

PERMANENT COURT OF ARBITRATION

Case No. 2012-07

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENTS BETWEEN
THE REPUBLIC OF FINLAND AND THE ARAB REPUBLIC OF EGYPT ON THE
PROMOTION AND PROTECTION OF INVESTMENTS RESPECTIVELY
DATED 5 MAY 1980 AND 3 MARCH 2004 AND THE
UNCITRAL ARBITRATION RULES**

BETWEEN

MOHAMED ABDEL RAOUF BAHGAT (Egypt)

Claimant

AND

THE ARAB REPUBLIC OF EGYPT (Egypt)

Respondent

Respondent's Request for Bifurcation

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6. For the avoidance of any doubt, nothing in this submission shall be construed as an acceptance, admission or acknowledgement of any allegations, assertions or claims made by Claimant, unless otherwise expressly stated. Respondent fully reserves its right to further contest the jurisdiction of the Arbitral Tribunal and the merits of the dispute. Respondent further reserves the right to cross-examine Claimant's witnesses and experts and to contest the authenticity of any documents or the correctness of any translations submitted by Claimant.

II. FACTUAL BACKGROUND TO EGYPT'S JURISDICTIONAL OBJECTIONS

7. Respondent will hereby present the relevant facts relating to its objections to jurisdiction. Namely, this will consist of laying out the facts relevant to Claimant's nationality (**A**), followed by the facts surrounding Egypt's offers to arbitrate in the 1980 and 2004 BITs (**B**).

A. Claimant's Nationality

8. Respondent will hereby present the relevant facts, in chronological order, relating to Claimant's Nationality. First, Claimant's nationality until 1980 (**a**); second, Claimant's nationality between 1980 and 1997 (**b**); finally, Claimant's nationality from 1997 until the present (**c**).

a) Claimant's Nationality until 1980

9. Claimant was born in Egypt to Egyptian parents on 1 May 1940. He acquired Egyptian nationality at birth. Claimant claims to have immigrated to Finland in October 1967³. He further claims to have acquired Finnish nationality as soon as 12 February 1971 and to have remained a Finnish national ever since⁴.
10. Claimant's nationality status during the 1970s is of limited relevance in this arbitration. Egypt nevertheless notes, for the sake of clarity, that the evidence offered does not support Claimant's nationality contentions over this period of time.
11. First, Claimant has so far produced remarkably little evidence of his alleged Finnish nationality during the 1970s. Second, Claimant alleges that, in 1971, he "*went to the*

³ Mr. Bahgat's First Witness Statement at 2 & Mr. Bahgat's Second Witness Statement at 3.

⁴ Mr. Bahgat's First Witness Statement at 2 & Mr. Bahgat's Second Witness Statement at 5.

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Egyptian Embassy in Helsinki and informed them that [he] wanted to give up [his] Egyptian nationality and take Finnish nationality”⁵. However, a letter from the Egyptian Embassy in Helsinki dated 25 March 1974 contradicts this allegation insofar as it states:

*“Kindly be informed that your request filed on **January 02, 1974** to acquire the Finnish nationality and preserve the Egyptian one is granted by virtue of the Ministry of Interior’s letter, Passports, Emigration & Nationality Administration, file no. 23/56/7865 in its correspondence no. 1884 sent on March 12, 1974”⁶ (emphasis added).*

12. As far as Respondent can see, the first official document concerning Claimant’s Finnish nationality is a photocopy of his Finnish passport issued by the Finnish embassy in Cairo as late as 14 May 1981⁷.
13. Second, contrary to Claimant’s allegation that he gave away his last Egyptian passport to the Egyptian embassy in Helsinki back in 1971⁸, the written evidence clearly indicates that **Claimant still held a valid Egyptian passport as late as 1980**. In fact, Claimant’s application to the Egyptian Passports, Emigration and Nationality Administration (“**PENA**”) of 29 September 1980 requesting permission to lose his Egyptian nationality makes express reference to the existence of Claimant’s “**Passport no. 77/8 issued from the embassy of the Arab Republic of Egypt in Helsinki on September 21, 1977**”⁹.
14. Third, to add to the confusion, Claimant himself stated in his Application to Restore Egyptian nationality of 1 September 1997 that his “*Date of Adopting the Foreign [i.e. Finnish] Nationality*” had been “1975”¹⁰, not 1971 as he now claims in this arbitration.
15. To summarize, Claimant’s claim that he gained Finnish nationality in 1971 is highly suspect.

b) Claimant’s Nationality between 1980 and 1997

16. Contrary to his nationality status over the 1970s, Claimant actually appears to have held Finnish nationality between 1981 and September 1997.

⁵ Mr. Bahgat’s Second Witness Statement at 5.

⁶ **Exhibit R0006.**

⁷ Exhibit C0015, p. 29.

⁸ Mr. Bahgat’s Second Witness Statement at 5.

⁹ **Exhibit R0001.**

¹⁰ **Exhibit R0001.**

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17. On 29 September 1980, Claimant submitted an application to PENA requesting permission to lose his Egyptian nationality in order to acquire Finnish nationality¹¹.
18. On 6 November 1980, Claimant was authorized by Ministerial Decree No. 1896/1980 to acquire Finnish nationality and to renounce his Egyptian nationality in accordance with Article 10 of Law No. 26 for the year 1975 concerning nationality¹². On 6 December 1980, Claimant appeared before PENA and stated that he had acquired Finnish nationality¹³. Consequently, Claimant was and is considered under Egyptian law to have lost his Egyptian nationality on 6 November 1980¹⁴.
19. Accordingly, as stated by Claimant, “[b]etween 1980 and September 1997 Mr Bahgat resided in Egypt as a Finnish national”¹⁵, using working permits issued by the Egyptian authorities¹⁶.

c) Claimant’s Nationality from 1997 to present

20. On 1 September 1997, Claimant submitted an application to PENA to regain Egyptian nationality under Article 8 of Law No. 26 of the year 1975 concerning nationality¹⁷. Claimant denies that he personally appeared before PENA to file this application¹⁸, but confirms that he filled in the application personally¹⁹. Following Claimant’s application, his Egyptian nationality was returned to him on 28 September 1997 by way of Ministerial Decree No. 10815/1997²⁰. According to PENA, Claimant “has been treated in Egypt ever since as Egyptian in any and all aspects and under any and all circumstances”²¹. This statement is consistent with its contemporaneous position; for instance, on 26 March 2002,

¹¹ **Exhibit R0001.**

¹² Exhibit C0017 and C0017.1.

¹³ See PENA letter dated 7 August 2012 (**Exhibit R0002**).

¹⁴ See PENA letter dated 7 August 2012 (**Exhibit R0002**) and letters from the Egyptian authorities to Claimant dated 6 November 1980 and 4 January 1981 (Exhibit C0017 and C0017.1) as well as 11 December 1990 (Exhibit C0018.2).

¹⁵ Claimant’s Letter of 8 July 2011 (appended to the Notice of Arbitration of 3 November 2011) at 9.

¹⁶ Exhibit C0018.

¹⁷ **Exhibit R0001.**

¹⁸ Claimant’s Reply on Interim Measures at 11.

¹⁹ Mr. Bahgat’s Second Witness Statement at 37.

²⁰ See, PENA letter dated 7 August 2012 (**Exhibit R0002**); Letter from PENA dated 26 March 2002 (**Exhibit R0006**); Exhibit C0021.

²¹ **Exhibit R0002.**

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PENA wrote to Claimant, further to a request of his attorney, “*you have been treated as Egyptian from that date [28 September 1997]*”²².

21. The return of Claimant’s Egyptian nationality was announced to him by letter of 30 September 1997²³. Soon thereafter, Claimant began actively taking advantage of his newly-acquired nationality. For example, the Cairo Airport records²⁴ reveal that Claimant began using his new Egyptian passport as soon as November 1997 when he left Egypt for Germany. Similarly, in September 1998 Claimant left Egypt for Switzerland and returned from Italy with his Egyptian passport. He also used his Egyptian passport for travelling to Turkey in December 1998 as well as during trips to Switzerland and Austria in July 1999²⁵. Considering that Claimant actually alleges that “[s]ince becoming a Finnish national I always travelled abroad as a Finnish national”²⁶, the above data concerning his travels provides some perspective as to his credibility.
22. In addition, far from rejecting his recovered Egyptian citizenship, Claimant has accepted (if not requested²⁷) an Egyptian passport with a validity period between 13 October 2004 and 12 October 2011. A photocopy of said passport is attached to this submission as **Exhibit R0008**.
23. Furthermore, Claimant also relied on his Egyptian nationality to have the birth certificates of his daughters – Soraya (Thuraia) and Amina Mohamed Abdel Raouf Bahgat – modified, by filing an application on 8 November 1997²⁸ in order for them to benefit from this nationality. For instance, further to Claimant’s request to that end, PENA sent a letter dated 10 November 1997 to the Manager of the German School in Cairo confirming that Soraya and Amina Mohamed Abdel Raouf Bahgat had regained their Egyptian nationality on 28 September 1997, when their father regained his²⁹. This fact alone completely disproves Claimant’s opportunistic allegation that he was coerced to regain Egyptian citizenship. If

²² **Exhibit R0006**.

²³ Exhibit C0021.

²⁴ **Exhibit R0007**.

²⁵ **Exhibit R0007**.

²⁶ Mr. Bahgat’s Second Witness Statement at 8.

²⁷ Whether Mr. Bahgat has simply accepted or requested an Egyptian passport will be ascertained before the filing of Egypt’s next submission.

²⁸ **Exhibit R0009**. See also, Exhibit C0021.1.

²⁹ **Exhibit R0010**.

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this had been the case one does not see how Mr. Bahgat would have, without any request from anyone, insisted on his two daughters to be treated as Egyptians as well.

24. It is not before 31 October 2012, more than 15 years after regaining Egyptian nationality and almost one year into this arbitration, having actively availed himself of his Egyptian nationality over the years, that Claimant has suddenly begun to argue that his acquisition of Egyptian nationality in 1997 was a nullity and of no effect under Egyptian law³⁰.

B. Egypt's offers to arbitrate in the 1980 and 2004 BITs and Claimant's acceptance

25. Egypt's offer to arbitrate may be found in the two BITs it successively entered into with Finland (a). In order for consent to arbitrate to be qualified, Claimant – as the investor – must accept said offer (b).

a) The 1980 and 2004 BITs

26. On 5 May 1980, the Arab Republic of Egypt and the Republic of Finland signed a BIT in Helsinki³¹. This BIT entered into force on 22 January 1982 and was to remain in force for 20 years with tacit renewal thereafter. More particularly, Article 9.2 of the 1980 BIT provided:

“This Agreement shall remain in force twenty years and shall continue to be in force thereafter unless, after the expiry of the initial period of nineteen years, either Contracting State notifies the other Contracting State in writing of its decision to terminate the Agreement. The termination shall become effective one year after the notification has been received by the other Contracting State.”

27. This BIT contained express offers from each Contracting State, i.e. Finland and Egypt, to arbitrate disputes with foreign investors from the other Contracting State. This offer was included in Article 7 of the 1980 BIT, in the following terms:

“1. Any dispute which may arise between a national or a company of one Contracting State and the other Contracting State in connection with an investment on the territory of that other Contracting State [...] shall be subject to negotiations between the parties in dispute.

2. If the dispute cannot be resolved in accordance with the provisions of the preceding [sic] paragraph, any of the parties concerned may demand that the dispute be submitted to arbitration in accordance with the following procedure:

[...]”

³⁰ Claimant's Reply on Interim Measures at 10.

³¹ Exhibit CLA0001.

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accepted Egypt's standing offer to arbitrate by delivering to Egypt his Notice of Arbitration dated 3 November 2011³⁴ thereby purportedly accepting Egypt's offer to arbitrate contained in the 2004 BIT.

33. Respondent agrees with the fact that Claimant's purported acceptance of Egypt's offer to arbitrate occurred upon the filing of his Notice of Arbitration on 3 November 2011 regarding alleged breaches of Respondent, dating back to 2000³⁵ and even 1997³⁶.

III. THE LAW: OBJECTIONS TO JURISDICTION

34. Respondent will hereby present its objections to jurisdiction. It will first demonstrate that the Tribunal in the instant proceedings lacks jurisdiction *ratione personae* (A), and then that the Tribunal lacks jurisdiction *ratione temporis* (B).

A. The Tribunal lacks jurisdiction *ratione personae*

35. The Arbitral Tribunal lacks jurisdiction *ratione personae* over Claimant's claims because Claimant was not a Finnish national throughout the relevant period of time.
36. The 1980 BIT³⁷ and the 2004 BIT include a nationality requirement for an investor to be entitled to initiate arbitration proceedings on their ground (a). Therefore, the issue of nationality of the investor falls within the scope of the Arbitral Tribunal's competence to rule on jurisdictional objections (b). In order to decide on the issue of nationality, the key fundamentals will be found in the Finnish legal framework on nationality (c). The analysis of these applicable provisions, together with the evidence and expert opinions filed by Respondent, may only lead to the conclusion that Claimant lost his Finnish nationality in 1997. Respondent will also demonstrate the Claimant's allegations with respect to his nationality are incorrect and misleading (d).

³⁴ Statement of Claim at 2.23.

³⁵ Statement of Claim at 4.5, 4.15, 4.18.

³⁶ Statement of Claim at 4.12.

³⁷ The 1980 BIT is mentioned and studied for the sake of comprehensiveness. As mentioned above (see *supra* Section II.B.a)), the 1980 BIT was replaced by the 2004 BIT. More particularly, the offer to arbitrate contained in this BIT was repealed and replaced by the 2004 BIT; therefore it cannot apply at hand. See *infra* Section III.B.a)).

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*Avocats à la Cour Supérieure***a) *The Nationality Requirement under the BITs***

37. In order for the Arbitral Tribunal to have jurisdiction over Claimant's claims against Egypt under the 1980 BIT or the 2004 BIT, Claimant must be considered a Finnish national under Finnish law. This absolute precondition to jurisdiction applies under both the 1980 BIT and the 2004 BIT.
38. As regards the 1980 BIT³⁸, the dispute resolution mechanism under Article 7 only applies to disputes between a national or a company of one Contracting State [here Finland] and the other Contracting State [here Egypt] ("*Any dispute which may arise between a national or a company of one Contracting State and the other Contracting State in connection with an investment [...]*"). Furthermore, Article 1 of the 1980 BIT expressly provides that Finnish nationality shall be assessed in accordance with Finnish law ("*For the purposes of this agreement [...] 2- The term "national" means: [...] In respect of Finland, an individual who is a citizen of Finland, according to Finnish law [...]*").
39. As regards the 2004 BIT³⁹, the dispute resolution mechanism under Article 9 correspondingly applies only to "[a]ny dispute between one Contracting Party and an investor of the other Contracting Party [...]" In addition, Article 1(3) of the 2004 BIT provides that Finnish nationality shall be assessed in accordance with Finnish law ("*The term 'investor' means, for either Contracting Party [...] (a) any natural person who is a national of either Contracting Party in accordance with its laws*").
40. In brief, in order to be eligible to claim against Egypt under either of the two BITs between Finland and Egypt, Claimant must be a Finnish national (as determined by Finnish law) during a relevant period of time.
41. In the present arbitration, as confirmed by Claimant, the parties agree "*in order to make a claim under the 1980 and 2004 BITs, the Claimant must have held Finnish nationality in accordance with Finnish law at the time of the breach of the BITs and until the commencement of arbitral proceedings*"⁴⁰. According to Claimant, Egypt's alleged BIT

³⁸ Exhibit CLA0001.

³⁹ Exhibit CLA0002.

⁴⁰ Claimant's Reply on Interim Measures at 6. See also, e.g., the Award in ICSID Case No. ARB/98/2 *Victor Pey Casado et al. v. Republic of Chile* of 8 May 2008, at 414: "*Par ailleurs, les conditions d'application du traité, dont la condition de nationalité, doivent également être satisfaites, en l'absence de précision contraire du traité, à la date de la ou des violations alléguées, faute de quoi l'investisseur ne pourrait se prévaloir*

breaches began in 1997 and have continued to this day⁴¹. Consequently, on Claimant's own case, in order for the Arbitral Tribunal to have jurisdiction, Claimant must have held Finnish nationality throughout the relevant time period.

42. In the following section, it will be established that Claimant did not hold – and indeed could not have held – Finnish nationality as a matter of law from 28 September 1997.

b) *The Arbitral Tribunal is empowered to rule on Claimant's Nationality*

43. Article 21(1) of the 1976 UNCITRAL Rules provides for the well-established principle of *competence-competence*, according to which an Arbitral Tribunal has jurisdiction to decide on jurisdictional objections.

44. When the jurisdiction of an arbitral tribunal is grounded in a BIT, the Arbitral Tribunal's assessment of its jurisdiction may be closely connected to, and dependant on, the nationality of the investor. Therefore, such issue may be raised and decided when an objection to jurisdiction is presented. In *Soufraki v. UAE*, the Arbitral Tribunal held:

*“It is accepted in international law that nationality is within the domestic jurisdiction of the State [...] But it is no less accepted that **when, in international arbitral or judicial proceedings, the nationality of a person is challenged, the international tribunal is competent to pass upon that challenge.** It will accord great weight to the nationality law of the State in question and to the interpretation and application of that law by its authorities. But it will in the end decide for itself whether, on the facts and law before it, the person whose nationality is at issue was or was not a national of the State in question and when, and what follows from that finding. **Where, as in the instant case, the jurisdiction of an international tribunal turns on an issue of nationality, the international tribunal is empowered, indeed bound, to decide that issue**”⁴² (emphasis added).*

45. The above statement was subsequently upheld by the *ad hoc* Committee reviewing the annulment application filed by claimant⁴³ and of which, the aforementioned paragraph was the main focus. The *ad hoc* Committee emphasized the mandatory nature of a ruling on the

devant le tribunal arbitral mis en place en application du traité d'une violation de celui-ci.” (Exhibit RLA0014).

⁴¹ Claimant's Application for Interim Measures at 8; Statement of Claim at 4.12.

⁴² Award in ICSID Case No. ARB/02/7 *Hussein Nuaman Soufraki v. The United Arab Emirates* of 7 July 2004, at 55 (Exhibit RLA0015).

⁴³ Decision on Annulment in ICSID Case No. ARB/02/7 *Hussein Nuaman Soufraki v. The United Arab Emirates* of 5 June 2007 at 52 (“The *ad hoc* Committee is convinced that the Tribunal did not exceed its powers in stating that it had to verify Mr. Soufraki's nationality in order to ascertain its competence over the case.”) and 56 (Exhibit RLA0016).

issue of nationality, when this issue is decisive to determine whether the arbitral tribunal has jurisdiction over a claim:

*“International tribunals have asserted their competence to verify that the nationality has indeed been granted in accordance with the national law requirements, as well as with the basic requirements of international law. In such situations, **international tribunals have the right – and indeed the obligation – to determine the existence of the treaty-required nationality as a jurisdictional requirement** by reference to the laws of the State whose nationality is claimed”⁴⁴ (emphasis added).*

46. It follows that it is in fact mandatory that this Arbitral Tribunal rule on the issue of Claimant’s nationality as a preliminary matter for it is the main ground for Respondent’s first jurisdictional objection.

c) *Fundamentals of Finnish Nationality law*

47. In the following section, Respondent will present the pertinent aspects of Finnish Nationality law with respect to the instant proceedings. First, Respondent will describe the restrictive approach to multiple nationality (**i**); second, Respondent will discuss the loss of Finnish nationality by operation of Finnish law (**ii**); third, Respondent will present case-law applying Section 8 of the Nationality law (**iii**); fourth, Respondent will discuss the release from Finnish nationality by application (**iv**); and finally, Respondent will discuss the changes to Finnish Nationality law in the 2003 Nationality Act (**v**).

i. Restrictive approach to multiple nationality

48. During the late 1900s and up until 1 June 2003, the primary source of Finnish law governing the acquisition and loss of Finnish nationality was the 1968 Nationality Act (401/1968). Over time, the 1968 Nationality Act had been subject to a number of amendments, namely through:

- 1) Act 584/1984 entering into effect on 1 September 1984;
- 2) Act 155/1995 effective as of 1 March 1995; and
- 3) Act 481/1998 effective as of 15 August 1998.

⁴⁴ Decision on Annulment in ICSID Case No. ARB/02/7 *Hussein Nuaman Soufraki v. The United Arab Emirates* of 5 June 2007 at 60 (**Exhibit RLA0016**).

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49. The 1968 Nationality Act reflected the hallmark traits of Nordic nationality legislation of the time. These included an emphasis on the *jus sanguinis* principle combined with a restrictive approach to multiple nationality⁴⁵. Indeed, governmental sources confirm that “[i]n Nordic citizenship legislation and naturalisation praxis [...] avoidance of dual citizenship has been an important and fundamental principle”⁴⁶, and that “[t]he nationality act currently in force [i.e. the 1968 Nationality Act, as amended] takes a negative view to multiple nationality, especially among adults”⁴⁷.
50. The restrictive approach to multiple nationality in the 1968 Nationality Act manifested itself in two primary ways. First, a foreigner acquiring Finnish nationality was normally required to renounce any previous nationalities:

*“In order to avoid dual nationality, the law provides that naturalization may be made conditional on the applicant forfeiting his or her foreign nationality within a specified period of time (Section 4, Subsection 3, of the Nationality Act). This is normally done with respect to all applicants who are in a position to renounce their previous nationality.”*⁴⁸

51. Second, in an attempt to prevent multiple nationality, the 1968 Nationality Act provided for the automatic loss of Finnish nationality under a number of circumstances. According to Section 8 of the Act (in its post-1984 form)⁴⁹, the acquisition of a foreign nationality resulted in the automatic loss of Finnish nationality:

Section 8 (10.8.1984/584)

“A person loses Finnish nationality:

- 1) if he acquires the nationality of a foreign country by application or declaration, or by specifically consenting to it of his own free will;*
- 2) if he acquires the nationality of a foreign country by entering into its service; or*

⁴⁵ Expert Opinion of Professor Scheinin at 13-14.

⁴⁶ Government Bill HE 43/1984, p. 5 (Additional Authority No. 4 to Professor Scheinin’s Expert Opinion).

⁴⁷ Government Bill HE 235/2002, p. 5 [Free translation] (Additional Authority No. 6b to Professor Scheinin’s Expert Opinion).

⁴⁸ A. Rosas, M. Suksi, Finnish Nationality Law, appearing in B. Nascibene (ed.): Nationality Laws in the European Union, p. 289. Milano: Butterworths/Giuffrè, 1996. (Source No. 7 to Professor Scheinin’s Expert Opinion).

⁴⁹ Sections 8a and 8b of the 1968 Nationality Act also provided for the loss of Finnish nationality under additional circumstances. Section 8a contained a provision applicable in the event that Finland had concluded treaties concerning the loss of nationality with other States. As no such treaties were concluded, Section 8a was of no practical significance. Of more importance was Section 8b, which in simplified terms provided that a Finnish national born abroad with little or no ties to Finland would automatically lose his or her Finnish nationality upon reaching the age of 22 provided that he or she also had another nationality. Neither Section 8a nor 8b, it is submitted, is relevant in the context of the present arbitration.

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- 3) *if he has not reached the age of eighteen and is unmarried, and if he becomes a national of a foreign country on account of:*
- a) *his parents acquiring the nationality of a foreign country in the manner described in points 1 or 2, provided that his parents have joint custody; or*
 - b) *one of his parents acquiring the nationality of a foreign country in the manner described in points 1 or 2, provided that he is in the custody of said parent or jointly with said parent's spouse who is not a Finnish national*⁵⁰ (emphasis added).

ii. *Section 8 – Loss of Finnish Nationality by operation of Finnish law*

52. Loss of Finnish nationality under Section 8⁵¹ did not require a separate act of renunciation or a decision by the Finnish authorities. Loss of Finnish nationality instead took place automatically by operation of law immediately upon fulfillment of the conditions set out in the Nationality Act. This is unanimously confirmed by scholarly opinion:

*“Finnish citizenship may be lost by operation of law in a number of circumstances. One important ground, which has again been devised to minimize dual citizenship, is where the person has acquired a foreign nationality on application, declaration or otherwise on his or her own free will. The same applies to a child who is under 18 years of age and unmarried and whose parents (or parent) acquire a foreign nationality under the said circumstances, on condition that the custody of the child belongs to the parents (parent) in question (**Section 8 of the Nationality Act**)”*⁵² (emphasis added).

53. Commentators unequivocally confirm that a Finnish national acquiring a foreign nationality under the 1968 Nationality Act automatically lost his or her Finnish nationality:

“Finland has traditionally held a critical position as regards multiple nationality, but as the international trend lately has been moving towards a more positive attitude to the acceptance of multiple nationality, Finland has consequently revised its position on the matter. On 1 June 2003, when the new Nationality Act came into force, toleration of multiple nationality was introduced as a major principle. A Finnish national acquiring a second nationality no longer automatically loses his or her Finnish nationality. Nor is it a requirement for a foreign national who acquires Finnish nationality to renounce his or her former nationality. Before this

⁵⁰ Exhibit RLA0017.

⁵¹ The automatic loss, with no separate renunciation or decision of Finnish authorities, also applies to Sections 8a and 8b.

⁵² A. Rosas, M. Suksi, Finnish Nationality Law, appearing in B. Nascibene (ed.): Nationality Laws in the European Union, p. 291. Milano: Butterworths/Giuffrè, 1996. (Source No. 7 to Professor Scheinin's Expert Opinion).

change came about the principal rule was that anyone acquiring a second nationality automatically lost his or her Finnish nationality, and a condition for acquisition of Finnish nationality was that any other nationality was renounced”⁵³ (emphasis added).

“The main novelty in the Nationality Act of 2003 is the acceptance of multiple citizenship. Loss of Finnish citizenship is no longer a consequence of the acquisition of a foreign citizenship. Nor does the new Act include a requirement of renunciation of former citizenships when acquiring Finnish citizenship.

[...]

While a Finnish citizen no longer automatically loses his or her Finnish citizenship when acquiring another citizenship, the new Nationality Act introduced some other new modes for the loss of Finnish citizenship”⁵⁴.

54. The *ipso iure* loss of Finnish nationality through the acquisition of a foreign nationality is also confirmed by governmental sources. Said sources further confirm that the loss of nationality takes place the moment the foreign nationality becomes effective. Indeed, this is stated expressly in Government Bill 235/2002 which led to the new Nationality Act of 2003 (359/2003):

*“According to Section 8, point 1 of the Nationality Act currently in force [i.e. the 1968 Nationality Act as amended], **a Finnish national loses his or her nationality directly by operation of law upon receiving the nationality of a foreign state** by application or other comparable means”⁵⁵ (emphasis added).*

55. The *ipso iure* loss of Finnish nationality under Section 8 of the 1968 Nationality Act is also apparent from Government Bill 43/1984 amending the Nationality Act. According to the Bill:

“Under present legislation, Finnish citizenship is forfeited by a person who acquires the citizenship of a foreign state either upon application or having granted his specific consent to it or having entered the service of a foreign state.

[...]

⁵³ J. Fagerlund, Finland, pp. 149-150 (RLA0004 and Source No. 2 to Professor Scheinin’s Expert Opinion).

⁵⁴ J. Fagerlund, S. Brander, EUDO Citizenship Observatory Country Report: Finland, 2010, p. 14 and 28 (Source No. 3 to Professor Scheinin’s Expert Opinion).

⁵⁵ Government Bill HE 235/2002, p. 58 [Free translation] (Additional Authority No. 6b to Professor Scheinin’s Expert Opinion).

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It is not known how many Finns forfeit annually Finnish citizenship abroad because no agreements on disclosure of data on this have so far been concluded between Finland and foreign states.”⁵⁶ (emphasis added).

56. In other words, because loss of nationality under Section 8 took place automatically by operation of law the moment a Finnish national acquired a foreign nationality, the Finnish authorities did not necessarily become aware of such losses. Thus it was not known “*how many Finns forfeit annually Finnish citizenship abroad*”.

57. To conclude, the above sources prove that a Finnish national acquiring a foreign nationality automatically lost his or her Finnish nationality by operation of Finnish law, provided that the preconditions in Section 8 of the 1968 Nationality Act were fulfilled.

iii. Case Law applying Section 8 of the 1968 Nationality Act.

58. The fact that the loss of Finnish nationality took place automatically by operation of law the moment a foreign nationality was obtained is also evidenced in Finnish case law applying the 1968 Nationality Act.

59. The leading case relating to the application of Section 8 of the 1968 Nationality Act is the case of Mrs. B⁵⁷. The facts of the case emphasize the automatic nature of the loss of Finnish nationality under Section 8. As explained by Professor Scheinin, B married a British national in 1973 and accepted to obtain British nationality in 1974 on account of her marriage, on the basis of an informal advice from the Consulate of Finland that she would not lose her Finnish nationality. Over several decades, B was able to renew her Finnish passport, as her acquisition of British nationality was not noted by Finnish authorities. The Finnish authorities only became aware that B had acquired British nationality in 2009, i.e. after the expiry of the five-year transitory window for reacquisition of Finnish nationality under the new law provided by the 2003 Nationality Act, and decided that B had in 1974 lost her Finnish nationality.

60. B took her case to the administrative courts; however, the Helsinki Administrative Court upheld the decision of the Finnish authorities in the following terms:

⁵⁶ Government Bill HE 43/1984, p. 5 (Additional Authority No. 4 to Professor Scheinin’s Expert Opinion).

⁵⁷ Expert Opinion of Professor Scheinin at 37 *et seq.*

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“Since B acquired foreign citizenship through application, she has lost her Finnish citizenship on the grounds set forth in Section 8 of the then-applicable Citizenship Act (401/1968).

[...]

B can neither be deemed to be a Finnish citizen nor have a right to become a Finnish citizen based on the fact that information in the Finnish population register system regarding her Finnish citizenship was erroneous”⁵⁸.

61. B appealed against the ruling further to the Supreme Administrative Court, the highest judicial instance in administrative law matters. Through its decision of 25 January 2012, the Supreme Administrative Court dismissed the appeal, hence confirming the correctness of the ruling by the Helsinki Administrative Court⁵⁹.

iv. *Section 9 – Release from Finnish nationality by application*

62. The 1968 Nationality Act provided for two primary ways of losing Finnish nationality by distinguishing between (i) automatic loss of Finnish nationality⁶⁰ and (ii) loss resulting from a release from Finnish nationality⁶¹. Government Bill 235/2002 describes this distinction as follows:

“In Finnish legislation, loss of nationality is used to signify the acquisition of a foreign nationality through an individual’s or his/her guardian’s own actions, the consequence of which is the breaking of the bond of nationality between the individual and Finland [...] On the other hand, Finnish legislation also provides for the release from nationality on the basis of an application [to the Finnish authorities]”⁶² (emphasis added).

63. In the 1968 Nationality Act, loss of nationality was regulated under Sections 8, 8a and 8b, whereas release from nationality by application to the Finnish authorities was regulated under Section 9. According to Section 9(1), “[a] *Finnish national, who is also the national*

⁵⁸ Annex B to Professor Scheinin’s Expert Opinion.

⁵⁹ Annex C to Professor Scheinin’s Expert Opinion.

⁶⁰ In Finnish: “*menettäminen*”.

⁶¹ In Finnish: “*vapauttaminen*”. As a separate matter, it should be noted that terminology in different pieces of legislation over time was not always consistent. According to Government Bill 235/2002, for example, “[t]he Nationality Act currently in force has been drafted, as was usual at the time, in very general terms”, and its “*concepts are inadequate and partly inconsistent.*” [Free translation] (Additional Authority No. 6b to Professor Scheinin’s Expert Opinion).

⁶² Government Bill HE 235/2002, p. 13 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

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of a foreign country, or who wishes to become the national of a foreign country, may on application be released from his Finnish nationality [...]”⁶³. Such an application could not be rejected if the person in question was residing abroad permanently (Section 9(2)).

64. The fact that Sections 8 and 9 provided for different, separate ways of losing Finnish nationality under the 1968 Nationality Act is further reaffirmed by Government Bill 235/2002:

“According to Section 5(2) of the Constitution of Finland⁶⁴, no one can be released of his or her Finnish citizenship except on grounds determined by an Act [of Parliament]. It is also required that a person does not become stateless due to the release. Release is an umbrella concept used in the Constitution which encompasses **different types of loss of nationality, which under the Nationality Act currently in force [i.e. the 1968 Nationality Act as amended] are loss of nationality directly by operation of law either based on the acquisition of a foreign nationality (Section 8) or at 22 years of age on account of insufficient ties with Finland (Section 8b(1) and (3)), or the release from nationality based on an application (Section 9)**”⁶⁵ (emphasis added).

65. The Finnish 1968 Nationality Act did provide for some exceptions to the prohibition of multiple nationalities⁶⁶. However, none of these exceptions apply in the case at hand.

⁶³ The relevance of the option given by Section 9 to apply for the release of Finnish nationality lies in that some countries require the former nationality to be withdrawn before granting their own nationality. Government Bill 235/2002 also confirms that the requirement to renounce one’s prior nationality was specifically intended to avoid multiple nationality (“*Release from an existing nationality can also be regarded as a precondition for naturalization*”) [Free Translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁶⁴ The current Constitution of Finland entered into effect on 1 March 2000. Section 5 of the Constitution is therefore not directly relevant to the present arbitration.

⁶⁵ Government Bill HE 235/2002, pp. 71-72 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁶⁶ Multiple nationality was not altogether prohibited under the Finnish 1968 Nationality Act. The Act rather took “*a negative view to multiple nationality, especially among adults.*” This meant that under most circumstances, the acquisition of a foreign nationality resulted in the *ipso iure* loss of Finnish nationality (Section 8). It also meant that the acquisition of Finnish nationality was normally made conditional on the renunciation of any pre-existing foreign nationality (Section 4). However, there were certain circumstances under which Finnish nationals could validly hold multiple nationalities, such as the following:

- children born to parents with different nationalities (one Finnish and the other not);
- children born to Finnish parents abroad in countries granting nationality under the *jus soli* principle, however, dual nationals born abroad were susceptible to lose their Finnish nationality automatically by operation of Section 8b of the 1968 Nationality Act when they reached the age of 22;
- immigrants who acquired Finnish nationality but were incapable of renouncing their pre-existing nationality; and
- Finnish nationals who are granted a foreign nationality under circumstances which did not fulfill the preconditions for loss of Finnish nationality enumerated in Section 8 of the 1968 Nationality Act (“*if he acquires the nationality of another country by application or declaration, or by specifically consenting*”

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66. The 1968 Nationality Act was repealed and replaced by the 2003 Nationality Act (359/2003), which entered into effect on 1 June 2003. The 2003 Nationality Act has since been subject to multiple minor amendments, which have not brought about drastic changes to the main fundamentals of the Act.

67. The 2003 Nationality Act reversed Finland's hostile attitude to multiple nationality overnight. In fact, the "*main novelty of the Nationality Act of 2003 is the acceptance of multiple nationality*"⁶⁷. The acceptance of multiple nationality is not expressly confirmed in the Act. Instead, according to Government Bill 235/2002, the Act simply

*"does not include a provision under which a Finnish citizen would forfeit his citizenship when acquiring upon application or in a comparable manner the citizenship of a foreign state. Correspondingly, under the bill, it would not be possible to require a foreigner applying for Finnish citizenship to relinquish [his] current citizenship as a condition for acquiring Finnish citizenship."*⁶⁸

68. In brief, along with the adoption of the 2003 Nationality Act, Finnish nationality law underwent a major transformation. As of 1 June 2003, multiple nationality has been accepted in Finnish law.

69. In addition to the acceptance of multiple nationality, the 2003 Nationality Act "*furthermore facilitates the reacquisition of Finnish nationality by persons who have lost their Finnish nationality due to the earlier prohibition of multiple nationality*"⁶⁹. Indeed, Section 60 of the Act provided "*an opportunity for reacquiring Finnish citizenship [...] to a person who has forfeited it, [after] having acquired upon application or in a comparable manner the citizenship of a foreign State*"⁷⁰. Reacquisition of Finnish nationality under Section 60 takes place by way of a simple declaration. Section 60(1) specifically applies to persons who had lost their Finnish nationality by operation of Section 8 of the 1968 Nationality Act (as well as corresponding provisions in earlier Finnish nationality legislation):

"(1) A former Finnish citizen will acquire Finnish citizenship by declaration if he or she has lost Finnish citizenship before the entry into force of this Act under:

to it of his own free will"). This was especially relevant to women marrying foreign nationals, because under certain foreign laws women were automatically granted the nationality of their spouses.

⁶⁷ J. Fagerlund, Finland, p. 161 (**RLA0004** and Source No. 2 to Professor Scheinin's Expert Opinion).

⁶⁸ Government Bill HE 235/2002, p. 17 (Additional Authority No. 6 to Professor Scheinin's Expert Opinion).

⁶⁹ J. Fagerlund, Finland, p. 161 (**RLA0004** and Source No. 2 to Professor Scheinin's Expert Opinion).

⁷⁰ Government Bill HE 235/2002, p. 87 (Additional Authority No. 6 to Professor Scheinin's Expert Opinion).

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- 1) *section 1(1) of the Act on the Loss of Finnish Citizenship (181/1927);*
- 2) *section 10 of the Act on the Acquiring and Loss of Finnish Citizenship (325/1941);*
- 3) *section 8 of the Nationality Act (401/1968); or*
- 4) *section 8 of the Act on Amending the Nationality Act (584/1984).’’⁷¹*

70. The declaration procedure under Section 60 was available for a period of five years from the entry into force of the 2003 Nationality Act, and therefore closed in 2008. As of 2011, however, the declaration procedure has been made permanent by an amendment to Section 29, which now provides that “[a] former Finnish citizen may acquire Finnish citizenship by declaration”⁷².
71. The application of the above-described principles of Finnish nationality law results in the incontrovertible conclusion that Claimant lost his Finnish nationality by operation of Finnish law in 1997.
72. It is undisputed in this arbitration that Claimant personally completed and signed an application to reacquire Egyptian nationality on 1 September 1997. Indeed, Claimant expressly testifies to this effect in his Second Witness Statement⁷³. A copy of Claimant’s application bearing his signature has been submitted as part of Exhibit R0001. It is further undisputed that Claimant was granted Egyptian nationality on 28 September 1997 by ministerial resolution No. 10815 of 1997 and that he was informed of his Egyptian nationality by letter dated 30 September 1997⁷⁴. In summary, Claimant (re)acquired Egyptian nationality by submitting an application.
73. Claimant’s acquisition of Egyptian nationality by application in 1997 falls squarely within the scope of operation of Section 8 of the Finnish 1968 Nationality Act (as amended). According to Section 8, point 1, “[a] person loses Finnish nationality: 1) if he acquires the nationality of another country **by application** or declaration, or by specifically consenting to it of his own free will”⁷⁵. As Claimant acquired Egyptian nationality by application, he therefore lost his Finnish nationality by operation of Section 8 of the 1968 Nationality Act on 28 September 1997.

⁷¹ Nationality Act 359/2003 (Additional Authority No. 7 to Professor Scheinin’s Expert Opinion).

⁷² Nationality Act 359/2003 (Additional Authority No. 7 to Professor Scheinin’s Expert Opinion).

⁷³ Mr. Bahgat’s Second Witness Statement at 37.

⁷⁴ Exhibit C0021.

⁷⁵ **Exhibit RLA0017.**

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74. In addition, Finnish case law, governmental sources and scholarly opinion (see ii and iii, *supra*) uniformly and unequivocally confirm that loss of Finnish nationality under Section 8 took place “*automatically*”⁷⁶ and “*directly by operation of law*”⁷⁷. From a timing standpoint, loss of nationality under Section 8 took place “*upon receiving the nationality of a foreign state*”⁷⁸. Consequently, Claimant lost his nationality automatically and by operation of Finnish law on the date he received Egyptian nationality, i.e. on 28 September 1997.
75. Apart from making an application for Egyptian nationality – which Claimant admits to having done – no other actions were required on the part of Claimant for the loss of his Finnish nationality to become effective under Section 8 of the 1968 Nationality Act.
76. In conclusion, Respondent has incontrovertibly established that Claimant lost his Finnish nationality by operation of Finnish law on 28 September 1997, the date he reacquired his Egyptian nationality. As a result, Claimant was not a Finnish national in accordance with Finnish law – as required by the 1980 and 2004 BITs – as of 28 September 1997.
77. Furthermore, considering that Finnish nationality law did not embrace the possibility of multiple nationalities before 1 June 2003, **it was legally impossible as a matter of Finnish law for Claimant to have been a Finnish national alongside his Egyptian nationality between 28 September 1997 and 1 June 2003.** This, in turn, means that the Arbitral Tribunal lacks jurisdiction *ratione personae* on account of Claimant’s lack of Finnish nationality.
78. Finally, Claimant has not claimed to have applied to regain Finnish nationality as made available between 2003 and 2008 and since 2011. In fact, it would be extremely surprising if Claimant had carried out this procedure in light of his initial but erroneous assertion that he never lost Finnish nationality.

d) *Claimant’s Allegations Regarding His Nationality Are Incorrect, Misleading and Irrelevant*

79. As shown above, Claimant’s loss of Finnish nationality precludes him from presenting claims before this *forum*. Therefore, in an attempt to mislead and confuse the Arbitral

⁷⁶ J. Fagerlund, Finland, pp. 149-150 (RLA0004 and Source No. 2 to Professor Scheinin’s Expert Opinion).

⁷⁷ Government Bill HE 235/2002, p. 58 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁷⁸ Government Bill HE 235/2002, p. 58 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

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Tribunal into accepting jurisdiction, Claimant has concocted a number of allegations suggesting that he did not lose his Finnish nationality in 1997. Claimant further seeks to argue that he has uninterruptedly remained a Finnish national ever since 1971⁷⁹. In support of these allegations, Claimant has filed a number of legal opinions and other evidentiary materials.

80. To summarize, Claimant alleges the following:

- (i) The translation of Section 8 of the 1968 Nationality Act offered by Respondent is incorrect;
- (ii) Loss of Finnish nationality under the 1968 Nationality Act required an express act of renunciation and Finnish nationality could not be lost by default;
- (iii) The passports and other identity cards issued to Claimant by the Finnish authorities confirm that Claimant was and remained a Finnish national; and
- (iv) Claimant's so-called involuntary acquisition of Egyptian nationality in 1997 is null and void and of no effect as a matter of Egyptian law.

81. In the following section, every single one of Claimant's allegations will be proven incorrect, misleading and/or irrelevant. Respondent will first show that Claimant's translation of the 1968 Nationality Act is incorrect **(i)**; second, it will demonstrate that the loss of Finnish nationality did not require an act of renunciation in 1997 **(ii)**; third, it will show that the documents presented by Claimant only constitute *prima facie* evidence of Claimant's nationality **(iii)**, and that in fact the authenticity of that evidence is questionable; fourth, Respondent will show that the Arbitral Tribunal is not bound by certificates of nationality **(iv)**; fifth, it will expose Claimant's 'experts' as unreliable **(v)**; and finally establish that Claimant's acquisition of Egyptian Nationality in 1997 was valid under Egyptian Law **(vi)**.

i. Claimant's translation of the 1968 Nationality Act is incorrect

82. Claimant firstly argues that Section 8 of the 1968 Nationality Act "*was incorrectly translated so far as concerns the Respondent's submissions*"⁸⁰. According to Claimant, the "*proper and accurate translation of Section 8 of the Finnish Nationality Act 1968 as amended in 1984 shows that the first sentence of that provision reads 'A person can lose his*

⁷⁹ Mr. Bahgat's First Witness Statement at 2 & Mr. Bahgat's Second Witness Statement at 5.

⁸⁰ Hearing transcript of 1 December 2012 at 4:23-24.

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Finnish citizenship’ in place of ‘*A person shall lose his Finnish citizenship*’⁸¹. The ‘expert’ opinions filed by Claimant contain similar assertions.⁸²

83. To summarize, Claimant alleges that loss of Finnish nationality under Section 8 was only conditional or possible instead of absolute (“*can lose*” or “*may lose*” instead of “*shall lose*”).
84. Claimant’s allegation is plainly incorrect.
85. First, as explained by Professor Scheinin, “[b]oth translations offered by the Claimant are manifestly erroneous”⁸³, as the relevant passage of Section 8 can under no circumstances be translated “*can lose*” or “*may lose*”. This conclusion arises from the use of the word “*menettää*”, which could only be translated either by the indicative or by the future:

*“While the literal translation of “menettää” is “loses” or “will lose” in the indicative (descriptive) form, many English-speaking countries would use the modal form “shall lose” in their own style of legal drafting. The true meaning of the Finnish provision under discussion is that the loss of Finnish nationality is a mandatory consequence of the acquisition of foreign nationality, directly as a consequence of the law itself”*⁸⁴.

86. As is apparent from the above, the official Finnish-language wording of Section 8 contains no auxiliary verb such as “can” or “may”. It likewise contains no other expression indicating that the loss of Finnish nationality under Section 8 would be possible or potential⁸⁵. On the contrary, the wording of Section 8 is absolute and leaves no room for ambiguity. The correct translation is simply: “*A person loses Finnish nationality [...]*” Provided that the conditions of Section 8 are fulfilled, loss of nationality is thus the inevitable consequence.
87. Second, Respondent has commissioned its own certified translation of Section 8 from Mr. John Pickering, who has been an authorized English-Finnish translator since 1991. Mr.

⁸¹ Claimant’s Reply on Interim Measures at 13. At the Hearing on Interim Measures, Claimant further claimed that “*the relevant phraseology being ‘can lose’ or ‘may lose’ the relevant Finnish citizenship, as opposed to ‘shall lose’* (hearing transcript of 1 December 2012 at 4:25-5:2).

⁸² Backström Second Expert Opinion at 5; Paavola First Expert Opinion, p. 1.

⁸³ Expert Opinion of Professor Scheinin at 64.

⁸⁴ Expert Opinion of Professor Scheinin, at 67.

⁸⁵ One of the basic qualities of any rule of law is that it has to secure legal predictability. This is the case of Section 8 in its exact wording. On the contrary Claimant’s contention that one might lose his (her) Finnish citizenship when acquiring another one, without any indication on the precise circumstances under which such a loss would occur, would open the door to arbitrariness and subjectivity, which is by no means what the Finnish Legislator has intended.

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Pickering's certified translation confirms that Section 8 is to be translated "*A person loses Finnish nationality [...]*"⁸⁶

88. Third, the translation filed along with Respondent's Answer to the Request for Interim Measures as legal Exhibit RLA0003 also supports Respondent's position. Contrary to Claimant's translations, this translation has not been prepared for the purposes of this arbitration. It is instead a publicly available translation on the website of the French Ministry of Culture. Also this translation correctly reveals that loss of nationality under Section 8 is absolute, not only potential: "[a] person ***shall lose*** his Finnish citizenship: 1) if he acquires the citizenship of another country by application or declaration, or if he has consented to it of his own free will" (emphasis added).⁸⁷
89. Finally, Respondent notes that Claimant has acquired a certified translation of the 1968 Nationality Act, in its original form and as amended in 1984, from a Dutch translation agency (Snelvertaler BV)⁸⁸. Respondent submits that the below-standard quality of this translation as a whole (not solely of Section 8) is apparent to anyone reading it.
- ii. *Loss of Finnish Nationality did not require an Act of Renunciation in 1997*
90. Claimant further alleges that "*under the Nationality Act 1968 (as amended in 1984), no Finnish citizen was at risk of losing his or her nationality by default if and when he or she took on a foreign nationality. Finnish law required an application under Section 9 of the same act to renounce Finnish nationality*"⁸⁹. Claimant's 'experts' echo Claimant's position⁹⁰. In other words, Claimant alleges that Finnish nationality could not be lost automatically on the basis of Section 8 of the 1968 Nationality Act, and that a separate application under Section 9 was required.
91. Again, Claimant's allegations are plainly incorrect.
92. First, as described previously in Section c)ii and c)iii, a multitude of authorities – including case law, preparatory works and scholarly opinion – uniformly and unequivocally confirm that loss of Finnish nationality under Section 8 of the 1968 Nationality Act (as amended)

⁸⁶ **Exhibit RLA0017.**

⁸⁷ **Exhibit RLA0003.** As mentioned above, the original Finnish-language wording of Section 8 contains no auxiliary verb, meaning that the verb "shall" is in fact also superfluous in the Ministry translation.

⁸⁸ Exhibit C0007.

⁸⁹ Claimant's Reply on Interim Measures at 13.b.

⁹⁰ See, e.g. Backström Second Expert Opinion at 6-11; Paavola First Expert Opinion, p. 2.

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took place “*automatically*”⁹¹ and “*directly by operation of law*”⁹². Timewise, loss of nationality under Section 8 took place “*upon receiving the nationality of a foreign state*”⁹³. Just a few of these sources are reproduced below:

*“According to Section 8, point 1 of the Nationality Act currently in force [i.e. the 1968 Nationality Act as amended], a Finnish national loses his or her nationality directly by operation of law upon receiving the nationality of a foreign state by application or other comparable means”*⁹⁴ (emphasis added).

*“Finnish citizenship may be lost by operation of law in a number of circumstances. One important ground, which has again been devised to minimize dual citizenship, is where the person has acquired a foreign nationality on application, declaration or otherwise on his or her own free will. The same applies to a child who is under 18 years of age and unmarried and whose parents (or parent) acquire a foreign nationality under the said circumstances, on condition that the custody of the child belongs to the parents (parent) in question (Section 8 of the Nationality Act)”*⁹⁵ (emphasis added).

93. These sources alone are sufficient to prove that loss of Finnish nationality took place automatically upon the fulfillment of the conditions listed in Section 8 of the 1968 Nationality Act. Because of this, no separate application under Section 9 was (nor could have been) required.
94. The automatic nature of the loss of Finnish nationality upon the acquisition of another nationality under the 1968 Nationality Act (as amended) is also clearly affirmed by Professor Scheinin, who mentions numerous authorities upholding this reading of the law⁹⁶. Accordingly, Professor Scheinin reaches the necessary conclusion that:

*“Pursuant to the 1968 Nationality Act, as amended in 1984 and in force at the material time, the Claimant lost his Finnish nationality automatically and by the force of the law itself on the day he acquired Egyptian nationality through his application, declaration or consent, i.e. on 28 September 1997”*⁹⁷.

⁹¹ J. Fagerlund, Finland, pp. 149-150 (RLA0004 and Source No. 2 to Professor Scheinin’s Expert Opinion).

⁹² Government Bill HE 235/2002, p. 58 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁹³ Government Bill HE 235/2002, p. 58 (Exhibit No. 6 to Professor Scheinin’s Expert Opinion).

⁹⁴ Government Bill HE 235/2002, p. 58 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁹⁵ A. Rosas, M. Suksi, Finnish Nationality Law, appearing in B. Nascibene (ed.): Nationality Laws in the European Union, p. 291. Milano: Butterworths/Giuffrè, 1996. (Source No. 7 to Professor Scheinin’s Expert Opinion).

⁹⁶ Expert Opinion of Professor Scheinin at 21.

⁹⁷ Expert Opinion of Professor Scheinin at 35.

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95. Second, by alleging that a separate application under Section 9 was required in order for a Finnish national to lose his or her Finnish nationality, Claimant and its ‘experts’ are effectively confusing two separate concepts of Finnish nationality law: loss of nationality (Sections 8, 8a and 8b) and release from nationality (Section 9). As explained under paragraph c)iv, *supra*, loss of nationality under Section 8 and release from nationality under Section 9 were completely separate ways of losing Finnish nationality under the 1968 Nationality Act. This is confirmed, *inter alia*, in Government Bill 235/2002:

*“Release is an umbrella concept used in the Constitution which encompasses different types of loss of nationality, which under the Nationality Act currently in force are loss of nationality directly by operation of law either based on the acquisition of a foreign nationality (Section 8) **or** at 22 years of age on account of insufficient ties with Finland (Section 8b(1) and (3)), **or** the release from nationality based on an application (Section 9)”*⁹⁸ (emphasis added).

96. A further confirmation of the distinct, separate nature of the loss of nationality under Sections 8 and 9 of the 1968 Nationality Act is to be found in Nationality Decree No. 402/1968⁹⁹, which supplemented the 1968 Nationality Act. Section 8(1) of the Decree clearly distinguishes the two and confirms that it was possible to lose or be relieved from one’s Finnish nationality under either provision:

*“If someone, who based upon the Nationality Act Sections 4, 5, 6 or 10 or Section 15 subsections 2 or 3 have become Finnish nationals or, based upon Section 8 has lost his or her Finnish nationality, then the Ministry of the Interior without delay must inform the proper District Registrar or the Population Register Centre. The same applies, when someone, based upon Section 9 of the Nationality Act has been relieved from Finnish nationality [...]”*¹⁰⁰

97. As mentioned above¹⁰¹, the relevance of Section 9 came from the fact that some countries require – as a precondition to granting nationality – that the applicant withdraws his or her current nationality.

98. In brief, it is evident that loss of Finnish nationality under Section 8 of the 1968 Nationality Act took place automatically by operation of law the moment a Finnish national acquired a

⁹⁸ Government Bill HE 235/2002, pp. 71-72 [Free translation] (Exhibit No. 6b to Professor Scheinin’s Expert Opinion).

⁹⁹ In Finland, decrees usually regulate the practical, detailed implementation of parliamentary acts. Decrees can be issued by the President of the Republic, the government or by individual ministries on the basis of a parliamentary delegation of legislative authority. Decree 402/1968 was repealed in 1985 and replaced by Decree No. 699/1985. The Nationality Decree currently in force (No. 799/2004) dates from 2004.

¹⁰⁰ See, Backström’s Second Expert Opinion at 8.

¹⁰¹ Footnote 63.

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foreign nationality under the conditions listed in Section 8 (“*by application or declaration, or by specifically consenting to it of his own free will*”¹⁰²). No renunciation under Section 9 was required in order for loss of nationality under Section 8 to become effective.

iii. *Documents issued by Finnish authorities only constitute prima facie evidence of Claimant’s nationality*

99. Claimant further invokes a number of evidentiary documents allegedly issued by the Finnish and Egyptian authorities, apparently in an effort to prove his Finnish nationality. The documents invoked include photocopies of the following:

- (i) An extract from the Finnish Population Information System of 2009¹⁰³;
- (ii) Finnish passports covering the years 1981 to 1998 and 2008 to present¹⁰⁴;
- (iii) A Finnish identity card valid between 12 July 2012 and 12 July 2017¹⁰⁵;
- (iv) A document allegedly constituting a Finnish identity card issued by the Finnish embassy in Cairo on 3 November 2003¹⁰⁶, and
- (v) Work permits and residence certificates issued by the Egyptian authorities between 1981 and 1995¹⁰⁷.

100. Respondent submits that the documents relied upon by Claimant do not prove that Claimant was a Finnish national between 1997 and 3 November 2011 for a number of factual and legal reasons, namely:

- (a) Respondent has doubts regarding the authenticity of certain documents filed by Claimant;
- (b) The nationality-related evidence submitted by Claimant – even if it were authentic and accurate – does not prove that Claimant was a Finnish national throughout the period between 1997 and 3 November 2011;

¹⁰² **Exhibit RLA0017.**

¹⁰³ Exhibit C0014.

¹⁰⁴ Exhibit C0015.

¹⁰⁵ Exhibit C0015.

¹⁰⁶ Exhibit C0004.

¹⁰⁷ Exhibit C0018.

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(c) Under Finnish law, nationality-related documents or register entries only constitute rebuttable *prima facie* evidence of a person's nationality;

(d) International case law confirms that nationality certificates issued by a State only constitute rebuttable *prima facie* evidence of nationality and that an international arbitral tribunal is entitled to extend its enquiry beyond documents issued by the authorities of a State whose nationality is in question.

101. These matters will be considered directly below.

102. Along with its Interim Measures Reply of 31 October 2012, Claimant filed a document allegedly constituting a Finnish identity card, which, Claimant submits, has been issued by the Finnish embassy in Cairo on 3 November 2003¹⁰⁸.

103. Respondent has serious doubts regarding the authenticity of this document. First, it contains no information in Finnish or Swedish, the two official languages of Finland. Second, it does not resemble a normal Finnish identity card such as Claimant's identity card of 2012¹⁰⁹. Third, the Finnish Embassy in Cairo confirmed to the Egyptian Foreign Affairs Ministry that this document in no way proves Claimant's Finnish nationality¹¹⁰.

104. These doubts are further supported by the indication by Professor Scheinin – who specializes, in nationality law, among other domains of the law – that he has “*never before seen this type of a document*”¹¹¹.

105. Even if the evidence produced by Claimant were authentic, it would not suffice to prove that he retained his Finnish nationality.

106. As explained above, the direct consequence of the automatic feature of the loss of Finnish nationality pursuant to Section 8 of the 1968 Nationality Law is that awareness on the part of the Finnish authorities and/or of the targeted national is irrelevant.

107. As clearly explained by Professor Scheinin in his Opinion:

“The existence or lack of awareness by Finnish authorities of the fact that the person had in fact acquired the nationality of another country was immaterial. Hence, it was fully possible that a person was able to present himself or herself as a

¹⁰⁸ Exhibit C0004.

¹⁰⁹ Exhibit C0015, pp. 75-76.

¹¹⁰ **Exhibit R0011.**

¹¹¹ Expert Opinion by Professor Scheinin at 57.

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*Finnish national, for instance by showing a valid Finnish passport, even if he or she by the force of the law had already lost Finnish nationality. It was even possible that Finnish authorities renewed a person's Finnish passport unaware of the fact that the person had become a citizen of another country and therefore no longer was a Finnish national. **Therefore, the mere possession of a technically valid Finnish passport was not definitive proof of the person being a Finnish national**" (emphasis added)¹¹²*

108. A striking example of this fact can be found in the abovementioned case of Mrs. B¹¹³, as recounted by Professor Scheinin¹¹⁴. In this case, the Helsinki Administrative Court asked the Finnish Immigration Service for its comments on the issue. In its opinion, the Finnish Immigration Service explained:

*"The issuing of a Finnish passport to the applicant does not constitute any proof of the applicant's Finnish citizenship. It is unfortunately possible that a Finnish passport has been issued to a person who is not a Finnish citizen. The issuing of a Finnish passport does not give rise to Finnish citizenship"*¹¹⁵.

109. For the same reasons, registration in the Finnish Population Information System is by no means proof of Finnish nationality. Again, the case of Mrs. B is representative in this regard¹¹⁶.

110. Furthermore, Claimant invokes a printout from the Internet claiming that the position taken by its experts was "well known"¹¹⁷. Claimant further claims that this is reflected in "information made available by the Finnish Embassy in Washington, D.C.", according to which "Finnish citizenship may not be lost by default"¹¹⁸. Claimant further invokes a partial reproduction of the same text "given by the European Citizenship website"¹¹⁹.

111. Claimant's allegations are misleading and irrelevant. First, it should be noted that the first printout¹²⁰ is taken from www.multiplecitizenship.com which contains no express affirmation that the text would originate from the Finnish Embassy. In fact, the header of the text notes that "it was produced... as part of a US government report", and that "[t]he

¹¹² Expert Opinion by Professor Scheinin at 36.

¹¹³ See, *supra* Section III.A.c)iii.

¹¹⁴ Expert Opinion by Professor Scheinin at 36 *et seq.*

¹¹⁵ Annex A to the Expert Opinion of Professor Scheinin.

¹¹⁶ Expert Opinion of Professor Scheinin at 41.

¹¹⁷ Claimant's Reply on Interim Measures at 14.

¹¹⁸ Claimant's Reply on Interim Measures at 14.

¹¹⁹ Claimant's Reply on Interim Measures at 15.

¹²⁰ Exhibit C0005.

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accuracy and depth of these country listings varies significantly, and some information may be incorrect.”

112. Curiously, the real website of the Finnish Embassy in Washington, D.C. contains the following information: “[a]fter June 1st 2003, dual/multiple nationality is accepted by the Finnish legislation. Finnish nationals will no longer lose their Finnish nationality when they assume another nationality”¹²¹.

113. Similarly, it is important to note that the second printout¹²² from “*the European Citizenship website*” originates from a privately-held Internet blog which does not seem to have anything to do with the European Union or any other national or international organization. Furthermore, it is interesting to note that this printout contains the following: “*DUAL FINNISH CITIZENSHIP/ NOT RECOGNIZED*”, and proceeds to listing certain exceptions.

iv. *The Arbitral Tribunal is not bound by certificates of nationality issued by a contracting state*

114. For the sake of completeness, Respondent respectfully submits that this Arbitral Tribunal is not bound by certificates of nationality issued by a Contracting State.

115. As explained by Professor Schreuer, “[s]uch a certificate will be given its appropriate weight but does not preclude a decision at variance with its contents.”¹²³ Moreover, in the previously mentioned *Soufraki* case, the Tribunal held that the certificates of nationality produced by Claimant should only be considered as *prima facie* evidence:

“62. [...] it is thus for this Tribunal to consider and analyse the totality of the evidence and determine whether it leads to the conclusion that Claimant has discharged his burden of proof.

*63. The Tribunal will, of course, accept Claimant’s Certificates of Nationality as “prima facie” evidence”*¹²⁴.

116. The issue of the evidentiary weight of the certificates of nationality was also put under the scrutiny of the *ad hoc* Committee, which held:

“the principle is in fact well established that international tribunals are empowered to determine whether a party has the alleged nationality in order to ascertain their

¹²¹ **Exhibit R0012.**

¹²² Exhibit C0006.

¹²³ Ch. Schreuer, *The ICSID Convention: A Commentary*, p. 268 (**Exhibit RLA0018**).

¹²⁴ Award in ICSID Case No. ARB/02/7 *Hussein Nuaman Soufraki v. The United Arab Emirates* of 7 July 2004, at 62-63 (**Exhibit RLA0015**).

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*own jurisdiction, and are not bound by national certificates of nationality or passports or other documentation in making that determination and ascertainment*¹²⁵.

117. Accordingly, even if the evidence submitted by Claimant were authentic, it would not bind, as a principle, this Arbitral Tribunal.

v. *Claimant's 'Experts' on Finnish law are unreliable*

118. In support of its allegations, Claimant has commissioned opinions from two Finnish lawyers. Respondent has the following general remarks regarding these 'experts' qualifications and the credibility of their opinions.

119. First, it is noteworthy that neither of the two 'experts' invoked by Claimant are recognized for their expertise in Finnish nationality law, international public law or any other field of law potentially relevant to this arbitration. One of the 'experts', Ms. Paavola, is 27 years old and graduated from the University of Helsinki in 2010. She is currently pursuing an LLD in environmental law, her research topic relating to carbon capture and geological storage. It is not clear to Respondent why she has been retained as an expert on Finnish nationality law. Claimant's other 'expert' witness, Mr. Backström, is as such an experienced Finnish attorney. However, he runs a boutique firm specializing in IP litigation¹²⁶. It is likely that Mr. Backström has been retained on account of his personal affiliation with Mr. Bahgat ("*I have known Mr Mohamed Bahgat personally and professionally since the eighties*")¹²⁷.

120. Second, it is remarkable that both of Claimant's 'experts' fail to refer to a single source of Finnish law apart from the actual texts of the Nationality Act and Nationality Decree. This, despite the fact that they make several conclusions in their opinions which cannot be made solely on the basis of these texts. In fact, it would appear that neither of Claimant's 'experts' has even sought to consult case law, preparatory works or scholarly opinion in support of their opinions. Mr. Backström actually confirms this explicitly through the disclaimer in his Second Opinion:

¹²⁵ Decision on Annulment in ICSID Case No. ARB/02/7 *Hussein Nuaman Soufraki v. The United Arab Emirates* of 5 June 2007 at 64 (**Exhibit RLA0016**).

¹²⁶ E.g. Chambers Europe 2012 lists Backström & Co solely in the category of Intellectual Property (Band 2) (**Exhibit R0013**).

¹²⁷ Backström First Expert Opinion at 4.

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*“The opinions I have expressed represent my true professional opinion. They are solely based upon Finnish laws and regulations. Factual information has been received from Mr. Bahgat’s witness statement”*¹²⁸ (emphasis added).

121. Ms. Paavola’s opinion contains a similar disclaimer:

*“The facts of my expert opinion are based on Nationality Act 401/1968 and its provisions about losing Finnish citizenship”*¹²⁹.

122. In brief, it appears that Claimants’ ‘experts’ specifically admit that they have not performed any research in relation to the preparation of their opinions, despite the fact that they have no recognized expertise in the subject matter of their opinions.

123. Finally, for reasons unknown to Respondent, Claimant repeatedly emphasizes that its expert opinions on Finnish law have been prepared by two “*practicing Finnish Advocates*”¹³⁰. While Egypt fails to understand why Claimant considers it important that its ‘experts’ be advocates (as opposed to, *e.g.*, academics or judges), Respondent wishes to point out that Ms. Paavola – contrary to Claimant’s allegation – is not a Finnish advocate. According to her own CV, she has no work experience from a law firm and no post-graduate work experience apart from her position as a researcher at the University of Helsinki.

vi. *Claimant’s acquisition of Egyptian Nationality in 1997 was valid under Egyptian law*

124. Claimant had obtained the release of his Egyptian nationality on 6 November 1980¹³¹. On 1 September 1997, Claimant applied to regain his Egyptian nationality¹³², which was eventually reinstated by virtue of Ministerial decree no. 10815/1997 on 28 September 1997¹³³.

125. Pursuant to Article 18 of Law No. 26 for 1975, “*by virtue of a decree issued by the Minister of Interior, it is possible, for persons who have had their Egyptian nationality rescinded or revoked, after five years from the date of such action; to regain Egyptian nationality*”¹³⁴.

¹²⁸ Backström Second Expert Opinion at 12.

¹²⁹ Paavola First Expert Opinion, 4th unnumbered page (2nd page of the document entitled “Relevant information of Article 5 of the IBA Rules”).

¹³⁰ Claimant’s Reply on Interim Measures at 12.a.-b., 13.b and 16. Claimant repeated its emphasis on his experts’ statuses as advocates at the Hearing on Interim Measures of 1 December 2012, transcript at 4:19.

¹³¹ Exhibit C0017 and C0017.1.

¹³² **Exhibit R0001**.

¹³³ See, PENA letter dated 7 August 2012 (**Exhibit R0002**); Letter from PENA dated 26 March 2002 (**Exhibit R0006**); Exhibit C0021.

¹³⁴ Exhibit No. 5 to Dr. Badran’s Expert Opinion.

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Almost seventeen years had passed between Claimant's release of Egyptian nationality and his application to regain it. Therefore, Claimant could benefit from the aforementioned provision.

126. Claimant alleges that he was coerced into regaining his Egyptian nationality and therefore, *"the decision of the Egyptian Minister of Industries to compel the Claimant to accept Egyptian nationality is correctly to be treated as a nullity and of no effect"*¹³⁵. However, this assertion cannot be accepted as Claimant's allegations of coercion are negated by the legal and factual framework of the case. In any case, Claimant ratified his Egyptian nationality on several occasions after September 1997.
127. Pursuant to Article 127 of the Egyptian Civil Code, a contract is voidable if one of the parties has contracted under duress¹³⁶. Such duress is deemed qualified *"when the party who invokes it has been led to believe, in view of the circumstances, that a serious and imminent danger to life, limb, honour or property threatened him or others"*¹³⁷.
128. It is clear from the facts of the case that no duress was imposed on Claimant. More particularly:
- (i) As shown on the application to regain Egyptian nationality, Claimant had to provide supporting documents, such as the birth certificate of himself and his father¹³⁸, which he obviously did not have with him on 1 September 1997 when he was allegedly requested by surprise by the then Minister of Petroleum to apply for Egyptian citizenship¹³⁹. Hence, Claimant voluntarily followed through the administrative process and submitted all necessary documents to regain his Egyptian nationality.
 - (ii) The security check carried out after Claimant submitted his application to regain Egyptian nationality lasted four weeks. Therefore Claimant had sufficient time to challenge the illegitimate behavior of the Ministry of Petroleum and Mineral Resources, had it been so. In any case, due to this four-week delay, Claimant was not in an imminent danger or in a situation he could not *"bear or escape"*¹⁴⁰.

¹³⁵ Statement of Claim at 2.5.

¹³⁶ Expert Opinion of Dr. Badran at 42.

¹³⁷ Article 127 of the Egyptian Civil Code (Exhibit No. 7 to Dr. Badran's Expert Opinion).

¹³⁸ **Exhibit R0001.**

¹³⁹ Mokhtar Ali's First Affidavit at 11-12.

¹⁴⁰ Expert Opinion of Dr. Badran at 46 and 52(5).

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- (iii) Claimant's own exhibits show that the awarding of the project did not hinge on whether Claimant was an Egyptian. In particular C0022 shows a letter dated 21 January 1998 from the Minister of Industries to the Minister of Cabinet Affairs detailing the results of a study to allow for the project to be undertaken. This was a full four months after Claimant was granted his nationality.
- (iv) Once the project was awarded to Ademco, Claimant did not try in any way to cancel or negate his Egyptian nationality, in spite of the fact that the Concession had been granted by a law, i.e. a legal instrument that may only be repealed by a parliamentary act and which did not condition the concession on Claimant's Egyptian nationality¹⁴¹.
- (v) Claimant never mentioned any duress in 14 years, including years of criminal prosecution and imprisonment in Egypt. Rather Claimant invoked his Egyptian nationality during the course of the relevant criminal proceedings¹⁴². It is only when the present arbitration proceedings were initiated and Claimant's nationality became crucial that this assertion was made.
129. Claimant's lack of contestation against his so-called "coerced" application to regain Egyptian nationality is paralleled with the numerous affirmations of his newly-regained Egyptian nationality and/or of his enthusiasm for the Aswan project. More particularly:
- (i) As mentioned previously¹⁴³, Claimant began to use his new Egyptian passport to travel as soon as November 1996 and continued using it from that date¹⁴⁴.
- (ii) As mentioned previously¹⁴⁵, Claimant filed an application to have his daughters' birth certificates amended to mention their regained Egyptian nationality¹⁴⁶ and requested PENA to certify the Egyptian Nationality of his daughters to the German School¹⁴⁷.
- (iii) Claimant produced numerous documents from the Middle East Economic Digest¹⁴⁸ in which he was presented as an Egyptian national: "[...] *such criticisms do not appear to*

¹⁴¹ Expert Opinion of Dr. Badran at 52(8).

¹⁴² See Exhibit C0002 and **Exhibit R0006**.

¹⁴³ See *supra* Section II.A.c).

¹⁴⁴ **Exhibit R0007**.

¹⁴⁵ See *supra* Section II.A.c).

¹⁴⁶ **Exhibit R0010**.

¹⁴⁷ **Exhibit R0011**.

¹⁴⁸ Exhibit C0050.

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bother Ademco chairman Mohamed Bahgat, an Egyptian project management specialist [...]”¹⁴⁹ In this same article, Mr. Bahgat boasts about the quality of his bid, stating “we had done our homework”. The Article continues to state that “Mr. Bahgat says he has nothing but praise for the way the government has approached the project”.

130. In any case, and for the sake of completeness, the aforementioned facts demonstrate that Claimant waived any right to argue he was coerced to regain his Egyptian nationality – which Respondents denies – by virtue of his subsequent conduct, pursuant to Article 139 of the Egyptian Civil Code¹⁵⁰.
131. To conclude, Claimant automatically lost his Finnish nationality on 28 September 1997 when he regained his Egyptian nationality. Claimant could have applied to regain his Finnish nationality within five years of the entry into force of the 2003 Finnish Nationality Act or as of 2011. However, Respondent notes that Claimant never alleged having taken any steps to regain his Finnish nationality. More particularly, it would be extremely surprising for Claimant to try to argue today that he had filed such an application considering Claimant’s initial but erroneous statement that he never lost Finnish nationality. Accordingly, Claimant was not a Finnish national during the relevant period and therefore fails to meet the *ratione personae* requirement of the BIT.

B. Lack of Jurisdiction *Ratione Temporis*

132. Claimant tries to argue that jurisdiction may be found on the ground of the 1980 BIT and/or on the ground of the 2004 BIT.
133. This allegation is inherently flawed as both the 1980 BIT (a) and the 2004 BIT (b) give rise to their own jurisdictional objections *ratione temporis*.

a) Lack of jurisdiction *ratione temporis* with respect to the 1980 BIT

134. As mentioned in Section II.B.a) above, Egypt and Finland signed a BIT on 5 May 1980 that was later replaced by a new BIT on 5 February 2005. Indeed, as provided by Article 17.2 of the 2004 BIT¹⁵¹, which entered into force on 5 February 2005:

¹⁴⁹ Exhibit C0050 – Article entitled “Aswan project marks mining milestone”, dated 9 October 1998.

¹⁵⁰ Exhibit No. 5 to Dr. Badran’s Expert Opinion; Expert Opinion of Dr. Badran at 53 *et seq.*

¹⁵¹ Exhibit CLA0002.