IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. 131
CHAMBER TWO
AWARD NO. 518-131-2

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
FILED ثبت شد
DATE 14 AUG 1991
تاریخ ۱۳۷۰/۵/۲۳

PETROLANE, INC.,
EASTMAN WHIPSTOCK MANUFACTURING, INC.,
and SEAHORSE FLEET, INC.,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
IRANIAN PAN AMERICAN OIL COMPANY,
NATIONAL IRANIAN OIL COMPANY, and
OIL SERVICES COMPANY OF IRAN,
Respondents.

AWARD

Appearances:

For the Claimants :
Mr. Arthur W. Rovine, Attorney,
Mr. Grant Hanessian, Attorney,
Mr. William B. Wade, Jr., Representative of Eastman Christensen Company,
Mr. Christopher A. Helms, Representative of Eastman Whipstock Manufacturing, Inc. and Seahorse Fleet, Inc.,
Mr. Robert J. McMillan, Witness,
Mr. Friedoun Bavarsai, Witness,
Mr. Austin Jones, Expert Witness.

For the Respondents : Mr. Ali H. Nobari,
Agent of the Government of the Islamic Republic of Iran,
Mr. Seifollah Mohammadi,
Legal Adviser to the Agent,
Mr. Abbas Ejtehadi,
Legal Assistant to the Agent,
Mr. Hamid Foroudian,
Mr. Seyed M. Shahrestani,
Mr. G. Bastani Allahabadi,
Mr. Seyed A. Hashemi,
Mr. Abdolhamid Bigdeli,
Representatives of the National Iranian Oil Company.

Also present : Mr. Michael F. Raboin,
Deputy Agent of the Government of the United States of America.

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I. INTRODUCTION

1. This Case involves two distinct and independent sets of claims, which were filed together on 19 November 1981. As finally clarified, the Claimants in this Case are EASTMAN WHIPSTOCK MANUFACTURING, INC., a Delaware corporation, and SEAHORSE FLEET, INC., a Louisiana corporation. Both Claimants are wholly owned by PETROLANE, INC. ("Petrolane"), a California corporation.

2. Eastman Whipstock Manufacturing, Inc. brought three separate claims, totalling US$7,613,652, on its own behalf and on behalf of its wholly-owned British subsidiary, EASTMAN WHIPSTOCK (NORTH SEA) LIMITED (also "Eastman North Sea"), originally against OIL SERVICES OF IRAN ("OSCO"), and the ISLAMIC REPUBLIC OF IRAN ("Iran") ("the Eastman Claims"). Subsequently, Eastman also named as Respondent the NATIONAL IRANIAN OIL COMPANY ("NIOC").[1] The Tribunal accepts the addition of NIOC as a Respondent. The first claim, which is directed against NIOC and OSCO, as finally pleaded seeks recovery of US$539,806.65, plus interest, for unpaid invoices under certain contracts for rental of drilling equipment and related services, entered into by the Claimant and OSCO, and by the latter and Eastman North Sea. The second claim against OSCO and NIOC seeks reimbursement of US$322,092, plus interest, representing funds allegedly retained by OSCO to guarantee social security payments for work performed under those contracts. The third claim is directed against Iran, NIOC and OSCO. This claim, as

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[1] NIOC, which filed virtually all of the Respondents' submissions, including the Statement of Defense and Counterclaim of 22 July 1983, was formally named as Respondent in the Claimants' submission of 14 October 1985.

finally pleaded, seeks compensation in the total amount of US$6,760,236.88, plus interest, for the alleged taking of certain drilling equipment brought into Iran by the Claimant for the execution of the contracts with OSCO, and for the alleged taking of the Claimant's warehouse and offices in Ahwaz. NIOC brought counterclaims for breach of contract, reimbursement of excess advance payments, severance pay, and taxes and social security contributions allegedly due ("the Counterclaims against Eastman").

3. Seahorse Fleet, Inc. asserted two claims against the IRANIAN PAN AMERICAN OIL COMPANY (also "IPAC") ("the Seahorse Claims"). The first claim seeks recovery of US$111,540.43, plus interest, for unpaid invoices under a contract entered into by IPAC and the Claimant's predecessor corporation. The second claim, in the amount of US$296,200, plus interest, is for reimbursement of social security retentions. All of IPAC's submissions, including the Statement of Defense and Counterclaim, have been filed by NIOC. In the course of these proceedings, the Claimant acknowledged the validity of a counterclaim seeking to recover US$770.58, for goods and services provided by IPAC. Accordingly, the total request for compensation under the Seahorse Claims has been adjusted downward by the Claimant to US$406,969.85. NIOC also asserted counterclaims for contract debts and for tax and social security contributions allegedly due ("the Counterclaims against Seahorse ").

4. The Parties, both to the Eastman and to the Seahorse Claims and Counterclaims, seek costs in connection with the arbitration.

5. A Pre-Hearing Conference in this Case took place on 8 July 1985. A Hearing was held on 27 and 28 June 1990.

II. PROCEDURAL ISSUES

The Proper Claimants

6. As a preliminary matter, the Tribunal will address the issue of the identity of the proper Claimants. Initially, the Tribunal will give a brief account of the procedural history of the Case, and of certain details of the corporate history of the various entities appearing in the Claimants' submissions.

7. Petrolane filed the claims in this Case on 19 November 1981. In the cover letter accompanying the Statement of Claim, Petrolane stated: "Petrolane Incorporated ... herewith files its claim on behalf of its two wholly-owned subsidiary companies, Eastman Whipstock, Inc. and Seahorse, Inc...." The Statement of Claim consists of two distinct sections, denominated "THE SEVERAL CLAIMS OF EASTMAN WHIPSTOCK, INC." and "THE SEVERAL CLAIMS OF SEAHORSE, INC." The contracts at the basis of the two sets of claims were appended as exhibits to these sections. The original Statement of Claim names SEAHORSE, INC. as the successor corporation to EASTERN OFFSHORE BOATS, INC. (also "Offshore Boats"), a Louisiana corporation, party to the contracts with IPAC that gave rise to the Seahorse Claims.

8. In the Tribunal's first Order, made on 17 December 1981, the caption of the Case read: "Petrolane Inc. on behalf of Eastman-Whipstock Inc. and Seahorse Inc."

9. In the Statement of Defense submitted by NIOC on 22 July 1983, the Case caption read: "Petrolane, Inc., allegedly of United States nationality, and as alleged on behalf of Eastman Whipstock, Seahorse, and Eastern Offshore Boats domiciled in the United States."

10. In its submission of 7 November 1983, Petrolane corrected its earlier statements and asserted that Seahorse Fleet, Inc., and not Seahorse, Inc., was the successor corporation to Offshore Boats.

11. Subsequent to the Pre-Hearing Conference, on 14 October 1985, Petrolane, Eastman Whipstock Manufacturing, Inc. and Seahorse Fleet, Inc. filed a Memorial that clarified, in part, the relationships between the various corporations involved in this Case on the Claimant side. The Claimant in the Eastman Claims changed its corporate name from Eastman Whipstock, Inc. to Eastman Whipstock Manufacturing, Inc. on 26 May 1983. The latter's British subsidiary, on whose behalf Eastman Whipstock Manufacturing, Inc. is asserting the claims, changed its corporate name from Eastman Whipstock (U.K.) Ltd. to Eastman Whipstock (North Sea) Limited on 25 February 1983. Eastern Offshore Boats, Inc. was formed by Petrolane in 1969. On 1 October 1979, Eastern Offshore Boats, Inc. was merged by Petrolane into Seahorse Fleet, Inc.

12. However, the Claimants' Memorial did not clarify certain obscurities that still surrounded the relationships between Offshore Boats and Seahorse, Inc., on the one hand, and between Offshore Boats and Seahorse Fleet, Inc., on the other hand. Specifically, the Claimant in the Seahorse Claims, with its submission of 7 November 1983, produced the unpaid invoices upon which a portion of the Seahorse Claims are based. These invoices, rendered under the name of Offshore Boats in 1977, appear under the name of Seahorse, Inc. starting in 1978. Moreover, the Respondents submitted with the Statement of Defense of 22 July 1983 a copy of a letter on Offshore Boat's letterhead, dated 14 January 1978, advising IPAC that effective 30 December 1977 -- over a year and a half before Offshore Boats was merged into Seahorse Fleet -- Offshore Boats had adopted a new corporate name: "Seahorse, Inc." In view of the ambiguities resulting from

this evidence, by Order of 17 March 1986, the Tribunal, inter alia, requested the Claimants to provide as part of their evidence and brief further evidence and information to clarify these matters.

13. In their Memorial and Summary of Evidence, submitted on 22 June 1987, the Claimants explained that for tax reasons, beginning in 1976, Petrolane began to merge certain of its subsidiaries which operated vessels in the maritime services industry into Seahorse Fleet, Inc. The Claimants further explained that Seahorse, Inc. was not merged into Seahorse Fleet, Inc., but was maintained as a separate entity, since Petrolane, inter alia, desired to use Seahorse, Inc. as a worldwide tradename for its maritime services in the petroleum industry. The Claimants submitted that, for this reason, on 14 January 1978 Offshore Boats sent the letter to IPAC informing it that thereafter Offshore Boats would be known as Seahorse, Inc. The Claimants asserted that Seahorse, Inc. then became the entity that communicated with IPAC. The Tribunal is satisfied by these clarifications, which, in the Tribunal's view, explain why, beginning in July 1978, Offshore Boats' invoices were rendered to IPAC under the name of Seahorse, Inc.

The Contentions of the Parties

14. The Respondents argue that Petrolane cannot bring indirect claims on behalf of Eastman Whipstock Manufacturing, Inc. and Seahorse Fleet, Inc. because of their status as United States national corporations, capable of asserting direct claims in their own names. The Respondents further argue that by adding Seahorse Fleet, Inc. as a Claimant, Petrolane is seeking to file a new claim after the deadline for presenting claims found in Article III, paragraph 4, of the Claims Settlement Declaration.

15. The Claimants maintain that the Statement of Claim and the documentary evidence submitted with it clearly identified Petrolane, Eastman Whipstock Manufacturing, Inc. and, in substance, Seahorse Fleet, Inc. as the Claimants in this Case. The Claimants further submit that, in the event the Tribunal regards the addition of Seahorse Fleet, Inc. to the Claimants as requiring an amendment of the Statement of Claim, such an amendment would be permissible under Article 20 of the Tribunal Rules.

The Tribunal's Decision

16. The Tribunal notes that, indeed, with the original Statement of Claim, in practice two, separate and distinguishable statements of claim were presented. See supra, para. 7. With respect to the Eastman Claims, throughout the section denominated "THE SEVERAL CLAIMS OF EASTMAN WHIPSTOCK, INC.," Eastman Whipstock, Inc. is referred to as Party and Claimant. Further, the documentary evidence submitted with this section identified Eastman Whipstock, Inc. and Eastman Whipstock (U.K.) Ltd. as the parties contracting with OSCO with respect to the agreements at the basis of the Eastman Claims. Therefore, the Respondents at all times had knowledge of the proper Claimant and of the facts underlying the claims, and had ample opportunity to respond, and did respond, to the Statement of Claim. Accordingly, no prejudice could be considered to have been caused to the Respondents by the fashion in which the Eastman Claims have been filed.

17. With respect to Seahorse Fleet, Inc., the Respondents' argument that the naming of Seahorse Fleet, Inc. as a Claimant is tantamount to the filing of a new claim must be dismissed. In the Tribunal's view, substitution of Seahorse

Fleet, Inc. for Seahorse, Inc. represents a clarification of the name of the proper Claimant, and not an amendment whereby a new Claimant is added, since Seahorse Fleet, Inc. is the actual successor corporation to the claimholder, Offshore Boats. It was unmistakable from the section of the Statement of Claim denominated "THE SEVERAL CLAIMS OF SEAHORSE, INC." that the Claimant with respect to the Seahorse Claims was precisely the successor corporation to Offshore Boats. Indeed, Offshore Boats was even included by the Respondents in the caption of the Statement of Defense of 22 July 1983. The Respondents had notice of the contracts at issue from the outset of these proceedings and were therefore in a position to raise pertinent defenses. They are not prejudiced by this clarification, which, the Tribunal further notes, was also made at an early stage of the proceedings.

18. Accordingly, the Tribunal holds that Eastman Whipstock Manufacturing, Inc. and Seahorse Fleet, Inc. are the proper Claimants in this Case.

III. JURISDICTION

19. The Claimants have provided evidence establishing to the satisfaction of the Tribunal that, at all relevant times, Petrolane, Inc., a California corporation, was a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. This evidence includes a good standing certificate, copies of relevant pages of proxy statements issued by Petrolane during the relevant period, a certificate sworn to by Petrolane's Secretary, and a sworn certificate by a firm of certified public accountants. The Claimants have further submitted evidence, including certificates of good standing

and a sworn certificate by a firm of certified public accountants, showing that during the requisite period Petrolane wholly owned the Claimants Eastman Whipstock Manufacturing, Inc. (formerly Eastman Whipstock, Inc.), a Delaware corporation, and Seahorse Fleet, Inc. (formerly Eastern Offshore Boats, Inc.), a Louisiana corporation. The Claimants Eastman Whipstock Manufacturing, Inc. and Seahorse Fleet, Inc.[2] therefore qualify as nationals of the United States, in accordance with Article VII, paragraph 1, of the Claims Settlement Declaration. The Claimants also submitted proof, including a State certificate of incorporation and a sworn certificate by a firm of certified public accountants, showing that at all relevant times Eastman Whipstock Manufacturing, Inc. wholly owned Eastman Whipstock (North Sea) Limited (formerly Eastman Whipstock (U.K.) Limited), its British subsidiary. Consequently, Eastman Whipstock Manufacturing, Inc. is entitled to assert an indirect claim on behalf of Eastman Whipstock (North Sea) Limited, in accordance with Article VII, paragraph 2, of the Claims Settlement Declaration.

20. The Tribunal is also satisfied that it has jurisdiction over the subject matter of the claims in that they all arise out of debts, contracts, expropriations, or other

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[2] NIOC argues that the Tribunal lacks jurisdiction over Seahorse Fleet, Inc.'s claims because the Claimants tendered no evidence that Eastern Offshore Boats, Inc., Seahorse Fleet, Inc.'s predecessor corporation, was a national of the United States in 1975, when it entered into the contracts at the basis of the Seahorse Claims. Pursuant to Article VII, paragraph 2, of the Claims Settlement Declaration, "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date of the Algiers Accords, by nationals of that state. Seahorse Fleet, Inc.'s claims arose in 1978 and 1979, when its disputes with IPAC arose, see infra, and not when Offshore Boats, Inc. signed the contracts with IPAC. Accordingly, the Tribunal rejects NIOC's argument.

measures affecting property rights, as required by Article II, paragraph 1, of the Claims Settlement Declaration. Moreover, there is no dispute that the claims at issue were continuously owned by nationals of the United States during the requisite period, and were outstanding at the date of the Algiers Accords.

21. To establish its jurisdiction, the Tribunal must also determine whether the claims are directed against "Iran" as defined in Article VII, paragraph 3, of the Claims Settlement Declaration. The Claimants have named the Government of the Islamic Republic of Iran, NIOC, OSCO and IPAC as Respondents. In conformity with the Tribunal's earlier findings the Tribunal here holds that NIOC is the successor in interest to OSCO and that NIOC is thus a proper Respondent in this Case. See Oil Field of Texas, Inc. and Islamic Republic of Iran, et al., Interlocutory Award No. ITL 10-43-FT (9 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 347. With respect to IPAC, the Claimants produced in evidence a copy of a circular of the Iranian Ministry of Oil dated 31 July 1980 wherein, inter alia, it is stated that:

> It is necessary that the affairs of ... IPAC ... be centralized in a company under the name of "The Continental Shelf Oil Company of the Islamic Republic of Iran" which is to operate under the supervision of a Board of Directors appointed by the Ministry of Oil.

The Respondents neither offered any evidence in rebuttal, nor disputed the Claimants' proof. Based on the evidence before it and absent any challenge by the Respondents, the Tribunal finds, for purposes of establishing the Tribunal's jurisdiction, that IPAC was by the date of the Algiers Accords an entity controlled by the Government of Iran and, therefore, that claims directed against IPAC are claims against "Iran" as defined in Article VII, paragraph 3, of the Claims Settlement Declaration.

22. Based on the foregoing, the Tribunal holds that it has jurisdiction over the claims.

23. The Tribunal's jurisdiction over the counterclaims will be considered, to the extent required, together with the merits of the counterclaims, infra.

IV. EASTMAN CLAIMS AND COUNTERCLAIMS

A. Facts and Contentions[3]

24. The Eastman Claims arise from three contracts, pursuant to which either Eastman Whipstock Manufacturing, Inc., at that time under the corporate name of Eastman Whipstock, Inc. ("Eastman"), or Eastman North Sea, at that time under the corporate name of Eastman Whipstock (U.K.) Ltd., rented directional oil drilling equipment to OSCO and provided related services. Under Contract No. 3-78-400-339 ("contract 400"), Eastman agreed to rent to OSCO certain rotary drilling jars, known as "Dailey Jars"; the contract was effective 1 June 1975 and ran for two years. The Dailey Jars at issue in this case were owned by Dailey International Sales Corporation (also "Dailey"), a Texas corporation, and were rented to OSCO by Eastman as Dailey's agent. Under Contract No. 3-78-954-339 ("contract 954"), effective 1 May 1976 for a one-year term, Eastman agreed to rent other equipment to OSCO, to maintain a storehouse in Ahwaz stocked with equipment and spare parts, and to provide drilling services. Finally, Contract No. 3-75-280-339 ("contract 280") consolidated and extended contracts 400 and 954. It was effective 1 May 1977 and ran for three years, with both

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[3] More detailed consideration of certain facts will be given, as appropriate, in connection with the merits of the claims and counterclaims, infra.

parties having the right to terminate upon sixty days' notice.

25. Contract 280 provided in its Schedule of Rates for the rental of Eastman Whipstock Oil Tools. It stated that the price of these tools would be as shown by Eastman's "Price List" but then provided that certain volume discounts would apply to rentals of "Eastman Whipstock owned Oil Tools." The Schedule of Rates also included a price list for the rental of "Cougar Shock Tools." These tools were owned by O.P.I. Ltd. (also "OPI"), a Canadian corporation, and leased to OSCO by Eastman pursuant to a License Agreement between the latter and OPI. Contract 280 incorporated OSCO's General Conditions of Contract for Services. Contract 280 was negotiated in 1977 in London between OSCO and Eastman North Sea, Eastman's wholly-owned British subsidiary.[4] This contract was signed by OSCO in November 1978, and by Eastman in August 1979 (see infra, para. 32). Eastman's employees in Ahwaz did not receive a copy of contract 280 until the summer of 1979 and hence were unaware of some of its provisions. It is unclear whether OSCO's employees in Ahwaz received a copy of contract 280 before the summer of 1979; at any rate, there is no evidence in the record that they did.

26. Eastman's office in Ahwaz issued monthly invoices to OSCO for each tool or service provided. OSCO reviewed the invoices, sometimes responded with modifications or objections, and wired its payments to Eastman's account in New York. OSCO paid Eastman's invoices without significant

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[4] As a matter of convenience, and in view of the parent-subsidiary relationship between the companies, for the purposes of this Award, references to "Eastman" should be understood as referring to the Claimant, Eastman Whipstock Manufacturing, Inc., including Eastman Whipstock (North Sea) Limited.

arrears until October 1978. However, it later transpired that Eastman's invoices -- and OSCO's payments -- had not taken into account contract 280's volume discounts. In addition, Eastman's invoices charged higher rates for the rental of Cougar Shock Tools than those in contract 280's Schedule of Rates.

27. In October 1978, OSCO ceased paying Eastman's invoices. According to NIOC, strikes halted all oil drilling activity between 28 December 1978 and 17 February 1979. The Claimant contends that OSCO's orders for Eastman-supplied equipment diminished considerably in December 1978. Eastman maintains that, therefore, it wished to export equipment not needed in Iran to make it available for other international orders. The Claimant alleges that for this purpose, in January 1979, it carried out a physical inventory of all its equipment in Ahwaz. In order to export its equipment, Eastman was required, under the provisions of contract 280, to submit to OSCO a "Request to Export" form ("RTE"). The RTE would include a list of the equipment to be exported. Eastman prepared an RTE in April 1979 ("April RTE"). The April RTE listed 831 items of equipment and stated their value to be US$2,742,576.40. This amount was, according to Eastman, the book value of the equipment. Eastman maintains that the April RTE did not include equipment rented to OSCO at that time. The Claimant alleges that the equipment listed on the RTE was cleaned, crated, and fully prepared for shipment. According to Eastman, OSCO continued to order equipment until October 1979. Eastman contends that, although it presented the April RTE to NIOC and OSCO in compliance with all the requirements set by contract 280, NIOC and OSCO refused to process it. A copy of the April RTE has been submitted in evidence by the Claimant. The Tribunal notes that this document was signed by Friedoun Bavarsai, Eastman's directional drilling supervisor and representative in Iran at that time, on 4 Ordibehesht 1358 (24 April 1979). The two required

signatures by NIOC and OSCO officials indicating approval for export do not appear on this form.

28. In June 1979, Eastman prepared a second RTE, covering only a small quantity of items, valued at US$253,221.50. Apparently, this equipment, by the time it arrived in Iran in April 1979, was no longer needed by Eastman, and therefore was immediately readied for export. There is no dispute that the June RTE was presented by Eastman to NIOC and OSCO and that it was signed by NIOC's and OSCO's officials.

29. According to NIOC, some of its drilling rigs gradually resumed work after 17 February 1979. OSCO (or NIOC) made several lump-sum payments to Eastman during 1979 and 1980. NIOC's evidence shows that it paid Eastman a total of US$863,797 during this period. Eastman's evidence confirms that it received this amount and credited it to OSCO, though it was unable to attribute the payments to specific invoices. Eastman continued to bill OSCO for rentals and services throughout 1979 and into 1980.

30. On 5 May 1979, OSCO sent a telex to Eastman, informing it that it would still need Eastman's services, but at a reduced level. OSCO stated that "Excess equipment or personnel may be removed ... with prior approval of the company." OSCO further invited Eastman to submit a proposal for a revision of contract 280, in accordance with OSCO's changed requirements. Eastman denies that it received this telex.

31. During the summer and autumn of 1979, disputes arose between the Parties over how much NIOC owed Eastman for its unpaid invoices and over Eastman's desire to export its equipment from Iran. On 12 July 1979, Bavarsai sent Eastman a telex advising it, inter alia, that "we are not allowed to ship any equipment until to clear [sic] all OSCO

documents." On 29 July 1979, OSCO repeated its 5 May telex to Eastman, adding that payment of outstanding Eastman invoices was being held up due to "non execution of [contract 280] by you." Eastman replied on 1 August 1979, informing OSCO that Robert McMillan, Eastman's previous base manager in Ahwaz, would arrive in Iran on 4 August 1979 to discuss the revision of contract 280, the settlement of accounts between OSCO and Eastman, and the "transfer of excess equipment."

32. McMillan spent most of the period August-November 1979 in Iran, discussing these three issues with NIOC officials. In two affidavits, offered in evidence by Eastman, and confirmed in his testimony at the Hearing, McMillan recounts his attempts to obtain NIOC's permission to export the equipment. He states that he personally discussed the export of the equipment listed on the April RTE with Ahmad Saghian, the Head of NIOC's Materials Organization, repeatedly in the summer and fall of 1979, and that Saghian "initially vetoed our previously granted export permission." According to McMillan, NIOC first told him that permission to export would not be granted until Eastman executed contract 280. McMillan executed contract 280 on 21 August 1979. McMillan alleges that after he complied with this condition, NIOC stated that no export permission would be given until NIOC had reconciled Eastman's invoices with OSCO's payments, and until a letter had been issued to that effect by Dabir Hajian Tehrani, a high-ranking NIOC official. McMillan further says that in the fall of 1979, Mehdi Sadri, NIOC's Head of Drilling, told him that Eastman's export application would be examined by a three-person committee of NIOC officials in Tehran on 1 November 1979. McMillan concludes: "Whatever their reasons on a particular day, both Mr. Sadri and Mr. Saghian personally informed me that Eastman would not be permitted to export its equipment."

33. McMillan left Iran in November 1979. On 10 December 1979, NIOC terminated contract 280 with 60 days' notice. In a telex sent on 17 December 1979 to Iranian Oil Services Ltd., Eastman acknowledged the termination of contract 280 and stated that "since we currently have no other work in Iran we would like to export our service plant as soon as possible," and referred in this respect to Clause 16 of OSCO's General Conditions of Contract for Services. Eastman further stated that it would have "our base manager, Mr. Fred Bavarsi contact you concerning the proper procedures and documentation concerning this export." Bavarsai and the remaining Eastman employee, Ms. Keshvar Karimi, apparently continued to issue invoices on Eastman's behalf until April 1980. On 6 February 1980, Karimi sent a report to Eastman, stating, inter alia, that she had been told unofficially by a NIOC employee, an assistant of Sadri's, that "it might be possible that after election of Parliament, oil company might release our equipment because of our past good services."

34. Bavarsai stated in his affidavit and testified at the Hearing that in March or April 1980, individuals alleging that they represented the Foundation for the Oppressed seized Eastman's offices in Ahwaz and refused him access to the Eastman equipment. Bavarsai says that these individuals showed him a document indicating that Eastman's tools should be given to NIOC.

B. Eastman Claims

1. Invoice Claim

35. Eastman seeks payment of over 600 invoices for the rental of equipment and the provision of services to OSCO. Some of the invoices date back to 1976; most were issued between 1 October 1978 and 1 April 1980. Eastman originally

claimed that NIOC owed it U.S.$558,847.39. This took into account the volume discount that should have been applied to many of the invoices. Eastman calculated the discount to be U.S.$155,440.07. In its Memorial, NIOC accepted some invoices as payable in full and others as payable in part, and it rejected some invoices entirely. In response to NIOC's Memorial, Eastman withdrew its claim for amounts as to which NIOC presented a "contemporaneous document indicating a credible objection." Eastman thereby reduced its claim to US$531,323.22. Finally, at the Hearing, Eastman increased its claim by US$8,483.43. This reflected a reduction in the volume discount and was done in response to NIOC's arguments.

36. NIOC has consistently argued that the payable invoices total US$343,939.22. However, it has increased the amount of the discount that it says should be applied to these invoices, from US$220,142.89 to US$408,336.89. As a result, and taking into account several alleged set-offs and adjustments, NIOC claims that Eastman owes it US$178,868.49.

37. Eastman's invoice claim presents three major issues:

1. Whether Eastman was entitled to charge OSCO higher prices for Dailey Jars rented after 1 November 1978.

2. Whether NIOC is justified in refusing to pay for rentals and services on allegedly inactive rigs.

3. Whether contract 280's volume discount is applicable to the rental of Dailey Jars.

2. Retention Claim

38. Eastman seeks the return of funds that were retained from invoice payments under its contracts with OSCO to secure its satisfaction of its social insurance obligations. Eastman originally sought US$442,357.23; in its Rebuttal, it reduced its claim to US$322,092. This amount represents the dollar equivalent of 22,699,422 rials, converted at the rate applicable in 1979 of 70.475 rials/US$1. Eastman argues that it is entitled to the release of its SIO retentions by virtue of its having submitted an SIO clearance certificate, as required by the General Conditions of its contracts with OSCO.

39. NIOC acknowledges holding 22,699,422 rials in SIO retentions from payments to Eastman under contracts 400, 954 and 280, plus two other contracts. NIOC also concedes that Eastman submitted an SIO clearance certificate. However, NIOC refuses to release the money on the grounds that Eastman owes it money as a result of NIOC's overpayment of Eastman's invoices. Thus, the principal issue in this claim is not whether Eastman is entitled to the release of its SIO retentions but whether NIOC may take that money and apply it against other debts that Eastman allegedly owes it. There is also a dispute concerning the coverage of the clearance certificate: According to the clearance certificate itself, payments under the five contracts up to 663,628,320 rials were covered. However, NIOC asserts that it erred when declaring to the SIO the total amount paid to Eastman and that the coverage of the clearance certificate should have been only 643,337,320 rials. NIOC contends that, as a result of this and another correction, Eastman owes it US$11,295.30.

3. The Property Claim

40. Eastman seeks to recover US$6,760,236.88 in compensation for the alleged taking by Iran, through NIOC's actions and inactions, of the directional drilling equipment utilized in connection with the performance of the service and rental contracts with OSCO, and for the alleged taking of Eastman's fixed assets in Ahwaz. The claimed amount encompasses US$4,330,228.66, alleged to be the fair market value of the equipment, US$179,463.22, the fair market value of the fixed assets, and US$2,250,545 for lost profits.

C. Merits of Eastman's Claims

1. Invoice Claim

41. The first issue in Eastman's invoice claim is the rental rate for Dailey Jars. Contract 280 itself provided rental rates for Eastman-owned tools and Cougar Shock Tools, but did not mention Dailey Jars. Eastman claims that the contractual basis for Dailey Jar rentals lay in paragraph 4 of contract 280. That paragraph, entitled "Miscellaneous Additional Services," anticipated that OSCO might, "from time to time," request Eastman to supply equipment or services that were not listed in the contract's Schedule of Rates. Eastman would "use its best endeavours" to meet those requests, payment for which would be based upon Eastman's "then current published price list." Eastman's 1977 price list, which included Dailey Jar rentals, was incorporated by reference in contract 280. Eastman rented Dailey Jars to OSCO throughout the term of contract 280, but there is no evidence that indicates whether or not the Parties considered this a miscellaneous additional service. Initially, Eastman charged OSCO the rates that appeared on its 1977 list: US$200/day for Dailey Jars in operation and US$70/day for stand-by Jars. Eastman increased its rates in 1978; it issued a new price list, effective 1 November 1978, and immediately began to charge OSCO US$220/day and

US$90/day, respectively. Eastman charged the higher rates on eighty of the invoices at issue in this claim.

42. NIOC objects to the higher rates. It justifies this refusal by reference to the contract and to Eastman's conduct. NIOC claims that paragraph 4 of contract 280 must refer only to relatively minor services, not to something as important as the Dailey Jar rentals (which, according to NIOC, accounted for 50% of Eastman's billings). NIOC further claims that the 1977 price list remained part of the contract and that Eastman did not have the right unilaterally to increase those prices. NIOC contends that Eastman did, on occasion, reduce its charges for Dailey Jars from US$220 to US$200 following an objection from NIOC in September 1979. NIOC has submitted copies of six invoices, dated between 22 November 1979 and 21 January 1980, as evidence of this.

43. The fact that Eastman reverted to the lower rates in six invoices is not dispositive, for the issue here is whether Eastman had the right unilaterally to raise the prices that it charged OSCO for Dailey Jar rentals. A decision to lower prices, whether or not prompted by NIOC, does not prove that Eastman lacked that right. The Tribunal notes, too, that these six invoices were issued by Eastman's Iranian staff after its expatriate manager had left Iran and after the seizure of the American Embassy in Tehran. Concessions to NIOC under these circumstances should not necessarily be understood as an admission by Eastman that it lacked the right to raise prices. On the other hand, Eastman's claim that Dailey Jar rentals were a "miscellaneous additional service" is implausible: For example, it appears from Eastman's evidence that those rentals did comprise more than 50% of Eastman's billings to OSCO in 1978.

44. The Tribunal finds that a resolution of this issue should begin with contract 400. That contract provided for the rental of Dailey Jars by Eastman to OSCO. The contract set the rental rates according to Eastman's 1975 price list, a copy of which was attached to the contract. Several typewritten modifications were made to that printed rate schedule: For example, the rental rate for operational Jars was changed from US$185/day to US$200/day, and a proviso making prices subject to change without notice was crossed out. The term of contract 400 ran for two years until 31 May 1977. In 1977, the Parties agreed to contract 280, the term of which was to run for three years from 1 May 1977. The express purpose of contract 280 was to consolidate existing contracts between the Parties. While contract 280 did not mention Dailey Jars, it did include Eastman's 1977 price list, and that price list included rates for Dailey Jar rentals. The Dailey Jar rental rates on the 1977 list were the same as those on the 1975 list -- viz., US$200/day for operational and US$70/day for stand-by Jars. However, the proviso, "Prices subject to change without notice," was not crossed out on the 1977 list. The Tribunal draws several conclusions from these facts: Contract 280 should be construed as extending and modifying contract 400. Eastman's 1977 price list replaced its 1975 list. This replacement did not immediately change the rental rates for Dailey Jars, but it did give Eastman the right to raise its prices during the three-year term of contract 280. OSCO's right to terminate the contract with sixty days' notice would discourage Eastman from charging excessive rates. The Tribunal concludes that Eastman had the right, after it issued a new price list on 1 November 1978, to charge OSCO US$220/day and US$90/day for Dailey Jar rentals; therefore, there should be no reduction in the amounts due to Eastman for the rental of Dailey Jars.

45. The second issue within Eastman's invoice claim arises from NIOC's refusal to pay invoices for rentals and

services on drilling rigs that it says were inactive. The invoices involved here may be divided into two groups, depending upon the reason given for the inactivity: The first group of invoices covers the period from 28 December 1978 to 17 February 1979. NIOC claims that strikes and the departure from Iran of foreign workers shut down the oil fields, thus creating force majeure conditions that suspended its obligations under contract 280. Accordingly, NIOC rejects virtually all invoices from this force majeure period. The second group of invoices covers rentals and services after 17 February 1979. NIOC states that it made an "operation decision" to resume drilling at some rigs after that date, while leaving others idle. NIOC accepts invoices for rentals and services at rigs that it says became operational on or after 17 February 1979, and it rejects invoices for rigs that allegedly remained idle.

46. In support of its invoice claim, Eastman contends that OSCO and NIOC continued to order equipment for rental in late 1978 and through 1979. According to Eastman, NIOC has not proven that its rigs were actually inactive. Eastman also points out that, pursuant to provisions of contract 280, NIOC could stop some rental charges merely by informing Eastman's office in Ahwaz by telephone that particular equipment was no longer being used on its rigs. Eastman then argues that NIOC has not proven that force majeure conditions existed in general or in relation to this contract provision. NIOC replies that it "does not deem it necessary to supply evidence proving the existence of force majeure conditions between December 1978 through mid-summer, because the Tribunal has confirmed in various cases the existence of force majeure conditions." NIOC cites, in support of this assertion, the Tribunal's awards in Gould Marketing, Inc. and Ministry of National Defense of Iran, Interlocutory Award No. ITL 24-49-2 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 147, and Sedco, Inc. and National

Iranian Oil Co., et al., Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23.

47. In addressing this issue, the Tribunal notes that, under contract 280, Eastman's rental charges ran as long as OSCO had the equipment on its rigs, regardless of the drilling activity. The Tribunal must decide whether, and under what conditions, the cessation of drilling could interrupt Eastman's charges for rentals and services.

48. Turning first to the invoices for rentals and services between 28 December 1978 and 17 February 1979, the Tribunal reiterates the rule that the party invoking force majeure as an excuse from performing a contractual obligation has the burden of proving the existence of force majeure. See Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1, at 20 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 312. The alleged force majeure conditions must be assessed with reference to the particular contractual obligation at issue. Id. at 15-16, 8 Iran-U.S. C.T.R. at 309. In Gould, the Tribunal found that, "[b]y December 1978, strikes, riots and other civil strife in the course of the Islamic Revolution had created classic force majeure conditions at least in Iran's major cities." Gould Marketing, Inc., supra, at 11, 3 Iran-U.S. C.T.R. at 152-53. These force majeure conditions persisted as late as June 1979. Id. at 12, 3 Iran-U.S. C.T.R. at 153.

49. In Sedco, Inc., Case No. 129, the claimant's subsidiaries, SISA and SEDIRAN, leased drilling rigs to OSCO. The evidence showed that strikes halted drilling operations in September and November 1978. Drilling then stopped again in late December following the assassination of OSCO's General Manager, Mr. Paul Grimm, and the evacuation of OSCO's expatriate personnel from Iran. Drilling on the claimant's rigs resumed gradually, starting in late February 1979. See Sedco, Inc., supra, paras. 98, 140, 324.

The Tribunal found that the "general political unrest present in the instant case presents a classic force majeure situation." Id., para. 138.

50. It is not clear from the Award in Sedco whether the rigs involved in that case were those on which Eastman's equipment was being used. However, the Tribunal's findings in several oil cases show the extent of the upheaval that shook Iran's oil industry during the Islamic Revolution. Iran's oil workers played an especially important role in toppling the Shah. Beginning in November 1978, Imam Khomeini encouraged them to strike in order to stop the export of oil and thus to undermine the Shah's regime. Strikes spread. Turmoil and violence escalated, leading to the departure of foreign oil workers. By December, most oil production had ceased, and exports were blocked. The oil industry remained paralyzed (except for very limited production to serve domestic needs) until after the triumph of the Revolution in February 1979. Oil was not exported again until 5 March 1979. See Phillips Petroleum Company Iran and Islamic Republic of Iran, et al., Award No. 425-39-2, paras. 30-35, 78-84 (29 June 1989), reprinted in 21 Iran-U.S. C.T.R. 79. The cessation of oil production created force majeure conditions throughout Iran's oil industry. The Tribunal has found that these conditions "commenced in late 1978 when Imam Khomeini called on the oil workers to strike and they ended a few months later when the Revolution resulted in the creation of the Islamic Republic and the new Government directed resumption of production." Id., para. 81; see also Mobil Oil Iran Inc., et al. and Islamic Republic of Iran, et al., Award No. 311-74/76/81/150-3, paras. 21, 112-119 (14 July 1987), reprinted in 16 Iran-U.S. C.T.R. 3.

51. Accordingly, the Tribunal finds that force majeure conditions interrupted Eastman's rental of equipment to OSCO between 28 December 1978 and 17 February 1979. The Tribunal does not accept Eastman's argument that NIOC has failed to

prove force majeure in relation to the contractual provisions for cancelling rental charges with a telephone call. Since copies of contract 280 were unavailable in Ahwaz until sometime later in 1979, it is likely that the Parties' employees there were unaware of those provisions during the force majeure period -- just as they were unaware of the volume discount provision. Thus, Eastman's invoices for rentals during the force majeure period are not payable. However, a few invoices from that period charge NIOC for services performed by Eastman that were not affected by the force majeure conditions -- for example, the storage of OSCO's equipment in Eastman's warehouse. Such invoices remain payable.

52. Thirty-nine invoices cover, in whole or in part, the period from 28 December 1978 to 17 February 1979. The total amount of these invoices is US$103,243.36. Equipment rentals during this period account for US$60,622 of that figure. Applying the decision that force majeure interrupted the charges for equipment rentals, the Tribunal shall subtract US$60,622 from the amount due for Eastman's invoices.

53. Turning next to the invoices for rentals and services after 17 February 1979, the Tribunal notes that NIOC does not plead force majeure as an excuse for rejecting some of these invoices; NIOC simply claims that some of its rigs remained idle. However, the Tribunal can find nothing in the contract or in the Parties' course of conduct that would entitle NIOC to refuse payment of an invoice where NIOC had not previously notified Eastman of its desire to halt certain rentals. The mere fact that a rig was idle did not suspend Eastman's rental charges. Force majeure might excuse NIOC from notifying Eastman that rentals should cease; but, as conditions in the Iranian oil industry became more settled in late February 1979, NIOC was obliged to inform Eastman about the reduction in its drilling program,

to return unneeded equipment, and to object to erroneous invoices. See American Bell International Inc. and Islamic Republic of Iran, Award No. 255-48-3, para. 137 (19 Sept. 1986), reprinted in 12 Iran-U.S. C.T.R. 170, 211. NIOC was not entitled to change its drilling activity for reasons of its own without informing Eastman and then, some time later, object to Eastman's invoices. This issue thus turns on whether, and when, NIOC notified Eastman of its new requirements for equipment and services.

54. Eastman continued to send invoices to NIOC after 17 February 1979. NIOC's telex to Eastman, dated 5 May 1979, stated: "We shall continue to require your service. But as a result of changes in drilling activity we would like to inform you that your services in future should be based on 10 rig level of drilling effort." It is doubtful whether Eastman received this message. Eastman did, however, receive the telex when it was repeated on 29 July 1979. The Tribunal considers this telex to be adequate notification of NIOC's new requirements, notwithstanding its failure to specify the rigs on which rentals should cease. If further details were needed, it was incumbent upon Eastman to seek them. The Tribunal concludes that Eastman's invoices for rentals and services between 17 February and 29 July 1979 are payable in full. For the period after 29 July 1979, the Tribunal accepts NIOC's objections to thirty invoices. These invoices total US$43,566; NIOC objects to rental charges totalling US$22,628.50. Finding that NIOC notified Eastman that certain rentals should cease, the Tribunal will subtract US$22,628.50 from the amount due on Eastman's invoices.

55. Before turning to the final major issue of Eastman's invoice claim -- the volume discount, which concerns all invoices under contract 280 -- the Tribunal must examine ten invoices, totalling US$77,188.95, which raise

miscellaneous evidentiary issues.[5] For most of these invoices, the issue is whether NIOC made a valid objection. The contemporaneous evidence consists of letters to Eastman written by NIOC, objecting to certain invoices, and of various handwritten notations on letters and an invoice.

56. The Tribunal finds that, for five of these invoices, NIOC's objections were inadequately explained or documented. (This contrasts with many other objections that were presented by NIOC and eventually accepted by Eastman. See supra, para. 35.) For the remaining five invoices, the Tribunal accepts NIOC's objections. Eastman apparently acquiesced in OSCO's US$104 underpayment of invoice no. I00182 in 1976. Eastman has failed to submit a copy of invoice no. D13156, dated 12 December 1977, for US$7373; the listing of this invoice on Eastman's "Aged Trial Balance" is inadequate proof that it is payable. With respect to invoice no. I16562, NIOC correctly objected that Eastman had charged US$385.50 too much for re-chroming a Dailey Jar. The final two invoices, no. I00491 for US$375.10 and no. I07806 for US$27,546, involve handwritten notations. These notations have not been conclusively authenticated; nonetheless, the Tribunal is persuaded by a preponderance of the evidence that NIOC adequately objected to these two invoices, thereby placing the burden on Eastman to substantiate them further. The total amount in dispute from these five invoices, US$35,783.60, will be subtracted from the amount due upon Eastman's invoices.

57. The final major issue in Eastman's Invoice Claim concerns contract 280's volume discount. There is no dispute that Eastman failed to apply the discount to rentals of "Eastman Whipstock owned Oil Tools," as required by the

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[5] These are invoices nos. I00182, I00252, I00491, I00512, D13156, I16362, I16550, I16562, I16576, I07806.

contract's Schedule of Rates.[6] Eastman accordingly recognizes that volume discounts for many of its invoices -- including those paid by OSCO -- must retroactively be calculated and subtracted from the amount owed to it by NIOC. The dispute here relates solely to the amount of the discount.

58. In a letter dated 17 June 1980, NIOC claimed that the discount should be US$220,142.89. NIOC provided no evidence to substantiate that figure. Eastman claimed in its Memorial that the discount should be US$155,440.07. It calculated this amount by referring to the available invoices and to its "Earned Income Reports" (contemporaneous records which indicated for each invoice the type of equipment that had been rented). In its Rebuttal Memorial, NIOC accepted Eastman's figure of US$155,440.07 as the correct discount upon the rentals and services to which it was applied. However, NIOC went on to claim that the discount should also be applied to all rentals of Dailey Jars. This would add US$252,896.82 to the discount, making the total amount US$408,336.89. NIOC based this argument on the structure of contract 280: Since "Eastman utilized Dailey Jars (which engaged 50% of the costs in each month) as E. W. owned Oil Tools," it would be "illogical" to classify Dailey Jars under paragraph 4's "Miscellaneous Additional Services." As evidence in support of this contention, NIOC pointed to the fact that, on twenty-four invoices, Eastman did, in fact, apply the discount to the rental of Dailey Jars. This was done when Eastman calculated the amount of the discount for the purposes of these proceedings. The twenty-four invoices were among more than 1650 invoices that Eastman submitted to OSCO between 1 June 1977 and 1 October

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[6] This omission was one of the issues which apparently prompted NIOC to demand a reconciliation of Eastman's accounts with OSCO during the summer of 1979 before NIOC would approve the export of Eastman's equipment. See infra, paras. 92-94.

1978. Eastman responded to this argument at the Hearing by asserting that it had simply erred in applying the discount to some Dailey Jar rentals. Eastman then reduced the total discount that it accepted by US$8,483.43 -- the amount erroneously discounted from the twenty-four invoices -- and thereby increased the amount of its invoice claim by a like amount.

59. The Tribunal has already concluded that Eastman's rental of Dailey Jars was not a "miscellaneous additional service." This conclusion does not, ipso facto, transmute Dailey Jars into "Eastman Whipstock owned Oil Tools" and therefore subject to the contract's volume discount provision. The Dailey Jar price list, incorporated in contract 280, explicitly identified the Jars as the property of "Dailey Oil Tools." This excludes Dailey Jar rentals from the volume discount. The fact that Eastman included twenty-four Dailey Jar invoices when it calculated the volume discount for its Memorial does not change this conclusion. Eastman's action appears to have been a clerical error; this does not estop Eastman from advancing its claim for full payment of the other Dailey Jar invoices. However, with respect to the twenty-four invoices, Eastman's correction of this error, in the form of an amendment of its claim at the Hearing, came too late to be admissible.

60. Both Parties, as noted above, accepted US$155,440.07 as the volume discount if Dailey Jar rentals were excluded. This figure must be revised to take into account the Tribunal's decisions that some invoices are not payable. The volume discount ranged from 0% to 16% of the discountable amount, depending on the monthly total of Eastman's invoices. The total discountable amount of Eastman's invoices under contract 280 was US$2,980,315.75. The exclusion of non-payable invoices reduces the discountable amount as follows:

Original discountable amount	US$2,980,315.75
Discountable amounts of	
non-payable invoices:	
-- force majeure	(30,226.00)
-- post-29 July 1979 . . .	(15,494.50)
-- miscellaneous issues. . .	(68.00)
Revised discountable amount. . . .	US$2,934,527.25

A reduction in the volume discount that is proportional to this reduction of US$45,788.50 in the discountable amount yields a reasonably accurate revised discount. The Tribunal therefore decides that the volume discount should be US$153,052.

61. To conclude its examination of Eastman's Invoice Claim and to determine the amount due to Eastman, the Tribunal begins with the total of all invoices involved in this claim, which equals the sum of the invoices allegedly due, plus credits for payments made to Eastman. This figure, US$1,578,084.46, is a reliable starting point, for it can be derived from documents submitted by both Parties. Reductions in this amount are made to credit NIOC for payments made to Eastman, to subtract non-payable invoices and to apply the volume discount. The contractor's tax will also be deducted, pursuant to provisions of contract 280. This yields the net amount due to Eastman:

Total of all invoices.	US$1,578,084.46
NIOC's payments to Eastman	(863,797.00)
Eastman concessions in response to NIOC's Memorial.	(27,524.17)
Corrections[7]	(874.68)
Non-payable invoices:	
-- force majeure period	(60,622.00)
-- post-29 July 1979.	(22,628.50)
-- miscellaneous issues	(35,783.60)
Volume discount	(153,052.00)
Gross amount due	US$ 413,802.51
Contractor's tax deduction (5.5%)	(22,759.14)
Net amount due	US$ 391,043.37

The Tribunal therefore awards the Claimants US$391,043 for the Eastman Invoice Claim. Interest on this sum will run from 19 November 1981, the date of the Statement of Claim.

2. Retention Claim

62. Eastman cleared its account with the Social Insurance Organization and received its clearance certificate in January 1980. To achieve this, Eastman was required to make a final payment of 1,190,751 rials to the SIO. Eastman arranged for NIOC to make this payment, using retention funds credited to Eastman's account. Upon the

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[7] Eastman conceded in response to NIOC's Memorial that this amount should be deducted from invoices nos. I15200, I16324, I16347, I16442, I16444, I16446, I16533 and I16678. However, Eastman then neglected to make the necessary adjustments in its claim, as presented in its "Reconciliation Summary" (Eastman's summary of its accounts with OSCO).

issuance of the clearance certificate, NIOC paid Eastman 9,291,233 rials on 19 January 1980. NIOC claimed that this was the net amount of retentions due to Eastman after offsetting excess payments, equivalent to 22,699,422 rials, made upon Eastman's invoices.

63. NIOC's payment in January 1980 of 9,291,233 rials to Eastman demonstrates NIOC's recognition that Eastman was entitled to the release of its SIO retentions. NIOC's only justification for continuing to hold the balance of Eastman's SIO retentions is the allegation that it overpaid Eastman's invoices. However, the Tribunal's examination of Eastman's Invoice Claim has shown that, in fact, NIOC still owes Eastman a considerable sum for its unpaid invoices. The Tribunal also finds that NIOC has failed to prove that the clearance certificate misstated the amount that it should cover. It follows, then, that NIOC must release the SIO retention money that it still holds on Eastman's account. The amount held by NIOC, 22,699,422 rials, is equivalent to US$322,092 when converted at the rate of 70.475 rials/US$1. This was the rate of exchange in January 1980 when the money should have been released. See International Monetary Fund, International Financial Statistics, Supplement on Exchange Rates 64 (1985). The Tribunal awards the Claimants US$322,092 for the Eastman Retention Claim. Interest on this amount will run from 19 January 1980, the date when NIOC should have released the entire retention amount, rather than just a portion of it.

3. The Property Claim

Factual Introduction

64. It is not disputed that Eastman imported into Iran, in NIOC's name, all of the equipment, tools and spare parts necessary to fulfill its obligations under contracts

400, 954 and 280 ("equipment"). OSCO's General Conditions of Contract for Services ("General Conditions") define this equipment as the "Service Plant." As has been noted earlier in this Award, the Service Plant not only included equipment owned by Eastman, but also certain tools owned by other companies. This latter equipment consisted of Dailey Jars, owned by Dailey International Sales Corporation, and "Cougar Shock Tools," owned by O.P.I. Ltd.

65. Dailey had provided the Dailey Jars to Eastman for rental to third parties, pursuant to an Agency Agreement dated 25 August 1978. The Agency Agreement stated that it did "not license [Eastman] to acquire title to the Jar." Article VII of the Agency Agreement, which defined the parties' obligations in case of loss of equipment, reads:

> If any Jar is lost and is not recovered while in the custody of a customer of [Eastman], it will, upon being invoiced by [Dailey], pay the full sales price of said Jar in accordance with the then current price of the Jar, plus the restocking charges and handling charges....

66. Similarly, OPI had furnished Eastman with "Cougar Shock Tools" ("Shock Tools") for rental to third parties, pursuant to a License Agreement dated 31 July 1978. The agreement specified that "[t]he title and ownership of the Shock Tools supplied by OPI to [Eastman] ... shall remain in OPI...." With respect to lost tools, Article IX of the License Agreement states:

> 9.01 It is anticipated that from time to time after delivery of Shock Tools to [Eastman], the same be lost or abandoned by [Eastman's] customers during the course of drilling or otherwise. [Eastman] shall promptly notify OPI of such loss and upon being invoiced therefor by OPI it will pay to OPI the export sale price for such lost Shock Tool as set forth in Schedule "A" hereto less Twenty (20%) per cent.

67. OSCO's General Conditions regulated in detail the procedure for the export of Eastman's Service Plant. Clause 16, in relevant part, provided that:

> On completion of the Services or on early termination of the Contract as provided for under these General Conditions [Eastman] shall export the Service Plant in accordance with [OSCO's] Materials Procedure in Schedule II hereto or use the Service Plant on another contract with [OSCO] or, with the permission of [OSCO], pay the appropriate customs duties and charges on the Service Plant and obtain a release from the customs authorities which will permit the use thereof for third parties or their sale in Iran....

68. The Materials Procedure in Schedule II of the General Conditions regulated, inter alia, the export procedure. Article 4, "Disposal by Export," provided, in paragraph A, that:

> Before export from Iran of any item of Service Plant originally imported by [Eastman] in the name of NIOC, [Eastman] shall submit to [OSCO's] Representative one original and two copies of a "Request to Export" ... signed by [Eastman] together with a copy of the original Customs Import Djawaz[8] for each of the items appearing on the "Request to Export."

Paragraph C of the same article, in pertinent part, further provided as follows:

> Upon receipt of the "Request to Export" approved by [OSCO's] Representative and endorsed by the NIOC Materials organisation, [Eastman] shall effect shipment in accordance with [OSCO's] directions....

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[8] Iranian import license.

The Claimant's Arguments

69. Eastman contends that NIOC and OSCO consistently denied Eastman's request for permission to export the equipment Eastman no longer needed in Iran for the performance of contract 280 ("excess equipment"). Eastman alleges that the excess equipment was covered by the RTEs Eastman had presented to NIOC and OSCO in April and June 1979. The Claimant maintains that OSCO and NIOC unjustifiably refused to approve the April RTE, and that, although they signed the June RTE, they denied Eastman indispensable assistance in clearing the equipment covered by this RTE through customs for export.

70. The Claimant asserts that after McMillan executed contract 280 on 21 August 1979, NIOC unilaterally imposed new conditions for the export of Eastman's excess equipment which had no contractual foundation. Eastman contends that after it was denied permission to export this equipment in April 1979, Eastman rented to OSCO a few items of it.

71. The Claimant argues that the Respondents' refusal to permit Eastman to export the excess equipment constitutes a compensable taking under any applicable rule of law. Eastman submits that either by the express terms of contract 280 or by operation of law, the equipment should have been returned to Eastman. The Claimant concludes that the Respondents' actions and/or inactions constitute a breach of contract, as well as an expropriation of Eastman's property. In this latter respect, Eastman argues that a taking may occur under international law through interference by a State in the use and enjoyment of property. In the Claimant's view, the Respondents' deliberate prevention of the export of Eastman's excess equipment is wrongful and gives rise to liability for damages under either theory of recovery.

72. At the Hearing, the Claimant suggested July 1979 as the possible date of the taking, since by that time

Eastman had complied with all contractual formalities regarding the export of the excess equipment and, in early July 1979, NIOC had signed all the Customs Import Djawazes submitted to it with the April RTE.

73. Eastman further argues that the alleged taking of control of Eastman's Ahwaz facility by representatives of the Foundation for the Oppressed ("Foundation") in March or April 1980, and their refusal to allow the remaining Eastman employees physical access to Eastman's equipment, warehouse and offices, constituted Iranian governmental action, since the Foundation is an entity controlled by Iran. Eastman claims that compensation for such taking is payable, both under international law and under the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran of 15 August 1955. The Claimant argues that as a consequence of the Foundation's actions, it definitively lost control not only of the equipment covered by the April and June RTEs, but also of its fixed assets as well as of the remaining equipment it held in Iran. It is not disputed that Eastman did not submit to NIOC and OSCO any request to export this latter equipment. The Claimant suggests that the allegedly expropriated directional drilling equipment is presently being used by NIOC.

74. The Claimant argues that it is entitled to bring a claim for the "full fair market value" of the allegedly expropriated property, including the drilling tools owned by Dailey and OPI. In this latter respect, Eastman submits that the agreements with Dailey and OPI, pursuant to which these companies had provided it with their products for rental to third parties, created bailments. Eastman maintains that, therefore, as these companies' bailee it has the right to recover compensation also for the conversion of

their property, commensurate with the market value of this property.

75. In the Claimant's view, the full fair market value of the equipment is its replacement value. Eastman gives several reasons in support of this argument: Eastman contends first, that directional drilling equipment was in great demand in 1979; second, that, owing to Eastman's high standard of maintenance, used equipment was as valuable as newly manufactured equipment; third, that inflationary pressures contributed to increased costs throughout the oil drilling services industry during the period from 1978 to 1979.

76. The sum claimed by Eastman for lost profits is alleged to represent the amount Eastman could have earned in one year had it not been deprived of the equipment, one year being the time it allegedly would have taken to replace this equipment.

The Respondents' Arguments

77. The Respondents deny all parts of this claim. They dispute that any or all of the alleged acts or omissions by either NIOC, OSCO or Iran could or in fact did constitute a taking under any theory of law.

78. With respect to the claim based on NIOC's and OSCO's alleged refusal to allow export of the Claimant's excess equipment, the Respondents argue that Eastman's failure to re-export this property was not caused by any actions or inactions on NIOC's and OSCO's side but rather was caused by actions or inactions on Eastman's side. In the Respondents' view, Eastman did not take the necessary steps to export the Service Plant as provided for in OSCO's General Conditions.

79. In particular, the Respondents deny that the April RTE was ever submitted for approval to OSCO and NIOC. In support of this contention the Respondents rely, inter alia, on affidavits from Ahmad Saghian, the Head of NIOC's Materials Organization, and from Mehdi Sadri, NIOC's Head of Drilling. With respect to the April RTE, Saghian stated: "I do not remember that I negotiated with Mr. McMillan or Bavarsi concerning these export forms." Sadri, in his first affidavit, admitted that he met with McMillan in Ahwaz in August 1979 and that "Eastman, Inc.'s tools and equipment" were among the topics discussed. Sadri further stated: "With regard to excess equipment that Eastman Inc. expressed intrested [sic] to re-export, it was decided that a [sic] export permit be prepared and submitted for approval of the Drilling Division." Sadri alleged that, however, no "documents concerning ... export permit were submitted." In his supplemental affidavit Sadri reiterated his previous statements and added: "[McMillan] did not submit a new exportation application with respect to the additional tools and equipment."

80. With respect to the export of the equipment covered by the June RTE, the Respondents submit that by evidencing their approval to the export of this property through signing the RTE, OSCO and NIOC did all they were contractually required to do. The Respondents suggest that most probably Eastman already has exported this property from Iran.

81. As regards the alleged seizure of Eastman's facilities in Ahwaz by the Foundation for the Oppressed, the Respondents argue that Eastman has presented no evidence in substantiation thereof. The Respondents conclude that, most probably, Eastman's equipment and fixed assets were abandoned in Iran by Bavarsai in July 1980. At the Hearing, NIOC's representative stated that the present whereabouts of Eastman's equipment are not known to NIOC.

The Tribunal's Decision

a. The Taking by the Foundation

82. The Claimant's allegation of a taking of its Ahwaz facility by representatives of the Foundation for the Oppressed is based on Bavarsai's statements. In his affidavit Bavarsai said:

> In March or April, 1980, individuals stating that they represented the Oppressed People's Foundation came to Eastman's offices and confiscated the keys to the Eastman office, gate, truck and staff house. I recall that these individuals showed me a document indicating that NIOC should be given Eastman's tools. They did not give me a copy of the document. Subsequent to this confiscation the gate to Eastman's yard and offices were [sic] locked and I was not allowed access to the Eastman equipment.

At the Hearing, Bavarsai confirmed to a large extent these statements. However, he was not able to identify more precisely the persons who took control of Eastman's yard in early 1980. Bavarsai testified that he did not remember who signed the document purportedly authorizing the confiscation of Eastman's equipment. Further, when asked on which grounds he concluded that the individuals stating that they represented the Foundation actually had the authority to take over Eastman's facility and equipment, Bavarsai explained that since the document he was shown by these persons was "officially typed in Farsi and signed," he assumed that it was an "official letter" from the Foundation. Bavarsai then rectified a previous statement, made in his affidavit, and said that a copy of this letter actually was given to him, and that he sent it to Eastman's office in Athens. The Claimant asserts that it has searched its files but has not found any evidence of such a letter. The Tribunal notes that this document is not in evidence.

83. On the basis of this evidence, the Tribunal is persuaded that Eastman lost control of its equipment, offices, and fixed assets in Ahwaz in March or April 1980. However, the Tribunal finds that the evidence before it is not adequate to establish that this loss is attributable to the Government of Iran. Bavarsai's recollections were too uncertain to establish, by themselves, that the seizure of Eastman's facility was carried out by persons cloaked with governmental authority. Consequently, the claim based on direct expropriation by the Foundation must be dismissed for lack of proof.

b. The Failure to Re-export

84. Under this alternative, the Claimant's possible recovery would not include compensation for the loss of its fixed assets.

85. Eastman argues that OSCO's and NIOC's refusal to permit Eastman to re-export its Service Plant constitutes a breach of contract, as well as an expropriation of the equipment. The Tribunal agrees to consider this claim under both theories of recovery.

86. The Tribunal previously has held that "the failure of a party to render contractually required assistance towards exportation could at some point in time ripen into a taking or conversion of the property affected". Sedco, Inc., supra, para. 21, 15 Iran-U.S. C.T.R. 31. In Houston Contracting Co. and National Iranian Oil Company, et al., Award No. 378-173-3, para. 467 (22 July 1988), reprinted in 20 Iran-U.S. C.T.R. 3, 124, where the respondent's alleged refusal to allow re-export of the claimant's property was likewise at issue, the Tribunal held that the claimant was "required to show that it took all reasonable steps to export the equipment, so as to satisfy the burden of proof

to show that the losses suffered by it were incurred as a result of the acts or omissions of Iran and not by [the claimant's] own failure to act". The Tribunal will examine the circumstances of this Case in light of the above principles.

87. As a preliminary issue, the Tribunal must determine whether Eastman presented the April RTE to OSCO and NIOC for approval, thus complying with Article 4, paragraph A, of the Materials Procedure in Schedule II of OSCO's General Conditions. Eastman has offered contemporaneous documentary evidence on this point: In addition to a copy of the April RTE itself, evidence of particular relevance is a memorandum, dated 21 October 1979, sent by McMillan to Keith Bengston, Eastman's Middle East and West Africa Division Operations Manager ("McMillan Memorandum"). McMillan reported to Bengston, inter alia, that:

> The original prerequisite for tool export was to follow instructions contained in the "Materials Procedure" clauses in our contract. It required copies of import forms and an inventory to accompany the permission to export forms. We complied fully with this requirement.... (emphasis added)

88. At the Hearing and in his first affidavit, McMillan testified that the April RTE was presented to OSCO and NIOC, together with all the contractually required documentation.

89. In support of their contention that Eastman did not submit the April RTE, the Respondents rely on the affidavits from Saghian and Sadri. Saghian asserted that he does not remember having negotiated this RTE with McMillan or Bavarsai. Sadri, in his first affidavit, stated that no documents concerning the exportation of Eastman's excess equipment were presented to NIOC. But in his supplemental affidavit, while confirming his previous statement, Sadri added that McMillan did not submit to NIOC a new exportation

application. It is not clear to the Tribunal whether by this Sadri implied that an export application had been previously submitted by Eastman, but NIOC required that Eastman submit a new one, or whether he was referring to the June RTE. The Tribunal notes that the Respondents submitted no documentary evidence in support of their position.

90. After reviewing all the evidence before it, the Tribunal is persuaded that the April RTE was presented by Eastman to NIOC and OSCO.

91. The Tribunal must now consider whether Eastman has established that the deprivation it complains of was caused by actions and inactions by the Respondents and that this deprivation was not the result of Eastman's own failure to act. In deciding this question, the Tribunal will take into account that Eastman submitted the April RTE to OSCO and NIOC, and that the latter approved the June RTE.

92. The Claimant has produced evidence showing that shortly before and after McMillan executed contract 280 on 21 August 1979, NIOC established a series of conditions for the export of Eastman's excess equipment:

(1) the requirement that Eastman establish credit with OSCO;
(2) a reconciliation of Eastman's invoices with OSCO's payments;
(3) the issuance of a letter to this effect by Dabir Hajian Tehrani, a high-ranking NIOC official; and
(4) finally, the examination of Eastman's export request by a three-man NIOC committee in Tehran ("the Conditions").

The establishment of the Conditions by NIOC is described in the two McMillan affidavits (see supra, para. 32). In his testimony at the Hearing, McMillan fully confirmed these statements. The Claimant also offered contemporaneous

documentary evidence on this point, among which the Tribunal considers the McMillan Memorandum to be of particular relevance. In October 1979, McMillan reported to his supervisor in Athens on the subject of Eastman's tool export application. This report stated that:

> We complied fully with this requirement [i.e. to follow the provisions in OSCO's Materials Procedure regarding tool export].... Then came the stipulation that we sign our original contract effective May 1977 through April 1980. We did this. Next, OSCO stated that it would be necessary for EW to establish credit with OSCO; we did this via clearance of invoices. Now however, they insist that a full reconciliation be issued by them and a cover letter be issued by Assistant Vice-President and Deputy Chairman, Mr. Tehrani. ... Our "case" - application for tool export - will be presented to a three-man N.I.O.C. committee on November 1, 1979 in Tehran, by Mr. Sadri himself, a member of the committee. He stated very strongly to me that OSCO had illegally withheld permission to export, procedure for which is outlined in our contract....

93. The Claimant further presented in evidence copies of contemporaneous telexes sent by McMillan to Eastman's Houston and Athens offices which also reflect the establishment of the Conditions by NIOC. On 21 August 1979 McMillan reported that the "pre-requisite" for the excess tool export "is that sufficient invoices have to be cleared, thus ensuring OSCO that E/W does not owe them money." On 26 August 1979 McMillan wrote: "We have [approval] to export excess equipt, [but] need to iron-out two or three points re our OSCO acct. and re contract, before a letter permittin[g] us to move it is signed." Finally, on 1 September 1979, McMillan informed Eastman's Houston office that permission for tool export "is appar[e]ntly dependant upon us satisfying OSCO that E/W is in credit with them...." At the Hearing, McMillan testified that Eastman met the condition that it establish credit with OSCO. McMillan further testified that Eastman was never informed of the decision of the three-man NIOC committee that supposedly was to examine

Eastman's tool export request in November 1979. McMillan also stated that Eastman never received the letter from Dabir Hajian Tehrani of NIOC attesting that the invoices had been reconciled. NIOC apparently concluded the reconciliation of Eastman's invoices with OSCO's payments in June 1980, as the Tribunal infers from NIOC's 17 June 1980 letter to Eastman's Ahwaz office, by which NIOC stated its position regarding the payability of Eastman's outstanding invoices (see supra, para. 58).

94. The evidence shows that while Eastman had complied with all the contractual requirements for tool export, and was attempting, to the extent possible, to comply with the conditions set by NIOC, NIOC was not responding by taking the necessary decisions and, to the contrary, raised new obstacles to the re-export of the Claimant's Service Plant. In the Tribunal's view, the most reasonable explanation for NIOC's refusal to allow Eastman to re-export its excess equipment is that NIOC might have believed that Eastman owed OSCO money, since NIOC had found out, apparently after a copy of contract 280 had been sent to Ahwaz, that Eastman's invoices rendered after May 1977 did not include the volume discounts provided for in the contract, and that Eastman had overcharged OSCO for the rental of Shock Tools. The Tribunal notes that this is not a defense that has been raised by the Respondents, and that the Respondents themselves state that the reconciliation of Eastman's invoices with OSCO's payments had "no link whatsoever" with the issue of the export of Eastman's excess equipment. In view of the circumstances of this Case, the Tribunal determines that it is not material whether or not the reasons stated above may have justified NIOC's refusal to allow export of Eastman's excess equipment during 1979.

95. On the basis of the evidence before it, the Tribunal finds that Eastman took all reasonable steps to export its excess equipment, but that Eastman's efforts were

thwarted by OSCO's and NIOC's failure to cooperate. In particular, the Respondents unjustifiably refused to process the April RTE, and the conditions imposed by NIOC on Eastman had no contractual foundation and were unwarranted and unreasonable obstacles to Eastman's right to export its excess equipment.

96. The Tribunal is persuaded that the export of the equipment listed on the June RTE likewise was prevented by NIOC and OSCO. The Respondents' allegation that Eastman most probably exported this equipment is unsupported by any proof. Certificates from Iranian Customs showing that this equipment had been cleared for export should have been accessible to the Respondents and could have been produced by them. The Tribunal further notes that pursuant to Paragraph C of Article 4 of OSCO's Materials Procedure, upon receipt of the RTE, approved by OSCO and endorsed by NIOC, Eastman would "effect shipment in accordance with [OSCO's] directions." The Respondents neither proved or even alleged that OSCO provided Eastman with any directions.

97. Based on the foregoing, the Tribunal finds that by preventing the Claimant from exporting its Service Plant, NIOC deprived the Claimant of the effective use, benefit and control of the equipment listed on the April and June RTEs in breach of contract, as well as constituting an expropriation for which the Government of Iran bears responsibility.[9]

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[9] The Full Tribunal observed in the Oil Field of Texas case that it is "clear that NIOC is one of the instruments by which the Government of Iran conducted and currently conducts the country's national oil policy". Oil Field of Texas, Inc., supra, at 14. International Law recognizes that a State may act through organs or entities not part of its formal structure. The conduct of such entities is considered as an act of the State when undertaken in the governmental capacity granted to it under internal law. See Article 7 (2) of the Draft Articles on

(Footnote Continued)

Under international law, a deprivation or taking of property may occur through interference by a State in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected. See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 at 10-11 (24 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225.

98. In determining the date of the breach and expropriation, the Tribunal takes into consideration that the Parties continued to negotiate the export of the equipment listed on the April and June RTEs at least until November 1979 when McMillan left Iran. Moreover, in light of NIOC's refusal to permit export, the Claimant chose to rent to OSCO certain unspecified equipment from the April RTE at least until October 1979. The Tribunal finds that these actions by the Claimant show a certain measure of control over the equipment and are inconsistent with a finding that the equipment was expropriated in July 1979, as argued by the Claimant.

99. On 10 December 1979, OSCO terminated contract 280 effective 10 February 1980. The Tribunal finds that by 10 February 1980, at the latest, the equipment should have been released by NIOC. By this date the reconciliation of OSCO's payments with Eastman's invoices, which already had begun in late summer 1979, reasonably should have been completed by NIOC. In view of the Tribunal's finding, supra, with respect to invoices and retentions, it is clear that Eastman would not have owed money to NIOC. Therefore, even assuming

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(Footnote Continued)
State Responsibility adopted by the International Law Commission, Yearbook International Law Commission 2 (1975), at 60. The 1974 Petroleum Law of Iran explicitly vests in NIOC "the exercise and ownership right of the Iranian nation on the Iranian Petroleum Resources." NIOC was later integrated into the newly-formed Ministry of Petroleum in October 1979.

that in 1979 NIOC might have been justified in blocking the export of the equipment in view of the invoice dispute, by February 1980 there would have been no justification for such behavior. The Tribunal therefore finds that the equipment listed on the April and June RTEs was expropriated as of 10 February 1980. Accordingly, the Respondents are liable to compensate the Claimant for its loss as of that date.

100. Eastman claims that its losses were not limited to equipment listed on the two RTEs, because those lists omitted equipment that was being rented to OSCO when the lists were compiled. Eastman has submitted a Field Equipment Inventory, dated 31 August 1979, purportedly listing all of the equipment that it owned and rented to OSCO (with the exception of certain Cougar equipment that Eastman also owned). Eastman argues that this Inventory should be used in identifying the equipment that was taken by NIOC.

101. There is no dispute that there was equipment rented from Eastman on OSCO's rigs throughout 1979. Some of this equipment presumably remained on the rigs when NIOC terminated contract 280. Eastman never submitted an RTE covering equipment that was not already listed on the April or June RTEs. However, in its telex responding to NIOC's termination of the contract, Eastman expressed its desire "to export our service plant as soon as possible" and cited the relevant provisions of the contract. The telex concluded by informing NIOC that Bavarsai would contact it to arrange for the export of Eastman's Service Plant. There is evidence that an Eastman employee did have further discussions with NIOC sometime in early 1980 and was told that NIOC might soon permit the export of the equipment (see supra, para. 33 in fine). However, it is clear that no equipment was ever exported. The Respondents state that they have no knowledge of what happened to the equipment that was on the rigs during 1979.

102. The 31 August 1979 Inventory allegedly includes equipment not listed on either RTE. However, the correlation between the Inventory and the RTEs is insufficient to identify the equipment at issue here. Also, Eastman acknowledges that some of the equipment listed on the April RTE was subsequently rented to OSCO. Other equipment was returned by OSCO to Eastman during 1979. Hence, the equipment that remained on the rigs when NIOC terminated the contract could have included some equipment that was listed on the April RTE. Eastman's explanations and the evidence upon which it relies do not enable the Tribunal to identify any additional equipment that was left on the rigs and not listed on an RTE. In view of the fact that the Tribunal, on the basis of the evidence presented, is unable to identify the equipment that remained on the rigs when contract 280 was terminated, it need not to decide whether Eastman took all reasonable steps to export that equipment, and whether NIOC is liable for Eastman's losses.

c. Third Party-owned Equipment

103. With respect to the Dailey Jars and the Shock Tools, owned by Dailey and OPI, respectively, the Tribunal notes that the Claimant submitted no proof in its pleadings that it was ever invoiced by these companies for the loss of their tools, as provided for under the Agency and License Agreements (see, supra paras. 65-66), nor that it ever paid Dailey and OPI any compensation for this loss. At the Hearing, the Claimant's representative stated that both Dailey and OPI had sought compensation from Eastman for the loss of their equipment. According to the representative, Eastman agreed to pay $200,000 to Dailey, plus 40% of any amount above $500,000, up to $1,584,000, awarded to Eastman for the taking of Dailey's equipment. OPI, it was alleged, filed a lawsuit against Eastman, following the failure of negotiations over the amount owed to OPI. OPI subsequently

went into receivership, but the lawsuit was said still to be pending.

104. The Tribunal finds that this tardy statement, which in any event lacked corroborating documentary evidence, is inadmissibly late and cannot be accepted. Consequently, there is no proof of actual damage as a consequence of the Respondents' refusal to allow the export of the Dailey Jars and Shock Tools. While a bailee may have rights to recover the value of converted property under domestic laws, the Tribunal is aware of no precedent in international law permitting a bailee to recover the value of expropriated property. Compensation for such property is owed to the owner of such property or the State of which he is a national. Merely hypothetical damage does not constitute a sufficient basis upon which to find liability by the Respondents. The Tribunal concludes, as a result, that the Claimant has not borne its burden of proof on the issue of damages. Accordingly, the claim relating to equipment owned by third parties must be denied for lack of proof.

d. Valuation of the Equipment

105. Under principles of international law as well as in application of the Treaty of Amity between Iran and the United States[10], the Claimant must be compensated for the deprivation it suffered in an amount equivalent to the full value, or "full equivalent"[11], of the expropriated

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[10] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900.

[11] The relevant provision of the Treaty of Amity is found in Article IV, paragraph 2, which provides:

(Footnote Continued)

equipment. See, for example, Tippetts, Abbett, McCarthy, Stratton, supra, Phelps Dodge Corp. and Overseas Private Investment Corp. and Islamic Republic of Iran, Award No. 217-99-2 (19 March 1986), reprinted in 10 Iran-U.S. C.T.R. 121. The Tribunal therefore must determine what is the "full equivalent" of the Eastman-owned equipment listed on the April and June RTEs.

106. The Claimant asserts that the fair market value of the expropriated equipment to which it is entitled is equal to its replacement value. Eastman derived this value mainly from its 1979 Export Price List. Eastman's calculations have been reviewed by Austin Jones, a consultant in specialized oil field products. Jones has oil field experience of 37 years, and during the last 20 years he has been involved with companies directly related to the directional drilling business, also with responsibility in terms of equipment valuation. In his two affidavits and in his testimony at the Hearing, Jones asserted that the fair market value of Eastman's equipment was its replacement value. The reasons for this were the extremely high demand for directional drilling equipment in the Middle East in 1979, the necessity that this equipment be continually maintained in an "as-new" condition, and the inflation rate. At the Hearing, Jones testified that used equipment of the kind owned and rented

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(Footnote Continued)

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

by Eastman is worth the same as new equipment because the rental rates are the same for used and new equipment. Jones asserted that he found the replacement values claimed by Eastman with respect to each item of equipment to be fair and reasonable. The replacement value stated by the Claimant for the equipment listed on the April and June RTEs that was owned by Eastman totals US$2,350,405.50. Except as explained infra with respect to "stabilizer sleeves", Eastman's 1979 Export Price List substantiates its claim for this amount.

107. With respect to the stabilizer sleeves, the US$2,350,405.50 sought by Eastman for the equipment that it owned includes US$661,569 for 286 stabilizer sleeves. However, according to Eastman's 1979 Export Price List, those stabilizer sleeves, if new, would cost only US$352,393. In addition, the evidence indicates that only 107 of the stabilizer sleeves were new; the remaining 179 had been used. According to one of the Claimant's affiants, stabilizer sleeves are expendable equipment; they are sold, rather than rented, and essentially are consumed in the drilling process, whether or not returned to the Claimant's warehouse after use. The Tribunal concludes that Eastman should receive no compensation for the taking of used stabilizer sleeves but should receive the full replacement value for the taking of new stabilizer sleeves. Accordingly, US$661,569 will be subtracted from the amount of US$2,350,405.50. The replacement value of the 107 new stabilizer sleeves was US$119,717; that amount will be awarded separately. There were also fifty stabilizer sleeves listed on the June RTE. These were evidently new stabilizer sleeves, worth US$908 each. However, Mr. Jones mistakenly valued them at US$2,269 each, Eastman's price for stabilizer bodies. A further US$68,050 must therefore be subtracted from the amount of US$2,350,405.50.

108. While the Tribunal has some doubts that used directional drilling equipment, even when maintained as good as new, would normally have the same fair market value as new directional drilling equipment, the only evidence in

the Case, as noted supra, para. 106, indicates that the Claimant's used equipment did have such a value as a result of the unusual circumstances at that time. The Respondents have introduced no evidence to the contrary. In their pleadings, the Respondents did not address at all the issue of the value of Eastman's equipment. At the Hearing, the Respondents argued that the amounts shown on the RTEs, supra, paras. 27-28, should be accepted as the value of the equipment ("RTE-value"). The RTEs list equipment owned both by Eastman and third parties. While the RTEs indicate an aggregate value for all this equipment, they fail to mention a value for each individual item. Under these circumstances, the Tribunal would not be able to determine the RTE-value of the equipment owned by Eastman. Accordingly, the RTEs do not constitute an adequate basis for the valuation of the expropriated equipment and no other evidence was adduced by the Respondents. The Tribunal, having no evidentiary basis for a different conclusion, finds that an appropriate measure of the fair market value of the equipment is its replacement value as reflected in Eastman's 1979 Export Price List. Accordingly, the Tribunal awards the Claimant US$1,620,786.50 for the taking of its rental equipment, plus US$119,717 for the stabilizer sleeves, making a total of US$1,740,503.50. Interest shall run from the date of the deprivation, 10 February 1980.

e. Loss of Profits

109. Eastman argues that it was deprived of the use of its directional drilling equipment at a time of particularly heavy demand for equipment of this kind. Eastman asserts that this equipment could have been utilized on another contract within one month from its export from Iran. Eastman claims that as a result of the unavailability of the equipment, it lost profits for at least one year, since the lead time to obtain new equipment was twelve months.

110. The Tribunal notes that the Claimant has failed to provide evidence that in 1979 and 1980 lead times for delivery of Eastman equipment from manufacturing locations were actually twelve months. The Tribunal further notes that the Claimant has not introduced any evidence, such as invitations to tender or inquiries by potential customers, in support of its claim that subsequent to the deprivation of its equipment it could have rented such equipment at a profit. The Tribunal finds that the Claimant has not adequately substantiated its claim for lost profits; accordingly, this claim must be dismissed. In these circumstances, the Tribunal need not decide whether alleged lost profits would otherwise have been recoverable.

D. Counterclaims against Eastman

1. Breach of Contract Counterclaim

111. NIOC claims that Eastman withdrew its personnel from Iran in December 1978 and thereby breached its contract with OSCO. NIOC also alleges that Eastman failed to return equipment owned by OSCO. In compensation for its alleged damages from this breach of contract, NIOC seeks the return of the equipment, plus an award equal to 10% of Eastman's total income under contract 280 -- viz., US$240,000. Eastman accepts the Tribunal's jurisdiction over this counterclaim but argues that it has no merit.

2. Advance Payments Counterclaim

112. NIOC claims that it made excess advance payments upon Eastman's invoices amounting to US$322,664. NIOC acknowledges having recouped these alleged overpayments from Eastman's SIO retentions; it has filed this counterclaim simply to preserve its claim for reimbursement of the

US$322,664. Converted at the rate of 70.35 rials/US$1, the amount claimed here is equivalent to 22,699,422 rials, the amount at issue in Eastman's Retention Claim. See supra, para. 38. Eastman denies that NIOC made excess payments upon its invoices; in its Invoice Claim, Eastman, of course, contends that its accounts show a balance still due from NIOC. See supra, para. 35.

3. Counterclaims for Social Security Premiums and Taxes

113. NIOC claims that Eastman owes 40,801,343 rials in unpaid social security premiums. NIOC has also filed a counterclaim for unpaid taxes. NIOC initially sought 9,418,761 rials; in a Supplementary Brief, NIOC increased the amount of its tax counterclaim to 13,891,148 rials. Eastman argues in response that these counterclaims lie outside the jurisdiction of the Tribunal.

4. Counterclaim for Severance Pay, Unpaid Salary and Other Benefits

114. NIOC alleges that Eastman failed to pay indemnities owing to Keshvar Karimi, Eastman's office manager in Ahwaz. NIOC submitted a document evidencing a judgment for severance pay, one month's salary and other benefits rendered on 13 September 1980 in favor of Karimi by the "Workshop Council" of Khuzestan Province. The Workshop Council ruled that Eastman was liable to pay Karimi a total of 648,490 rials. NIOC further produced a letter sent to OSCO by the Execution Board of the Ahwaz Public Court ("Court") on 9 February 1981, by which the Court requested OSCO to "earmark" the amount determined by the Workshop Council "from the convicted firm's claims with you, and remit the same to us." NIOC asserts that in compliance with

the Court's order, it earmarked 163,587 rials "from a part of the Eastman invoices payable for" August and September 1979, and paid this sum to the Court in March 1981. As proof of payment, NIOC presented in evidence a check for 163,587 rials, drawn by NIOC in favor of the Court. NIOC explained that it paid only this sum, and not the entire amount granted by the Workshop Council, since at the time of the enforcement of the Council's ruling Eastman "did not have more than" 163,587 rials with NIOC. NIOC asserts a counterclaim in the amount of 484,903 rials, representing the unpaid balance of the amount granted by the Workshop Council.

5. Counterclaim for Miscellaneous Costs

115. NIOC submitted an additional counterclaim in its Response of 10 October 1984 to the Claimants' Comments to the Statement of Defense. This counterclaim seeks US$2476 in reimbursement of local utility charges and miscellaneous costs. Eastman contends that the counterclaim has no merit.

E. Merits of Counterclaims against Eastman

1. Breach of Contract of Counterclaim

116. There is no dispute that the Tribunal has jurisdiction over this counterclaim. NIOC has submitted internal documents to support its assertion that the departure of Eastman's experts hindered NIOC's efforts to control a blow-out by drilling a directional relief well. These documents do provide many technical details relating to certain relief-well drilling operations. However, they do not in any way show that Eastman failed to perform a contractual duty and was thereby responsible for any of NIOC's expenses in connection with the relief well. In the absence

of evidence that connects Eastman and contract 280 with NIOC's drilling evidence, the latter is irrelevant. Other evidence in this Case shows that Eastman provided drilling services and tool rentals whenever requested to do so by NIOC. Accordingly, the Tribunal finds that this counterclaim must be dismissed for lack of proof.

2. Advance Payments Counterclaim

117. The Tribunal's decision in Eastman's Invoice Claim is dispositive of this counterclaim. NIOC's payments to Eastman were not in excess of what NIOC owed to Eastman. On the contrary, NIOC still owes Eastman US$391,043. See supra, para. 61. The Tribunal therefore dismisses this counterclaim on the merits.

3. Counterclaims for Social Security Premiums and Taxes.

118. The Tribunal has consistently held that it has no jurisdiction over counterclaims for unpaid social security premiums. The asserted obligation to pay these premiums is "imposed not by the contract that is the subject matter of the claim, but by operation of the applicable Iranian Social Security law." Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, at 39 (25 Sept. 1985), reprinted in 9 U.S. Iran-U.S. C.T.R. 107, 135, and Awards there cited. The rationale of the jurisdictional bar against counterclaims for unpaid social security premiums also applies, mutatis mutandis, against counterclaims for unpaid taxes. See id. at 39, 9 Iran-U.S. C.T.R. at 134. The Tribunal therefore dismisses NIOC's counterclaims for social security premiums and taxes for lack of jurisdiction.

4. Counterclaim for Severance Pay, Unpaid Salary and Other Benefits

119. Karimi's claim against Eastman evidently arose in 1980. The court order that required NIOC to earmark from amounts owed by NIOC to Eastman the sum awarded to Karimi by the Workshop Council was issued on 9 February 1981. If NIOC's counterclaim arose from that court order, it would not be outstanding within the meaning of the Claims Settlement Declaration, because the order was issued after the Algiers Accords. However, if Karimi's claim itself gave rise to NIOC's counterclaim, then the latter would, of course, be outstanding. The Parties have not addressed this question. In the Tribunal's view, the court order by its nature implied that, to the extent NIOC complied with it by paying Karimi, NIOC succeeded to Karimi's rights against Eastman. NIOC's counterclaim for reimbursement of funds actually paid therefore arose in 1980, when the underlying claim arose, not in 1981, when the court ordered it to earmark funds.

120. Eastman does not deny that Karimi was one of its employees involved in its work for OSCO and that she had an employment contract with Eastman. Further, there is no dispute that Karimi's claim for severance pay and other benefits arose from that employment contract. The Tribunal therefore turns to the merits of this counterclaim.

121. NIOC has proven that it paid 163,587 rials in response to the court order to earmark 648,490 rials, the amount of the Workshop Council's award. NIOC now seeks 484,903 rials, the difference between the award and the amount it actually paid. Not having paid the 484,903 rials, NIOC lacks standing to counterclaim for it. However, as, in effect, Karimi's successor for the portion of the award that it did pay, NIOC is entitled to reimbursement of that amount. The Tribunal therefore awards NIOC 163,587 rials

for this counterclaim. For the purpose of setting off this award against amounts awarded to the Claimant, 163,587 rials is equivalent to $2,169, at the rate of 75.419 rls./$1, the average rate of exchange in March 1981. See International Monetary Fund, International Financial Statistics, supra. Interest on this amount will run from 15 March 1981, the date of NIOC's payment to the Court.

5. Counterclaim for Miscellaneous Costs

122. NIOC has submitted no evidence in support of its counterclaim for miscellaneous costs. The Tribunal therefore dismisses this counterclaim.

V. SEAHORSE CLAIMS AND COUNTERCLAIMS

A. Facts and Contentions

123. The Seahorse Claims and Counterclaims arise principally from the Operating Agreement, a contract concluded on 1 June 1975 between the Iranian Pan American Oil Company and Eastern Offshore Boats, Inc. (the predecessor of Seahorse Fleet, Inc.; referred to hereinafter as "Seahorse"). Seahorse agreed in this contract to operate three of IPAC's vessels for three years, beginning 1 August 1975: The tug Maryam and the workboats Ladan and Laleh. The Operating Agreement required Seahorse to maintain and repair the vessels at its own expense, "ordinary wear and tear excepted." The contract then defined "ordinary wear and tear" as that "which would occur in normal commercial use notwithstanding good commercial maintenance practices." The contract also required Seahorse to drydock each vessel, at its own expense, at least once every two years for normal maintenance. The workboats Laleh and Ladan were drydocked for maintenance and repair work in April and May 1978,

respectively. Seahorse did not put the Maryam into drydock during the final months of the Operating Agreement; that ship's previous drydocking had been in September 1976.

124. Payment for Seahorse's services was fixed, per vessel, at daily rates in both dollars and rials. If a vessel broke down or became inoperative, payments to Seahorse were to cease -- but only if total "downtime" in a given month exceeded forty-eight hours. The 48-hour allowance was called "compensable downtime." Seahorse was allowed to accumulate up to twenty days per year of compensable downtime. This time could be applied against interruptions in the operation of a vessel that would otherwise reduce Seahorse's fees.

125. Seahorse and IPAC also concluded two Time Charter Agreements in 1975. Under these two, essentially identical contracts, IPAC chartered two vessels, the Coral Seahorse and the Emily L., from Seahorse. The charters under these agreements ran for three years, from 1 May 1975.

126. Disputes between Seahorse and IPAC arose during July 1978, near the end of the term of the Operating Agreement: On 2 July 1978, Seahorse wrote to IPAC, requesting reimbursement for part of the cost of drydocking the Laleh, on the grounds that the charge involved the repair of ordinary wear and tear. Seahorse has submitted a copy of that letter to the Tribunal. Seahorse alleges that it sent IPAC a similar letter concerning the Ladan at the same time, but it has not submitted a copy of that letter to the Tribunal. There is no response from IPAC to Seahorse in the record. Internal communications submitted by the Respondent show that, around the same time, IPAC had decided to demand payment from Seahorse for at least 23/24 of the cost of drydocking the Maryam (which was next due to occur in September 1978), and to withhold payment of Seahorse's July 1978 invoices for all three vessels until it obtained

satisfaction.[12] In a telex dated 30 July 1978, IPAC explained to Seahorse why, under its interpretation of the contract, it expected Seahorse to pay for the next drydocking of the Maryam. Other evidence indicates that IPAC demanded US$40,000 from Seahorse for the cost of drydocking the tug. Seahorse responded by telex on 28 August 1978 as follows:

> We still do not agree with you[r] contention that our drydocking of Sept 76 does not fulfill our requirement to drydock this vessel [Maryam] however for the sake of good relations with IPAC we will agree to pay a fixed amount prior to the vessel going on drydock.

Noting that IPAC had "previously agreed to compensate [Seahorse] for downtime," Seahorse offered to pay US$17,941 for the drydocking of the Maryam. This amount represented the average cost per vessel of drydocking the Ladan and Laleh, US$34,225, minus US$16,284 for accumulated downtime. The telex also informed IPAC that the surveyor's estimate for the cost of repairs to the Ladan and the Laleh was US$1,830 and US$3,570, respectively. Seahorse called these amounts "reasonable" and agreed to pay them. IPAC rejected this offer and continued to withhold payment of the July 1978 invoices.

127. Nearly one year later, on 10 August 1979, Seahorse sent IPAC a telex in which it suggested a settlement of all disputed claims regarding the Ladan, Laleh and Maryam. For the Maryam, Seahorse proposed subtracting US$16,284, the amount of compensable downtime, from US$40,000, the amount

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[12] For example, in an internal telex dated 11 August 1978, it is stated that:

> [IPAC] WILL WITHHOLD PAYMENT OF [SEAHORSE'S] JULY INVOICE FOR MARYAM, LALEH AND LADAN UNTIL COMPLETION OF DRYDOCKING OF MARYAM AND CORRECTION OF CERTAIN DEFICIENCIES OF LALEH AND LADAN.

claimed by IPAC for drydocking the tug. Seahorse also agreed to pay US$8,830 for repairs to the Ladan, and added US$3,740, the "previously agreed amount due IPAC by Seahorse," for the Laleh. Seahorse offered to deduct the total, US$36,286, from US$111,540.53, the amount that IPAC owed it for its July 1978 invoices. The net amount due to Seahorse would then be US$75,254.53. There is no direct response to this telex in the record. However, in a telex dated 19 December 1979, IPAC questioned the figure of US$111,540.53 and stated that, according to its records, the amount due to Seahorse was US$90,892. IPAC also inquired about actions by Seahorse "re delivery of Ladan tail shaft and fire pump as reflected in our previous correspondence." In response, Seahorse sent IPAC a telex on 4 January 1980 listing five invoices -- three for the operation of the three vessels in July 1978 and two for repairs to the workboats Ladan and Laleh -- totaling US$112,642.56. The telex explained that the repairs were necessary because of the age of the two workboats. The telex did not mention the Ladan's tail shaft and fire pump. Finally, IPAC sent two letters to Seahorse in 1980. In the first, 10 June, IPAC rejected the invoices for the repairs to the two workboats. In the second, 24 June, IPAC described its objections to two of Seahorse's July 1978 invoices, claimed US$70,000 for the drydocking of the Maryam and the two workboats, and claimed US$15,247 to cover the "estimate[d] cost" of the Ladan's tail shaft and fire pump.

B. Seahorse Claims

1. Invoice Claim

128. This claim involves eight invoices. Invoices nos. 12755-23 and 12757-23 charge IPAC for Seahorse's services on the workboats Laleh and Ladan during July 1978. NIOC contends that these two invoices should be reduced to account

for allegedly excessive downtime (i.e., actual downtime, or "off-hire" hours, minus accrued compensable downtime). Invoices nos. 12907-23 and 12908-23 present Seahorse's claim for reimbursement of the cost of repairing "ordinary wear and tear" when the two workboats were drydocked in April and May 1978. NIOC argues that these costs should be borne by Seahorse. The remaining four invoices are no longer in issue: NIOC agrees that invoice no. 12759-23, for the operation in July 1978 of the Maryam, should be paid in full. (However, NIOC claims that this invoice and those for the two workboats are subject to tax and social insurance deductions.) NIOC has also accepted invoice no. 13297-23, covering its share of the cost of surveying the Coral Seahorse. Finally, Seahorse agrees that it owes IPAC US$1,202.87 upon two credit invoices, nos. 10408-38 and 10587-38, relating to the Coral Seahorse and the Emily L. The following table summarizes the invoices and amounts involved in Seahorse's invoice claim:

Invoice No.	Subject		Amount
12755-23	Laleh, July 1978	US$	29,140.00
12757-23	Ladan, July 1978		29,140.00
12907-23	Ladan repairs		14,550.57
12908-23	Laleh repairs		7,199.99
12759-23	Maryam, July 1978		32,612.00
13297-23	Coral Seahorse survey		100.84
10408-38	Coral Seahorse credit		(1,135.47)
10587-38	Emily L. credit		(67.40)
	TOTAL CLAIMED BY SEAHORSE:	US$	111,540.53

2. Retention Claim

129. Seahorse seeks the release of US$296,291.42 that IPAC retained from payments under the Operating Agreement and the two Time Charter Agreements. The purpose of these

retentions was to secure Seahorse's payment of its social insurance contributions. Through its agent, Fast Shipping & Services, Ltd. ("Fast Shipping"), Seahorse obtained an SIO clearance certificate and submitted it to IPAC in July 1979. NIOC acknowledges that IPAC received the clearance certificate; however, NIOC claims that it did not cover all five ships and was not a "final" clearance certificate. NIOC contends that Seahorse still owes money to the SSO and therefore is not entitled to its retention money. Seahorse replies that, regardless of whether it was able to obtain a "final" clearance certificate for all five ships, it is entitled to the release of its retentions because it satisfied its social insurance obligations and could not have obtained another clearance certificate because of conditions in Iran in 1979.

C. Merits of Seahorse Claims

1. Invoice Claim

130. Three of Seahorse's July 1978 invoices under the Operating Agreement remain unpaid. NIOC argues that there should be deductions in two of them to account for excess downtime. According to NIOC, the Ladan was out of service for 124 hours more than its accrued compensable downtime; similarly, the Laleh's downtime allegedly exceeded its accrued compensable downtime by ten hours. This would require deductions of US$4,856 and US$392 in invoices nos. 12757-23 and 12755-23, respectively. Moreover, since NIOC allegedly paid the corresponding rial invoices in full, acceptance of NIOC's position would entail further adjustments totaling US$397. Seahorse maintains that the invoices are payable in full. It contends that NIOC has not proven how much actual downtime the two workboats experienced in July 1978, nor how much compensable downtime they had accrued. NIOC also claims, while Seahorse denies, that there should be

deductions from the invoices for the contractor's tax and an SIO retention, totaling 10.5%.

131. To support its objections to these invoices, NIOC submitted copies of the workboats' Service Time Tickets; they record one month's downtime but do not indicate the accrued compensable downtime for each vessel. In one set of Service Time Tickets, the tickets show the date as "July 1978"; another set in the same submission is identical, except that the tickets are dated "July 1979." In its final submission, NIOC provided a set of tables entitled "Vessel Down Time." These show monthly "actual downtime" and "accrued allowable downtime" from August 1977 through July 1978 for the two workboats. These tables lack details, such as a letterhead or signatures, that would aid in authenticating them. They quote some provisions of the Operating Agreement but misstate the contract's term.

132. In assessing this evidence, the Tribunal notes that IPAC originally withheld payment of Seahorse's three July 1978 invoices for reasons entirely unrelated to the validity of the invoices: These invoices gave IPAC leverage over Seahorse in the Parties' dispute concerning the drydocking of the Maryam. In its telex to Seahorse dated 19 December 1979, IPAC admitted that its own records showed that it owed Seahorse US$90,892 -- exactly the amount of the three July 1978 invoices.[13] It was not until 24 June 1980 that IPAC sent Seahorse a letter stating its current objections to the invoices for the Ladan and the Laleh.

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[13] This telex, in relevant part, reads:

WE HAVE COME ACROSS A DISCREPANCY IN THE AMOUNT DUE SEAHORSE BY IPAC WHICH NEEDS TO BE CLARIFIED. AS PER YOUR TELEX OF AUGUST 10, 1979. REF. NO. 0957 THIS AMOUNT IS US DOLLARS 111,540.53 WHEREAS OUR BOOKS INDICATE THIS AMOUNT TO BE U.S. DOLLARS 90,892. KINDLY

(Footnote Continued)

133. In the opinion of the Tribunal, the evidence might establish each vessel's downtime for July 1978, but it does not show convincingly that the vessels' downtime exceeded their accrued compensable downtime. The fact that IPAC did pay Seahorse's rial invoices for the operation of the two workboats in July 1978 reinforces the impression that IPAC's claims regarding excess downtime were post hoc objections that lack foundation. The Tribunal concludes that invoices nos. 12755-23 and 12757-23, along with no. 12759-23 for the Maryam, are payable in full. Pursuant to a provision of the Operating Agreement, monthly invoice payments are subject to a 5.5% deduction for the contractor's tax. The Operating Agreement also provided for a 5% retention to secure Seahorse's payment of its social insurance contributions. However, in view of the Tribunal's decision, infra, para. 147, that retentions from payments under this contract should be released, there will be no social insurance retention from these three invoices. Accordingly, IPAC owes Seahorse US$27,537 each for invoices nos. 12755-23 and 12757-23 and US$30,818 for invoice no. 12759-23.

134. Seahorse's invoices nos. 12908-23 and 12907-23, dated 29 and 30 August 1978, charged IPAC for part of the repairs carried out on the Ladan and the Laleh when those two workboats were drydocked in April and May 1978. In pressing its claim for payment of these invoices, Seahorse acknowledges that it was responsible, under the Operating Agreement, for drydocking the vessels and for maintaining and repairing them. However, Seahorse argues that these invoices charged IPAC for the repair of "ordinary wear and tear" which, under the contract, was IPAC's responsibility. Seahorse has submitted copies of two invoices from Iran Marine Industrial Co. ("IMICO") for the drydocking of the

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(Footnote Continued)
TRANSMIT BREAK-DOWN OF THE AMOUNT IN YOUR RETURN TELEX FOR OUR CONSIDERATION AND FURTHER PROCESS.

Laleh and the Ladan in April and May 1978; they charge Seahorse US$33,450.35 and US$43,282.45, respectively. Seahorse alleges that it paid these invoices in full. The invoices itemize their charges but do not identify those which cover the repair of ordinary wear and tear. Seahorse claims that it sent letters to IPAC, with copies of the IMICO invoices, explaining which charges were IPAC's responsibility. Seahorse has submitted a copy of the letter relating to the Laleh, dated 2 July 1978, but has not submitted a similar letter for the Ladan. NIOC has not submitted evidence that IPAC responded to this letter. In its telex sent to IPAC on 4 January 1980, Seahorse offered to substantiate its assertion that IPAC's representatives were informed in advance and helped to supervise the repairs to the two workboats. Seahorse has not submitted such substantiating evidence to the Tribunal. There is no evidence in the record of an immediate response from IPAC to Seahorse's invoices and its July 1978 letters. IPAC questioned Seahorse's outstanding invoices in general terms in its 19 December 1979 telex. Then, in a letter dated 20 Khordad 1359 (10 June 1980), IPAC flatly rejected the two invoices for repairs to the Ladan and the Laleh.

135. IPAC's letter of 10 June 1980 was not, in itself, a timely objection to Seahorse's invoices. However, the evidence in this case shows that the Parties were involved in several interrelated disputes concerning charges for services and repairs from July 1978 through June 1980. Accordingly, the Tribunal concludes that Seahorse's invoices should be supported with evidence that identifies the charges that were IPAC's responsibility. The Tribunal cannot judge from IMICO's invoices alone which charges were, or were not, for the repair of "ordinary wear and tear," as defined by the Operating Agreement. The Tribunal finds that Seahorse's letter of 2 July 1978 satisfactorily explains the charge in invoice no. 12908-23 for repairs to the Laleh. The absence of an analogous letter for the Ladan undermines

Seahorse's claim for payment of invoice no. 12907-23. The Tribunal therefore decides that invoice no. 12908-23 is payable and invoice no. 12907-23 is not payable. The contractual provision for deduction of the contractor's tax applied to "each monthly invoice"; it does not appear to apply to an invoice for the reimbursement of costs. Hence, the Tribunal finds that IPAC owes Seahorse US$7,199.99 in full payment for invoice no. 12908-23.

136. The following table summarizes the Tribunal's conclusions concerning Seahorse's invoices and presents the net amount due to Seahorse:

Invoice No.	Subject	Amount Payable
12755-23	Laleh, July 1978	US$ 27,537.00
12757-23	Ladan, July 1978	27,537.00
12907-23	Ladan repairs	0.00
12908-23	Laleh repairs	7,199.99
12759-23	Maryam, July 1978	30,818.00
13297-23	Coral Seahorse survey	100.84
10408-38	Coral Seahorse credit	(1,135.47)
10587-38	Emily L. credit	(67.40)
	TOTAL OWED TO SEAHORSE:	US$ 91,989.96

The Tribunal awards Seahorse US$91,990 for the Seahorse Invoice Claim. In view of the dispute between the Parties over these invoices and other charges, the Tribunal decides that the interest on this amount should run from 19 December 1979, the date of IPAC's telex to Seahorse, see supra, para. 132.

2. Retention Claim

137. The Parties agree that IPAC retained US$296,291.42 from payments made to Seahorse. NIOC acknowledges that IPAC still holds the money. These retentions evidently derive

from the operation of the Laleh, Ladan and Maryam under the Operating Agreement and from the charter of the Emily L. and Coral Seahorse under the two Time Charter Agreements: The Operating Agreement provided expressly for a 5% retention from Seahorse's invoices to secure Seahorse's payment of its social insurance obligations. This retention money was to be released "upon presentation of SIO Clearance Certificate(s) by [Seahorse]." The Time Charter Agreements made no provisions for periodic retentions to ensure Seahorse's compliance with social insurance regulations. Those contracts stated instead that "[f]inal payment" would not be made until Seahorse submitted an SIO clearance certificate. However, both Parties refer to "retentions" from payments made for the charter of the Emily L. and Coral Seahorse. An examination of the services, rates and terms of the three contracts confirms that the US$296,291.42 at issue here could not have been retained from payments relating only to the Operating Agreement. The sum of US$296,291.42 must include money retained from payments under the two Time Charter Agreements.

138. In arguing for the release of its retention money, Seahorse claims that in 1979 it submitted a "final" clearance certificate covering the three ships operated under the Operating Agreement, the Laleh, Ladan and Maryam. Seahorse asserts that it should be excused from the obligation to submit clearance certificates for the Emily L. and Coral Seahorse because it was impossible for Seahorse to obtain them in 1979, despite having fulfilled its SIO obligations. NIOC acknowledges that IPAC received a clearance certificate from Seahorse; according to NIOC, the clearance certificate applied only to the Operating Agreement. However, NIOC has submitted a 1986 "Declaration of Debt" from the Social Security Organization ("SSO") which refers to all three contracts; the Declaration states that the total work performed was 277,019,562 rials and that the coverage of the clearance certificate was 187,379,968 rials. NIOC alleges that IPAC

intended in 1979 to release 9,368,968 rials (which is 5% of 187,379,365 rials and is equivalent to US$133,176.51, at 70.35 rials/US$1). Referring to the SSO Declaration, NIOC asserts now that Seahorse owes more money to the Social Security Organization than was retained and therefore is not entitled to the release of any of its retention money.

139. Neither Party has submitted a copy of the clearance certificate that they agree was submitted to IPAC in 1979. Indeed, the Parties have not clarified what they mean by describing a clearance certificate as "final." It would seem from the evidence submitted in this Case that every clearance certificate is "final" according to its own terms -- i.e., with reference to one or more specified contracts and up to a monetary limit of work performed.

140. It appears from the evidence that the time charters ended on 30 April 1978 and the Operating Agreement expired on 31 July 1978. Seahorse closed its office in Abadan on 15 August 1978. The following year, in a telex to IPAC dated 5 July 1979, Seahorse requested that IPAC provide it with a "breakdown of the SIO retention for the M/V Coral Seahorse, M/V Emily L., M/V Ladan, M/V Leleh, [sic] and M/T Maryam." Seahorse informed IPAC that it was appointing Fast Shipping as its official representative "to finalize the SIO matter with IPAC and secure the appropriate retention." The telex then stated:

> It is our intent to have Fast Shipping present IPAC with the final SIO clearance certificates at which time we would like IPAC to present a check to Fast Shipping in the name of Eastern Offshore Boats for the amounts retained.

141. On 23 July 1979, Seahorse informed Fast Shipping by telex that it had received no reply from IPAC to its "repeated telexes regarding [its] intent to resolve the SIO matter." The telex authorized Fast Shipping to contact IPAC

on behalf of Seahorse and requested that Fast Shipping "secure the certificate from SIO." Two days later, Seahorse received a telex from Fast Shipping with the following message:

> Have paid off to insuance [sic] and obtained clearance which delivered to IPAC who require 2/3 weekstime [sic] to deliver your cheque to us stop shall keep you advised of any development.

142. IPAC finally replied to Seahorse's 5 July telex in a telex dated 24 November 1979. IPAC confirmed that Fast Shipping had "provided IPAC with SSO clearance certificate" and concluded: "IPAC is ready to deliver your check in rials to Fast Shipping. Please advise whether or not this check is to be handed over to Fast Shipping." Seahorse rejected IPAC's offer in a telex dated 30 November 1979:

> Considering that the matter of SIO refund is only a portion of total funds due from IPAC, and considering current exchange regulations we are unable to see how payment of SIO to Fast Shipping would satisfy our claims. Therefore, we cannot authorize you to make any payments to Fast Shipping in settlement of our accounts.

The record contains several subsequent communications between the Parties. See supra, paras. 127, 132, 134. In none of them, however, do the Parties mention Seahorse's retention money.

143. Before proceeding further with the merits of this claim, the Tribunal notes that Seahorse's 30 November 1979 telex raises the question whether its retention claim was outstanding on 19 January 1981, as required by the Claims Settlement Declaration. It is apparent from the telex -- and was confirmed by the Claimants at the Hearing -- that Seahorse's first objection to IPAC's offer referred to Seahorse's unpaid invoices. Had that been Seahorse's only objection, its rejection of the offer could be interpreted

as a waiver or suspension of its retention claim. Absent evidence that Seahorse renewed its request for the retention money before 19 January 1981, this would imply that the claim was not outstanding on that date. However, the currency exchange restrictions in effect in Iran and the measures taken by the United States to freeze Iranian assets in response to the seizure of its embassy in Tehran meant that Seahorse would have had great difficulty in late November 1979 in repatriating the retention money that IPAC was offering to it. Hence, the second objection was well-founded, and Seahorse did not waive or suspend its retention claim in rejecting IPAC's offer.

144. There is no direct, contemporaneous evidence that shows which contracts or how much work were covered by the clearance certificate. The telexes just quoted imply that the clearance certificate applied to all five vessels and thus covered the Operating Agreement and the two Time Charter Agreements. However, both Parties in their pleadings state that the clearance certificate submitted on Seahorse's behalf by Fast Shipping to IPAC covered the Operating Agreement only. Because the Parties are in agreement on this point, the Tribunal holds that Seahorse obtained a clearance certificate only for that contract. Seahorse admits that Fast Shipping was not able to obtain clearance certificates for the two Time Charter Agreements. Seahorse contends that its inability to obtain these clearance certificates, however, should not preclude it from recovering the funds retained by IPAC under the Time Charter Agreements because it complied with all its SIO obligations.

145. The Tribunal already has found that the non-production of an SIO clearance certificate, per se, does not justify a continued retention of SIO withholdings. A party claiming reimbursement of such funds who, because of force majeure, had not been able to produce a clearance certificate would have a right to repayment of SIO

retentions if it could prove that it had paid its debts to the SIO. See, e.g., Combustion Engineering, Inc., et al. and Islamic Republic of Iran, et al., Award No. 506-308-2, para. 67 (18 Feb. 1991). In this Case, Seahorse has not offered any evidence showing that it paid its debts to the SIO with respect to the two Time Charter Agreements. For this reason, the Seahorse Retention Claim must be dismissed to the extent that it relates to these two agreements.

146. With respect to the Operating Agreement, it is undisputed that Seahorse obtained a clearance certificate. NIOC admitted that the total amount cleared by the SIO was 187,379,365 rials. NIOC asserted, however, that the amount owed by Seahorse to the SIO is much more than the amount of the retained funds, and that, consequently, Seahorse is not entitled to the release of any of its retention money. The Tribunal rejects this argument. The presentation of the clearance certificate triggered OSCO's contractual obligation to release the retention money. The legal relationship between Seahorse and the SIO is an issue that lies outside the Tribunal's jurisdiction and cannot be raised by NIOC as a defense against Seahorse's claim.

147. Based on the foregoing, the Tribunal finds that Seahorse is entitled to the release of the funds withheld by IPAC, and which NIOC admits to be 9,368,968 Rials. This amount is equivalent to US$132,940 when converted at the rate of exchange of 70.475 rials/US$1. This was the rate of exchange prevailing during all of 1979. See International Monetary Fund, International Financial Statistics, supra. The Tribunal therefore awards Seahorse US$132,940 for the Seahorse Retention Claim. Interest on this amount will run from 19 November 1981, the date of the Statement of Claim.

D. Counterclaims against Seahorse

1. Drydocking of Maryam, Ladan and Laleh

148. NIOC counterclaims for US$70,000 to cover the costs of drydocking the Maryam, the Ladan and the Laleh. This counterclaim is based upon Seahorse's contractual obligation to drydock each vessel once every two years. NIOC interprets Seahorse's 28 August 1978 telex as an agreement to pay US$34,225 for the Maryam and US$5400 for the Ladan and the Laleh. Similarly, in its 10 August 1979 telex, Seahorse allegedly "accepted to pay" US$40,000 for the Maryam and US$12,570 for the two other ships. Seahorse describes these telexes as settlement offers, not admissions of fact.

2. The Ladan's Tail Shaft and Fire Pump

149. NIOC claims that Seahorse took the Ladan's tail shaft and its fire pump and never returned them. It asserts that they were worth US$15,247 and counterclaims for that amount. Seahorse argues that NIOC's evidence fails to establish Seahorse's liability or the value of the equipment.

3. Taxes and Social Security Contributions

150. In its Statement of Defense, NIOC counterclaimed for US$805,660.85 in unpaid social security contributions under six contracts between Seahorse and IPAC. NIOC later added a counterclaim for 15,398,362 rials in unpaid taxes. Seahorse argues that the Tribunal has no jurisdiction over these counterclaims and that, at any rate, they have no merit.

4. Miscellaneous Goods and Services

151. Finally, in response to NIOC's counterclaim, Seahorse has agreed that it owes NIOC US$770.58 for miscellaneous goods and services provided by IPAC.[14]

E. Merits of Counterclaims against Seahorse

1. Drydocking of Maryam, Ladan and Laleh

152. There is no dispute that the Tribunal has jurisdiction over this counterclaim. It arises from the Operating Agreement, as do Seahorse's claims. In support of its counterclaim, NIOC relied initially upon internal IPAC communications and telexes exchanged between IPAC and Seahorse. Seahorse challenged this evidence on the grounds that it failed to show that IPAC ever incurred any actual costs for drydocking the Maryam. In its final submission, NIOC offered further evidence, including an invoice from IMICO charging IPAC for the drydocking of the Maryam in June 1979 and an analysis of the invoice that segregated charges attributable to the tug's biennial repairs from other charges. NIOC also submitted "off-hire" survey reports, dated 25-27 July 1978, for each of the three ships; these state that Seahorse was responsible for certain necessary repairs at the end of its term as operator of the ships. Seahorse did not challenge this evidence at the Hearing, except to argue that, if the Maryam was drydocked in June 1979, then Seahorse should owe no more than 23/33 of the costs attributable to the tug's biennial repairs.

153. The Tribunal agrees that Seahorse's telexes of 28 August 1978 and 10 August 1979 were settlement offers that

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[14] NIOC also counterclaimed for damages arising from Seahorse's legal action against IPAC in New York. NIOC has apparently abandoned this counterclaim.

did not, in themselves, bind Seahorse. They remain, however, to a certain limited extent, relevant evidence. Seahorse made these offers -- and IPAC responded to them -- in the context of negotiations involving a larger set of claims that the two Parties had against each other. Extraneous factors, such as Seahorse's outstanding invoices for the operation of the three ships, influenced the positions that the Parties took concerning drydocking costs. Taken as a whole, the evidence shows that Seahorse was responsible for a share of the Maryam's biennial drydocking, as well as for certain repairs to the Ladan and the Laleh. These obligations were based upon the provisions of the Operating Agreement that made Seahorse responsible for maintaining and repairing the ships and for drydocking them once every two years; these provisions are the counterpart to the provision that excused Seahorse from repairing ordinary wear and tear. The evidence also shows that Seahorse recognized these obligations and was negotiating with IPAC over the amount that it owed. The Tribunal concludes, then, that Seahorse does owe IPAC compensation for the costs of drydocking the Maryam and of repairing the two workboats.

154. With respect to the Maryam, the Tribunal considers the actual cost of the tug's drydocking to be the best measure of Seahorse's obligation. NIOC has provided unrebutted evidence that the Maryam was drydocked in June 1979 and that the costs attributable to the tug's biennial repairs were 1,890,743 rials. NIOC has also proven that on 13 November 1980 IPAC paid the 23/24 share of those costs that, it claims, was Seahorse's responsibility. Seahorse has argued that it should owe no more than 23/33 of the repair costs, since the drydocking occurred thirty-three months after the Maryam's previous drydocking in September 1976. However, IPAC's segregation of costs purported to factor out costs attributable to the period after September 1978, and Seahorse has not refuted this analysis. The Tribunal therefore accepts NIOC's argument that Seahorse

owes IPAC 23/24 of 1,890,743 rials, or 1,811,962 rials, for drydocking the Maryam.

155. In its telex of 10 August 1979, Seahorse offered to pay US$8,830 toward repairs for the Ladan and US$3,740 for the Laleh. As noted above, these offers did not bind Seahorse. However, Seahorse's comments in presenting the offers indicate that the offers were a close approximation of what Seahorse did owe for the repairs identified in the surveyor's reports: For the Ladan, US$8,830 was a "just and fair amount" which Seahorse would accept "in view of . . . information from our operations staff and . . . our survey records." For the Laleh, US$3,740 was the "previously agreed amount due IPAC by Seahorse." The Tribunal decides, therefore, that Seahorse owes IPAC a total of US$12,570 for repairs to the Ladan and the Laleh.

156. The Tribunal awards the Respondents 1,811,962 rials and US$12,570 for their Drydocking Counterclaim. For the purpose of offsetting this award against awards in this Case in favor of Seahorse, the Tribunal converts the rial amount to dollars at the average rate in November 1980, 71.976 rials/US$1. See International Monetary Fund, International Financial Statistics, supra. The total amount of this award in dollars is thus US$37,745. Interest on this sum will run from 13 November 1980, the date on which IPAC paid for the drydocking.

2. The Ladan's Tail Shaft and Fire Pump

157. Here, too, there is no dispute that the Tribunal has jurisdiction over this counterclaim. In support of its counterclaim, NIOC has submitted what appears to be an internal memorandum reporting an agreement with Seahorse that the latter would replace the Ladan's tail shaft and fire pump. The memorandum stated that the agreement was made in

the presence of the surveyor and was accepted by the company that would succeed Seahorse as operator of the vessel. In its 19 December 1979 telex, IPAC requested Seahorse to "advise [re] actions taken by Sea-Horse re delivery of Ladan tail shaft and fire pump as reflected in our previous correspondence." Seahorse responded to this telex on 4 January 1980, but its telex did not mention the Ladan's tail shaft and fire pump. Finally, in its letter dated 24 June 1980, IPAC stated that the Ladan's tail shaft and fire pump had not been delivered and that their "estimate[d] cost" was US$15,247. See supra, para. 127.

158. The Tribunal considers the internal memorandum to be credible evidence of an obligation on Seahorse's part. IPAC's telex and letter put Seahorse on notice concerning its potential liability and the alleged value of the missing equipment. Seahorse made no contemporaneous objection to these communications. Accordingly, the Tribunal awards the Respondents US$15,247 upon this counterclaim. Interest on this sum will run from 24 June 1980, the date of IPAC's letter to Seahorse specifying the value of the Ladan's tail shaft and fire pump.

3. Taxes and Social Security Contributions

159. These counterclaims, like those considered with respect to the Eastman claims, lie outside the jurisdiction of the Tribunal. See supra, para. 118. They must therefore be dismissed.

4. Miscellaneous Goods and Services

160. Finally, the Tribunal awards the Respondents US$771 upon NIOC's uncontested counterclaim for unpaid invoices for goods and services. Interest on this sum will

run from 22 July 1983, the date of NIOC's Statement of Defense.

VI. INTEREST

161. In order to compensate the Parties for the damages they have suffered as a result of delayed payments, the Tribunal considers it fair to award simple interest at the rate of 9.5 percent on the various amounts found due. See supra, paras. 61, 63, 108, 121, 136, 147, 156, 158, 160.

VII. COSTS

162. Each of the Parties shall bear its own costs of arbitrating these Claims.

VIII. AWARD

163. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. (i) The Respondents, THE ISLAMIC REPUBLIC OF IRAN and NATIONAL IRANIAN OIL COMPANY, are obligated to pay to the Claimant, EASTMAN WHIPSTOCK MANUFACTURING, INC., the amount of Two Million Four Hundred Fifty Three Thousand Six Hundred Thirty Eight United States Dollars and Fifty Cents (US$2,453,638.50), plus simple interest at the rate of 9.5 percent per annum (365-day basis), calculated as follows:

on US$391,043 from 19 November 1981;

on US$322,092 from 19 January 1980;

on US$1,740,503.50 from 10 February 1980,

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(ii) The Counterrespondent, EASTMAN WHIPSTOCK MANUFACTURING, INC., is obligated to pay to THE NATIONAL IRANIAN OIL COMPANY the amount of Two Thousand One Hundred Sixty Nine United States Dollars and No Cents (US$2,169), plus simple interest at the rate of 9.5 percent per annum (365-day basis) from 15 March 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment to EASTMAN WHIPSTOCK MANUFACTURING, INC. out of the Security Account.

(iii) The other Counterclaims of THE NATIONAL IRANIAN OIL COMPANY against EASTMAN WHIPSTOCK MANUFACTURING, INC. are dismissed for the following reasons:

the Counterclaim for breach of contract, for lack of proof;

the Counterclaim for reimbursement of advance payments, on the merits;

the Counterclaims for social security premiums and taxes, for lack of jurisdiction.

The Escrow Agent is requested to calculate the amounts due under this Award to EASTMAN WHIPSTOCK MANUFACTURING, INC. and to THE NATIONAL IRANIAN OIL COMPANY, and to instruct the Depositary Bank to make payment out of the Security Account to EASTMAN WHIPSTOCK MANUFACTURING, INC. of the net amount due to EASTMAN WHIPSTOCK MANUFACTURING, INC. after offset of

the amount due from EASTMAN WHIPSTOCK MANUFACTURING, INC. to THE NATIONAL IRANIAN OIL COMPANY.

(iv) Each Party shall bear its own costs of arbitration.

B. (i) The Respondent, IRANIAN PAN AMERICAN OIL COMPANY, is obligated to pay to the Claimant, SEAHORSE FLEET, INC., the amount of Two Hundred Twenty Four Thousand Nine Hundred Thirty United States Dollars and No Cents (US$224,930.00), plus simple interest at the rate of 9.5 percent per annum (365-day basis), calculated as follows:

on US$91,990.00 from 19 December 1979;

on US$132,940.00 from 19 November 1981,

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(ii) The Counterrespondent, SEAHORSE FLEET, INC., is obligated to pay to the IRANIAN PAN AMERICAN OIL COMPANY the amount of Fifty Three Thousand Seven Hundred Sixty Three United States Dollars and No Cents (US$53,763.00), plus simple interest at the rate of 9.5 percent per annum (365-day basis), calculated as follows:

on US$37,745 from 13 November 1980;

on US$15,247 from 24 June 1980;

on US$771.00 from 22 July 1983,

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment to SEAHORSE FLEET, INC. out of the Security Account.

(iii) The Counterclaim of THE IRANIAN PAN AMERICAN OIL COMPANY for social security premiums and taxes is dismissed for lack of jurisdiction.

The Escrow Agent is requested to calculate the amounts due under this Award to SEAHORSE FLEET, INC. and to THE IRANIAN PAN AMERICAN OIL COMPANY, and to instruct the Depositary Bank to make payment out of the Security Account to SEAHORSE FLEET, INC. of the net amount due to SEAHORSE FLEET, INC. after offset of the amounts due from SEAHORSE FLEET, INC. to THE IRANIAN PAN AMERICAN OIL COMPANY.

(iv) Each Party shall bear its own costs of arbitration.

C. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
14 August 1991

Robert Briner
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Seyed Khalil Khalilian
Dissenting and Concurring
Opinion