra* note 177 and accompanying text. The difficulty was in attributing the creation of these circumstances to the state. See sources cited *infra* note 211 and accompanying text.

188. Treaty of Amity, *supra* note 72, art. II(3), 8 U.S.T. at 902, T.I.A.S. No. 3853, at 2, 284 U.N.T.S. at 112. The Treaty specifically provides that U.S. nationals may be expelled from Iran "only as necessary to maintain public order, and to protect public health, morals and safety." *Id.*

189. See *supra* notes 109-11 and accompanying text.

residence of foreign nationals is contrary to the public welfare of the state.¹⁹⁰ An expulsion, however, must be adequately justified.¹⁹¹ When it is not legitimately justified, the expulsion may be held to be arbitrary.¹⁹² In these cases, the expulsion of U.S. nationals was not justified by the Islamic Republic as being in the public interest of the state, under either the Treaty of Amity or under general principles of international law. First, Iran denied that U.S. nationals had been expelled and thus did not attempt to justify its actions.¹⁹³ Second, the Ayatollah's statements do not justify the expulsion of U.S. nationals as in the public interest of the state. They reveal only conclusory statements that the U.S. was an enemy of the people and the root of all of Iran's problems.¹⁹⁴ Under international law, expulsions that were justified on the basis of "motives of internal order" or "reserved political motives which cannot be revealed" have been held to be arbitrary.¹⁹⁵ Moreover, where the charges raised against an expellee were of a "vague and indefinite character, inconsistent with the admitted facts and unsupported by any proof or corroboration whatsoever," the expellee's government has been held to be entitled to compensation.¹⁹⁶ Thus, it seems that the Ayatollah's statements that the United States was an enemy of the people do not legitimately justify the expulsion of U.S. nationals. Therefore, the expulsions were not legitimately justified as in the

190. G. GOODWIN-GILL, *supra* note 107, at 230.

191. See *supra* notes 108-11 and accompanying text.

192. See *supra* notes 109-11, 121-23 and accompanying text.

193. Rankin v. Islamic Republic of Iran, Award No. 326-10913-2, slip. op. at 2 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database); Yeager v. Islamic Republic of Iran, Award No. 324-10199-1, slip. op. at 7 (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW, INT-IRAN database); Short v. Islamic Republic of Iran, Award No. 312-11135-3, slip. op. at 9 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database).

194. See B. RUBIN, *supra* note 18, at 267 ("Ayatollah Khomeini would be fond of saying that the United States was the cause of all of Iran's troubles"); *Visit Shows U.S. 'Despondency'*, Foreign Broadcast Information Service Daily Report, South Asia, at 13 (Nov. 10, 1986) (Khomeini identified the United States "as the cause of all the difficulties facing the country"). It seems that a reason for anti-American sentiment was the frustration of Iranians over their country's economic dependence on the United States and the belief that only U.S. support enabled the Shah to retain power. *Id.* at 111. Moreover, Iranians who did not understand U.S. technology felt defrauded by the United States and their resentment increased. *Id.* at 136.

195. G. GOODWIN-GILL, *supra* note 107, at 232-33.

196. *Id.* at 233 n.2.

public interests of the state.¹⁹⁷

3. Reprisal

The expulsions may also be wrongful under general principles of international law because they could be considered a reprisal against the United States. A reprisal is "a means of vindication of rights infringed by another state."¹⁹⁸ It is justified only against the provoking state,¹⁹⁹ and must ordinarily be preceded by resort to peaceful remedies.²⁰⁰ In this case, it is not evident that the United States acted unlawfully toward Iran. The Ayatollah did not identify an unlawful act of the United States. He merely identified U.S. nationals as enemies of the people, apparently because of the U.S. government's support of the Shah.²⁰¹ Furthermore, Revolutionary Guards and the revolutionary movement in general took threatening actions against U.S. nationals.²⁰² Thus, Iran should be held responsible for taking actions that could be considered as an illegal reprisal against the United States.

197. The Tribunal did not directly discuss whether the expulsions were legitimately justified in *Short* and *Rankin* because they did not find that Short and Rankin had been expelled by an agent of the Islamic Republic. See *supra* note 177. The Tribunal did state, however, in *Rankin*, that the Ayatollah's policy could be violative of international law. *Rankin*, Award No. 326-10913-2, slip. op. at 18. In *Yeager*, the Tribunal found that the expulsion of Yeager by Revolutionary Guards was violative of international law and thus did not address whether the Ayatollah's statements could have caused an expulsion. *Yeager*, Award No. 324-10199-1, slip. op. at 14. The Tribunal did state, however, that the Ayatollah's statements were attributable to the state. *Id.*

198. P. JESSUP, *supra* note 129, at 174.

199. See *supra* notes 116-17 and accompanying text.

200. *Id.*; see also I. BROWNLIE, *supra* note 24, at 705 (there is no obligation that parties settle international disputes; however, if they consent to do so, the use of force to settle those disputes is unlawful); *id.* at 465 (armed reprisals are against the United Nations Charter).

201. *Short v. Islamic Republic of Iran*, Award No. 312-11135-3, slip. op. at 12 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database); see also B. RUBIN, *supra* note 18, at 241 (the United States "has backed the massacre of our people by the shah's ignoble regime").

202. *Rankin v. Islamic Republic of Iran*, Award No. 326-10913-2, slip. op. at 14-16 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database); *Yeager v. Islamic Republic of Iran*, Award No. 324-10199-1, slip. op. at 3-5 (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW, INT-IRAN database); *Short*, Award No. 312-11135-3, slip. op. at 6-8.

4. Manner of Expulsion

Even if the Islamic Republic were otherwise justified in expelling U.S. nationals, the expulsions were carried out in a manner that was needlessly detrimental to the expellees. A state may be held responsible for an expulsion that is carried out with undue haste or that subjects the expellee to unnecessary hardship.²⁰³ In *Yeager*, the claimant was given only thirty minutes to gather his belongings.²⁰⁴ The Tribunal found that Yeager's expulsion was wrongful because it did not give him "sufficient time to wind up his affairs."²⁰⁵ In *Short and Rankin*, the claimants also departed under circumstances that subjected them to unnecessary hardship. The cases illustrate that they feared for their personal safety.²⁰⁶ As a result, they were forced to leave in such haste that they did not have sufficient time to arrange their affairs.²⁰⁷ Thus, the Islamic Republic should be held responsible for the damages sustained as a result of the manner in which their expulsions were effected.²⁰⁸

B. Attribution

A nation is responsible for the actions of a successful revolutionary movement.²⁰⁹ Indeed, the Tribunal recognized that the statements of the Ayatollah are attributable to the Islamic

203. See *supra* notes 127-32 and accompanying text. The situation is similar to President Idi Amin's mass expulsion of British subjects for allegedly sabotaging the economy of Uganda. See *supra* notes 118-20 and accompanying text. The measure was described as a reprisal against Great Britain for its citizens' economic success in Uganda. See Sharma & Wooldridge, *supra* note 115, at 397 (the unpopularity of British subjects of Asian descent stemmed in part from their economic success and from the fact that they maintained a different culture). The action was challenged as unlawful because it ordered the expulsion of aliens *en masse*, it subjected many expellees to unjustifiable harassment, and it was a disguised method of discrimination. See *supra* notes 117, 119 and accompanying text. The unlawfulness of the action, however, was never decided. See *supra* note 118.

204. *Yeager*, Award No. 324-10199-1, slip. op. at 22.

205. *Id.* at 21-22.

206. *Rankin*, Award No. 326-10913-2, slip. op. at 21; *Yeager*, Award No. 324-10199-1, slip. op. at 3; *Short*, Award No. 312-11135-3, slip. op. at 6-8, 12.

207. *Rankin*, Award No. 326-10913-2, slip. op. at 3-4; *Short*, Award No. 312-11135-3, slip. op. at 8. It seems clear that a sufficient time should be at least enough time for U.S. nationals to arrange for the shipment of their belongings to the United States.

208. See *supra* notes 127-32 and accompanying text. The Tribunal did not address this issue in either *Short* or *Rankin*.

209. See *supra* note 134 and accompanying text.

Republic.²¹⁰ The major stumbling block for the Tribunal in *Short, Rankin, and Yeager* was in attributing the actions of loosely organized adherents to Ayatollah Khomeini's revolutionary movement.²¹¹

Ayatollah Khomeini was the undisputed leader of the Islamic Revolution.²¹² As an ayatollah of Islamic Shi'ism, Khomeini was seen as "literally the manifestation of God on

210. *Yeager*, Award No. 324-10199-1, slip. op. at 14.

211. *Rankin*, Award No. 326-10913-2, slip. op. at 13 (the question is whether the actions that caused claimant's departure were those of mobs or of the revolutionary movement); *Yeager*, Award No. 324-10199-1, slip. op. at 14, 15 (there is insufficient evidence to attribute the actions of persons other than revolutionary guards to the state. To attribute an act to the state, the claimant must identify with reasonable certainty the actors and their association with the state); see also *Arthur Young & Co. v. Islamic Republic of Iran*, Award No. 338-484-1, WESTLAW at 22 (Iran-U.S. Claims Trib. Dec. 1, 1987) (WESTLAW, INT-IRAN database) (when a U.S. partnership claimed that it was wrongfully expelled, the Tribunal found that it failed to identify agents of the state with sufficient certainty and thus failed to attribute their actions to the state).

An examination of cases involving the *expropriation* of U.S. business assets in Iran during 1978-1979 reveals that the Tribunal has found conduct attributable to the state only when there is a "deliberate governmental assertion of control over the corporation, such as the substitution of Government-appointed managers." Brower, *Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal*, 21 INT'L LAW. 639, 669 (1987). "Losses caused by revolutionary unrest not directly traceable to such a governmental action have not generally been held to constitute compensable expropriations." *Id.* U.S. corporations claimed damages resulting from alleged interference with their property by the Government of the Islamic Republic of Iran. *Id.* at 653-56. The Tribunal stated in one case that "the state of administrative chaos which prevailed in Iran throughout the first few months of 1979 make it unsafe to attribute any . . . ostensibly governmental acts to the revolutionary Government that subsequently came to power." *Sea-Land Serv., Inc. v. Iran* (Award No. 135-33-1), 6 Iran-U.S. Claims Trib. Rep. 149, 166 (1984). Compare *Sea-Land Serv.*, 6 Iran-U.S. Claims Trib. Rep. at 165 (the Tribunal found that the governmental interference resulted from "a state of upheaval in [the port authority's] internal management which is consistent with the general picture of disruption which characterised Iran in the months leading up to the success of the Revolution"), and *Schering Corp. v. Iran*, 5 Iran-U.S. Claims Trib. Rep. 361, 370-71 (1984) (a Workers Council of an Iranian company that blocked payments due to its parent U.S. company was held not to be acting for the state although the formation of these councils was initiated by the state) with *William L. Pereira Assocs., Iran v. Iran*, 5 Iran-U.S. Claims Trib. Rep. 198, 226-27 (1984) (a notice of confiscation issued by Revolutionary Guards was sufficient evidence of state action to hold the Government of Iran responsible for the value of the confiscated property). See generally Brower, *supra*, at 652-56 (discussing the standards of attribution applied by the Tribunal in expropriation cases).

212. *Rankin*, Award No. 326-10913-2, slip. op. at 14; see also *Yeager*, Award No. 324-10199-1, slip. op. at 15 (the vast majority of the revolutionary movement supported the Ayatollah); B. RUBIN, *supra* note 18, at 234 (the people clearly expressed their determination that the new government be an Islamic Republic under the

earth."²¹³ He exploited his position as a religious leader to incite the Iranian people to depose the Shah and expel all foreign influence from the country.²¹⁴ Indeed, his statements reveal a perception of complete identity between himself and the Iranian people. The Ayatollah stated that "*we will take power through the legitimate referendum of the streets.*"²¹⁵ The Ayatollah warned the provisional government not to "wait for an explosion so that [*he*] would have to get the people involved in a holy war."²¹⁶ He used his influence among the Iranian people to carry out a revolution through demonstrations, strikes, and propaganda rather than through conventional military forces.²¹⁷

The form of its revolution should not diminish the Islamic

Ayatollah's leadership), 213 (by August 1978, demonstrators were already chanting, "Khomeini is our leader!").

213. J. BILL & C. LEIDEN, *POLITICS IN THE MIDDLE EAST* 44 (2d ed. 1984).

214. See B. RUBIN, *supra* note 18, at 6 (within the Islamic tradition, "Iranian religious leaders were free to attack the shah's government and policies on the grounds that they were unjust and contrary to Islam"); *Khomeini Calls Shah 'Dethroned,' Vows to Take Over*, N.Y. Times, Jan. 20, 1979, at A3, cols. 4-5 (the Ayatollah evidently used his influence as a religious leader to utilize public pressure from the people as a means to gain power over the country); *The Weekend of Crisis*, TIME, Dec. 18, 1978, at 32, 37 ("mullahs throughout the country repeated the inflammatory messages of Ayatullah [sic] Khomeini, mixing religious exhortations with anti-Shah diatribes"). The political vacuum created by the Shah's 25-year ban on political expression has been filled by Islamic fundamentalists such as the Ayatollah. *Id.*

215. *Khomeini Calls Shah 'Dethroned,' Vows to Take Over*, N.Y. Times, Jan. 20, 1979, at A3, col. 4 (emphasis added). Indeed, public demonstrations have been described as a test of the Ayatollah's strength. *Id.* at A3, col. 5.

216. Markham, *Ayatollah Steps Up Pressure on Regime To Bow Out in Iran*, N.Y. Times, Feb. 4, 1979, at A1, col. 6 (emphasis added).

217. See *supra* notes 178-86 and accompanying text; Short v. Islamic Republic of Iran, Award No. 312-11135-3, slip. op. at 19 (Brower, J., dissenting) (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database) (the Revolution succeeded "without the formation of a distinct and complete revolutionary military force"); *The Khomeini Era Begins*, *supra* note 1, at 33 (the Ayatollah sent messages to Iran "summoning the faithful" to topple the monarchy and install an Islamic Republic); Apple, *A Million Marchers Rally for Khomeini in Teheran Streets*, N.Y. Times, Jan. 20, 1979, at A4, col. 2 (during demonstrations, copies of a resolution identifying demonstrations and strikes as the means toward the establishment of an Islamic Republic were distributed); Gage, *Shah Leaves for Indefinite Stay*, N.Y. Times, Jan. 17, 1979, at A1, col. 6 (the Shah was deposed by popular upheaval); Lewis, *Shah's Departure Hailed in Message by Ayatollah*, Jan. 17, 1979, at A8, cols. 5-6 (the Ayatollah evidently planned to use demonstrations as one of a series of actions designed to bring down the Bakhtiar government); *The Shah Compromises*, TIME, Jan. 8, 1979, at 24, 25 (at the urging of the Ayatollah, striking oil workers refused to go back to work); *The Weekend of Crisis*, TIME, Dec. 18, 1978, at 32, 32 (hundreds of thousands of marchers demonstrated in support of the Ayatollah); *Entering a Dangerous Hour*, TIME, Dec. 11, 1978, at 50, 50

Republic's responsibility for the movement's actions. A more or less organized movement that strives for the overthrow of a particular government, on the impetus of general discontent or under the influence of prominent leaders, may be styled a revolution.²¹⁸ Moreover, a state is responsible for the actions of revolutionaries when they are mobs as well as when they evolve into more organized forces.²¹⁹

Alternatively, the Islamic Republic should be held responsible because it failed to exercise due diligence to prevent injuries to U.S. nationals during the Revolution. A state is responsible for the actions of revolutionaries from the inception of the revolution.²²⁰ Such actions may be either affirmative acts or failures to act.²²¹ In this case, it is clear that the revolutionary movement had effective control over the country and the means to suppress mob violence. This control is illustrated by the fact that crowds in the streets were guided by Islamic clergymen.²²² Additionally, on February 6, the Ayatollah's supporters helped to keep crowds from converging on the Parliament building during meetings held there by the Shah's provisional government.²²³ In fact, the revolutionary movement used its control over the state to promulgate, rather than suppress, anti-American actions.²²⁴ Thus, the Islamic Republic should be held responsible for failing to exercise due diligence

(the Ayatollah called for a general strike and urged oil workers to repeat a two-week strike).

218. *Georges Pinson Case*, 4 Ann. Dig. 239, 241 (Fr. and Mex. Mixed Claims Comm'n 1928). In *Rankin*, the Tribunal found that the actions of revolutionaries in response to the Ayatollah's statements were attributable to the Islamic Republic. *Rankin v. Islamic Republic of Iran*, Award No. 326-10913-2, slip. op. at 17 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database). It did not find, however, that such statements and actions caused Rankin's departure. *Id.* On the other hand, in *Short*, the Tribunal stated that the "acts of supporters of a revolution cannot be attributed to the government following the success of the revolution." *Short*, Award No. 312-11135-3, slip. op. at 13. Further, the Ayatollah's statements were not found to be the cause of Short's departure. *Id.* at 14.

219. D.P. O'CONNELL, *INTERNATIONAL LAW* 968 (2d ed. 1970).

220. See *supra* note 134 and accompanying text.

221. B. CHENG, *supra* note 106, at 174.

222. Markham, *Both Iran Factions Give Demonstration of Their Strength*, N.Y. Times, Feb. 7, 1979, at A6, col. 3.

223. *Id.* at A1, col. 1.

224. See *supra* notes 178-84 and accompanying text; see also *Waiting for the Ayatollah* [sic], TIME, Feb. 5, 1979, at 42, 43-44 ("From the start of his exile . . . Khomeini laid the groundwork for the revolution in talks with his students. Taped cassettes carried his message back to the mosques in Iran. . . . When the time came to mount

to control the actions of the revolutionary movement.²²⁵

The Islamic Republic may also be held responsible because the mob violence was directed specifically at U.S. nationals.²²⁶ A state may be held responsible regardless of the care it exercised because mob violence directed at nationals of a particular country is usually regarded as an attack upon the nationals' state.²²⁷ The mob violence in these cases during the Islamic Revolution definitely took on an anti-American tone.²²⁸ Thus, the Islamic Republic should be held responsible for the injuries sustained by U.S. nationals, regardless of the care it exercised, because the mob violence was expressly directed at citizens of the United States.

C. Causation

The expulsion of U.S. nationals from Iran was a proximate and natural consequence of the actions of the revolutionary movement. After February 1979, anti-American sentiment escalated and the revolution intensified.²²⁹ All but 5000 of the 45,000 U.S. nationals who had lived in Iran prior to September 1978 had left the country by the middle of February 1979.²³⁰ Approximately 1500 U.S. nationals have since brought wrongful expulsion cases arising from departures in February 1979.²³¹ It seems likely that at least this small percentage was

strikes and demonstrations, a whole network of mosques, Islamic schools and neighborhood associations was in place.'').

225. C. DEVISSCHER, *supra* note 133, at 286. It is difficult to exempt the Islamic Republic from responsibility when the facts actually indicate that it exercised control over Iran. *See id.* at 289; *supra* text accompanying notes 221-24. *But see* Yeager v. Islamic Republic of Iran, Award No. 324-10199-1, slip. op. at 8, (Iran-U.S. Claims Trib. Nov. 2, 1987) (WESTLAW, INT-IRAN database); Short v. Islamic Republic of Iran, Award No. 312-11135-3, slip. op. at 13 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database) (the Islamic Republic argued that it had not consolidated its control over the country at the time of the expulsions of the U.S. nationals in these cases).

226. *See supra* notes 142-44 and accompanying text.

227. *See sources cited supra* note 143.

228. *See sources cited supra* note 186.

229. B. RUBIN, *supra* note 18, at 280; *see also*, R. ANDERSON, R. SEIBERT & J. WAGNER, *POLITICS AND CHANGE IN THE MIDDLE EAST* 117 (1982) (the Ayatollah's return to Iran on February 1 "brought a massive outpouring of popular approval").

230. *The Khomeini Era Begins*, *TIME*, Feb. 12, 1979, at 33, 39; *see also* *Guns, Death, and Chaos*, *TIME*, Feb. 26, 1979, at 26, 30 (the U.S. prepared to evacuate the 5000 to 7000 U.S. nationals still in Iran).

231. Short v. Islamic Republic of Iran, Award No. 312-11135-3, slip. op. at 15-

expelled because of the Ayatollah's policy.²³² The circumstances, particularly after the return of the Ayatollah on February 1, cast doubt on the proposition that all U.S. nationals chose to leave Iran voluntarily.²³³

Moreover, the United States and its nationals had established profitable business relationships in Iran. U.S. corporations had invested heavily in the country and U.S. companies were committed to long-term contracts.²³⁴ Iran was also a valuable location from which the U.S. government could monitor activities of the Soviet Union.²³⁵ Although U.S. corporations, such as BHI, had begun to evacuate their personnel, their employees were not obligated to leave Iran.²³⁶ Nor were they bound by U.S. Embassy recommendations to leave.²³⁷ These ties indicate that U.S. nationals would have remained in Iran but for the anti-American violence instigated by the Ayatollah.²³⁸

The expulsions were a foreseeable result of, and not remote from, the actions of the revolutionary movement. In fact, the actions were part of an intentional policy designed to bring about the departure of U.S. nationals.²³⁹ In light of the deliberate policy carried out by the proponents of the Revolution, it seems clear that the expulsion of U.S. nationals was a direct consequence of the actions of the revolutionaries.²⁴⁰

16 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database) (Brower, J., dissenting).

232. *Id.* at 16.

233. *Id.* at 13-15; see also Rankin v. Islamic Republic of Iran, Award No. 326-10913-2, slip. op. at 3-4 (Iran-U.S. Claims Trib. Nov. 3, 1987) (WESTLAW, INT-IRAN database); Yeager v. Islamic Republic of Iran, Award No. 324-10199-1, slip. op. at 3-5 (Iran-U.S. Claims Tribunal Nov. 2, 1987) (WESTLAW, INT-IRAN database); Short, Award No. 312-11135-3, slip. op. at 7-8.

234. Kilborn, *Iranian Festival is Over for American Business*, N.Y. Times, Jan. 17, 1979, at A10, cols. 5-6; see also Robinson, *Recent Developments at the Iran-United States Claims Tribunal*, 17 INT'L LAW. 661, 661 (1983) (during the Islamic Revolution, the extensive economic and commercial ties between the U.S. and Iran were ruptured).

235. See Middleton, *Loss of Devices Watching Soviet a Serious Casualty of Iran Crisis*, N.Y. Times, Jan. 18, 1979, at A14, col. 1 (discussing the dismantling of the Central Intelligence Agency's "strategic-weapons monitoring system" in Iran).

236. Yeager, Award No. 324-10199-1, slip. op. at 19-20.

237. *Id.* at 20.

238. Short v. Islamic Republic of Iran, Award No. 312-11135-3, slip. op. at 14 (Iran-U.S. Claims Trib. July 14, 1987) (WESTLAW, INT-IRAN database) (Brower, J., dissenting).

239. See sources cited *supra* note 178.

240. Short, Award No. 312-11135-3, slip. op. at 15 (Brower, J., dissenting). This

Thus, as Judge Brower argued, there should be a *rebuttable* presumption that the departure of U.S. nationals after the return of Ayatollah Khomeini on February 1 was caused by the anti-American stance of the revolutionary movement.²⁴¹

CONCLUSION

The constructive wrongful expulsion of foreigners by the actions of revolutionary mobs, instigated by state-inspired propaganda, is within a state's responsibility for injuries to aliens. It is evident that the masses of Iranian people who supported the Ayatollah heeded his directives and took anti-American actions that deliberately caused the departure of U.S. nationals. A nation should be responsible when a mob, moved by state-inspired propaganda, forces aliens to leave the country. Under such circumstances, as in the case of the Islamic Revolution, foreign nationals may be constructively expelled in the absence of an official order. Whether the propaganda stems from the constituted authority of a state or from an ultimately successful revolutionary movement does not alter the state's responsibility for the consequences of those statements.

*Ruth L. Cove**

conclusion was not clear to the Tribunal, which did not find the revolutionary turmoil to be caused by actions of persons that were attributable to the state. *See supra* notes 177, 218.

241. *Short*, Award No. 312-11135-3, slip. op. at 22 (Brower, J., dissenting). *But see Short*, slip. op. at 11 (to assume that all departures were attributable to the Islamic Republic unless the state demonstrated otherwise is contrary to international law).

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