IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران و ایالات متحده

2-73
۲-۷۳

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IRAN-UNITED STATES CLAIMS TRIBUNAL

2-73

دیوان داوری ... ۲-۷۳

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 2

CHAMBER THREE

AWARD NO. 93-2-3

AMERICAN INTERNATIONAL GROUP, INC. and AMERICAN LIFE INSURANCE COMPANY,
Claimants,

and

ISLAMIC REPUBLIC OF IRAN and CENTRAL INSURANCE OF IRAN (BIMEH MARKAZI IRAN),
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه دایری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date ۱۳۶۲ /۱۰/ ۹ تاریخ
30 DEC 1983
No. 2 ۲ شعبه

CH3

CONCURRING OPINION OF RICHARD M. MOSK

I concur in the Tribunal's Award in order that a majority can be formed. As one authority has written, if there is no majority, the "arbitrators are therefore forced to continue their deliberations until a majority, and probably a compromise solution, has been reached." Sanders, Commentary on UNCITRAL Arbitration Rules, II Yearbook, Commercial Arbitration 172, 208 (1977). This Award represents a "compromise solution" in which I have joined so that some award could be issued. Otherwise, this case, heard almost a year ago, would remain undecided.

I recognize that the value of Claimants' nationalized interest in Iran America cannot be established with precision. I believe, however, that there are justifications for an award of damages higher than that provided by the

Tribunal in this case. Moreover, the Tribunal should have discussed more fully in its Award certain issues such as the applicability of the U.S.-Iran Treaty of Amity,[1] the time at which the payment of compensation was required and the standard of compensation utilized.[2]

Treaty of Amity

The Tribunal should have held explicitly that the terms of the Treaty of Amity are controlling as to the requirements for compensation in cases of nationalization or expropriation by Iran of the property of United States nationals.

Article IV, paragraph 2, of the Treaty of Amity provides as follows:

> 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.

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[1] 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, T.I.A.S. No. 3853, 8 U.S.T. 900 ("Treaty of Amity").

[2] For a criticism of summary determinations of the value of nationalized property, see Lillich, "The Valuation of Nationalized Property by the Foreign Claims Settlement Commission", in I The Valuation of Nationalized Property in International Law 95, 97-99 (R. Lillich ed. 1972).

The Treaty of Amity has never been terminated, either under its terms or otherwise. There is no evidence that Iran gave the formal written notice required by Article XXIII of the Treaty of Amity or any other notice effective under international law. See Vienna Convention on the Law of Treaties, Arts. 54(a), 65 and 67, U.N. Doc A/Conf. 39/27, 23 May 1969, entered into force 27 January 1980, reprinted in 8 I.L.M. 679 (1969) ("Vienna Convention");[3] 14 M. Whiteman, Digest of International Law 442-44 (1970).

It is doubtful that even a material breach of the Treaty of Amity would permit termination without the notice required by that treaty and by international law. In any event, I cannot agree with Iran's contention that the United States breached the Treaty. See United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran) 1980 I.C.J. 3, 18-20, 28, 38 (Judgment of 24 May 1980). Moreover, during 1980 and 1981, Iran itself relied upon and argued the

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[3] The effect of paragraph 5 of Article 65 of the Vienna Convention is unclear. A plea of termination in defense to a claim for breach of a treaty does not appear to constitute the instrument of notice required under Articles 65, paragraph 2, and 67, paragraph 2, of the Vienna Convention, to make the termination effective. Similarly, a fundamental change of circumstances, Art. 62 of the Vienna Convention, would seemingly not obviate notice requirements. In any case, Iran has not invoked, and under the circumstances cannot invoke, such a ground. See, e.g., Article 62, paragraph 2(b), of the Vienna Convention. Moreover, Iran should be precluded by virtue of Article 45 of the Vienna Convention and general principles of estoppel from asserting that the Treaty was terminated. See infra at n.4.

continued applicability of the Treaty of Amity in cases before United States courts.[4] Iran asserted in one of these cases:

> The Treaty of Amity, moreover, remains in effect. American courts have uniformly refused to declare a treaty to be terminated or ineffective, in the absence of executive action, under circumstances at least as compelling as those in the Iranian cases.... In the present situation, where there has been no declaration of war, this Court should be even less willing to derogate any existing treaty with a foreign power. Article XXIII, [para.] 2 of the Treaty of Amity provides that it "shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein," and paragraph 3 of Article XXIII requires one year's written notice to effect termination. No such notice has been given.

Memorandum of the Government of Iran in Opposition to Confirmation of Attachments, 74-6, Iranian Attachment Cases (S.D.N.Y.)(filed April 21, 1980). Thus, Iran cannot now contend that the Treaty was abrogated by events that were known to it at the time of its own invocation of the Treaty. See Vienna Convention, Art. 45; Bowett, Estoppel Before International Tribunals and Its Relation to Acquiescence, 1957 Brit.Y.B. Int'l.L. 176, (1958); B. Cheng, General Principles of Law As Applied by International Courts and Tribunals 141-42 (1953); MacGibbon, Estoppel in International Law, 7 Int'l & Comp.L.Q. 468, 479 (1958).

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[4] See, e.g., Brief for Intervenor-Respondent The Islamic Republic of Iran 13, 29, 45, Dames & Moore v. Regan (U.S. Sup. Ct.) (Filed June, 1981); Memorandum of the Government of Iran in Opposition to Confirmation of Attachments 16-17, 74-75, Iranian Attachment Cases (S.D.N.Y.) (filed April 21, 1980); Memorandum of Davis Robinson, Legal Adviser of the U.S. Department of State, Application of the Treaty of Amity to Expropriations in Iran, 129 Cong. Rec. S 16055, n.6 (daily ed. Nov. 14, 1983). The United States Government continues to issue "treaty trader" and "treaty investor" visas to Iranian nationals pursuant to the Treaty of Amity. Id. at S 16058 n. 7.

In United States Diplomatic and Consular Staff, the International Court of Justice stated that:

> [A]lthough the machinery for the effective operation of the 1955 Treaty has, no doubt, now been impaired by reason of diplomatic relations between the two countries having been broken off by the United States, its provisions remain part of the corpus of law applicable between the United States and Iran.

1980 I.C.J. at 28. The Court also observed:

> The very purpose of a treaty of amity, and indeed of a treaty of establishment, is to promote friendly relations between the two countries concerned, and between their two peoples, more especially by mutual undertakings to ensure the protection and security of their nationals in each other's territory. It is precisely when difficulties arise that the treaty assumes its greatest importance....

Id.

Even if the Treaty of Amity were not considered to be operative today, it was in force on the date this claim arose -- the date of the nationalization -- and thus is applicable to this claim. Id.; Vienna Convention, Art. 70, paragraph 1 (b) ("[T]ermination of a treaty ... does not

affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.").[5]

The Treaty of Amity constitutes the law applicable to this case, and Claimants, as nationals of the United States, may rely upon that Treaty. Article V of the Claims Settlement Declaration[6] provides that the Tribunal shall apply "such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable." As noted supra, the International Court of Justice has held that the provisions of the Treaty "remain part of the corpus of law applicable between the United States and

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[5] The property protection provisions of the Treaty of Amity have not been superseded by the adoption of such United Nations resolutions as the United Nations Declaration on Permanent Sovereignty over National Resources, G.A. Res. 1803, 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc. A/5217 (1962), reprinted in 57 Am.J.Int'l L. 710(1963), or the 1974 United Nations Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974), reprinted in 69 Am.J. Int'l L. 484 (1975), as contended by Iran. If Iran wished to have Article IV, paragraph 2, of the Treaty of Amity amended in the light of those resolutions, it could have sought to negotiate such amendment; but it did not do so. Indeed, with respect to Resolution 3281, the Iranian delegate to the United Nations noted that approval thereof was "without prejudice to any arrangements or agreements reached between States concerning investments and modalities of compensation in the event of nationalization or expropriation of foreign property." Legal Problems of Multinational Corporations 148 (K. Simmonds ed. 1977) (quoting U.N. Doc. A/C.2/SR. 1650, pp. 10-11).

[6] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated 19 January 1981.

Iran." United States Diplomatic and Consular Staff, 1980 I.C.J. at 28. Thus, in the instant case, the Treaty of Amity is the source of international law. It also appears that the Treaty of Amity is part of the municipal law of both the United States and Iran. United States Constitution, Art. VI, cl.2; Civil Code of Iran, Art. 9. Accordingly, in cases such as this case, which involve matters that are the subject of the Treaty of Amity, that Treaty is the most, if not the only, appropriate law to apply.

The entire framework of the Algiers Declarations[7] leads to the same conclusion. Article II, paragraph 1, of the Claims Settlement Declaration, gives this Tribunal jurisdiction over, inter alia, claims of United States nationals which "arise out of ... expropriations or other measures affecting property rights." The Algiers Declarations specifically give the nationals of the United States and Iran the right to bring such claims on their own behalf. Claims Settlement Declaration, Art. III, paragraph 3. Thus, the Governments gave to their nationals the right to bring before this Tribunal claims which would normally be governed by international law. As the Treaty of Amity is the pertinent international law, it should be applied to these claims.

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[7] Claims Settlement Declaration and Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981("General Declaration").

There is no reason to decline to apply the applicable law or to accord claimants fewer substantive rights just because the two Governments have agreed that claimants may present their own claims before this international Tribunal rather than providing for government espousal of such claims.

Moreover, both Iran and United States claimants relied on the Treaty of Amity in United States courts. It does not seem logical that by shifting such disputes to arbitration before this Tribunal[8] the parties to the Algiers Declarations intended to eliminate the substantive rights of the parties to base a claim on a Treaty of Amity violation or otherwise to invoke that Treaty as applicable law.

Even without regard to the Algiers Declarations, it is arguable that, in providing for rights of their nationals in the Treaty of Amity, the Governments intended that those rights be enforceable by their nationals. See Jurisdiction of the Courts of Danzig Case, 1928 P.C.I.J., ser. B. No. 15 (Advisory Opinion of 3 March). In addition, in the words of Judge Jiménez de Aréchaga:

> Precisely, one of the most important future uses of the stipulation "pour autrui" in international law may consist in its being

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[8] See General Principle B of the General Declaration. A United States Court held in favor of Claimants against Iran on the basis of the Treaty of Amity. It should be noted that a claimant before the Tribunal does not have to exhaust local remedies and is not faced with such defenses as sovereign immunity and the act of state doctrine (see the Tribunal discussion of jurisdiction in this case).

> used in order to raise the individual to the status of a subject of the law of nations, granting him certain rights based on agreement between states, and giving him remedies before international organs for protection of those rights.

Jiménez de Aréchaga, Treaty Stipulations in Favor of Third States, 50 Am.J.Int'l Law 338, 357 (1956); see Draft Convention on the International Responsibility of States for Injuries to Aliens, Art. 3, paragraph 1(d) and Art. 22, paragraph 2, reprinted in 55 Am.J. Int'l L. 548, 549, 578 (1961).

Thus, in determining the Claimants' rights with respect to the nationalization of their ownership interest in Iran America, the Tribunal should have relied upon the provisions of the Treaty of Amity.

It appears that the Tribunal, in awarding Claimants as damages what it determined to be the full value of the property nationalized, has relied upon customary international law. As I discuss infra, there are no meaningful differences between the obligations for compensation set forth in the Treaty of Amity and those provided for by customary international law.

Prompt Compensation

Under the Treaty of Amity, Iran is obliged to pay compensation promptly for its taking of the property of a United States national. Treaty of Amity, Art. IV,paragraph 2 ("Such property [shall not] be taken ... without the prompt payment of just compensation ... [A]dequate provision shall have been made at or prior to the time of taking for

the determination and payment thereof."). Such prompt compensation is also compelled by customary international law. See Norwegian Shipowners' Claims (Nor. v. U.S.), 1 R. Int'l Arb. Awards 307, 342 (1922); Goldenberg Case (Ger. v. Rum.), 2 R. Int'l Arb. Awards 901, 909 (1928); 2 D. O'Connell, International Law 781 (1970).[9]

Standard of Compensation

Under the Treaty of Amity, Iran is obligated to pay "just compensation," which is defined as that which "shall represent the full equivalent of the property taken." Treaty of Amity, Art. IV, paragraph 2 (emphasis added). Here again, there is no difference between the standard of compensation provided for by the Treaty of Amity and that provided for by customary international law. See ITT Industries, Inc. and The Islamic Republic of Iran, Award No. 47-156-2, (Concurring Opinion of George H. Aldrich)(26 May 1983).[10] Although there has been controversy over the standard of compensation required by customary international law, see Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875, 888-91 (2d Cir. 1981), I believe such law requires

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[9] Post World War II settlement practice has not modified international custom regarding promptness of compensation. Such settlements do not reflect legal determinations, but rather are negotiated resolutions of claims that obligations were breached. Each settlement agreement should be deemed sui generis. See Barcelona Traction Case, 1970 I.C.J. 3, 40 (Judgment of 5 February). Certainly the lengthy negotiation process leading to lump sum settlements has no bearing on the appropriate time for the payment of compensation.

[10] See also the negotiating history of the Treaty of Amity in Robinson Memorandum, 129 Cong. Rec. at S 16056-57.

full compensation.[11] The notion that property can be taken without full compensation is incompatible with fundamental fairness and other public and international interests. The risk of inadequate compensation for takings may discourage much-needed international investments in the developing countries or at least will raise the cost of those investments to such countries. In addition, developing countries will have an increasing interest in protecting the foreign investments of their own nationals. See generally 2 D. O'Connell, International Law 784 (1970)[12]

There are some who suggest that less than full compensation may constitute appropriate compensation. Although I do not agree with this suggestion, various factors cited with regard to a determination of whether less than full compensation should be awarded support full compensation in the instant case. Claimant American International Group, Inc. and its subsidiaries (collectively "AIG") made their investment with the encouragement of the Iranian government.

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[11] Full compensation clearly contemplates effective compensation.

[12] Various United Nations resolutions are not determinative of the customary international law standard. See discussion in Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d at 889-91; Amerasinghe, "The Quantum of Compensation for Nationalized Property" in III The Valuation of Nationalized Property in International Law 91, 111-14 (R. Lillich ed. 1975); Texaco Overseas Petroleum Co. v. Libyan Arab Republic (Merits) 53 I.L.R. 422,484-95 (Dupuy, sole arb.)(Award of 19 January 1977); Higgins, "The Taking of Property by the State: Recent Developments in International Law," 176 Rec. des Cours 259, 292-3 (1983); Schwebel, The Effect of Resolutions of the U.N. General Assembly on Customary International Law 73 Am. Soc. Int'l L. Proc. 301 (1979).

Presumably, both were interested in the development of an Iranian insurance industry. AIG devoted time and money to supply expertise, train Iranian personnel in the business of insurance, and otherwise assist the Iranian insurance industry. The investment was not made in a "colonial" or "quasi-colonial" country and did not have any adverse effect on Iran. AIG did not commit any improper acts, and there is no indication that AIG derived excess or unwarranted profits. Indeed, it appears that AIG encouraged Iran America to take measures favoring long-term stability over short-term profits. Thus, although the investment was not a relatively old one, it was intended to be one of long duration. It may be assumed that AIG made its investment in reliance, not only on Iranian government cooperation, but also on the explicit provisions of the Treaty of Amity. Thereafter, Iran took over the assets of the company as part of its program "to expand the insurance industry over the entire State" and to nullify and "liquidate" all activities of "representatives of foreign insurance companies." The Law of Nationalization of Insurance Corporations, paragraphs 1 and 2 (25 June 1979). Thus, Iran, by its taking, became the beneficiary of all of the efforts of AIG, as well as of the business of Iran America. I do not suggest that any of these factors is relevant to the determination of what is adequate compensation under customary international law; as noted above, they are relevant only to theories that I do not accept. I mention them, however, to point out that even under these theories, the Claimants are entitled to full compensation.

The Tribunal correctly concludes that, having failed to pay any compensation, Iran is now liable for damages equal to the compensation which AIG was entitled to receive, plus interest from the date of the taking. The Tribunal also correctly determines that the compensation due was AIG's share of the fair market value of the property nationalized. These decisions are in accordance with customary international law. See Chorzów Factory Case (Merits)(Ger. v. Pol.), 1928 P.C.I.J., ser. A, No. 17, at 47 (Judgment of 13 September); Norwegian Shipowners' Claims (Nor. v. U.S.), 1.R. Int'l Arb. Awards 307 (1922).

The Valuation

The Tribunal properly holds that Iran America, which was an operating entity, must be valued as a going concern, considering all of the elements which contribute to the company's worth, including prospective income.[13] The term "going concern" connotes "the undertaking itself considered as an organic totality ... the value of which is greater than that of its component parts, and which must also take

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[13] The value of lost prospective business has been recognized as compensable by international tribunals. R.N. Pomeroy et al. and Government of the Islamic Republic of Iran, Award No. 50-40-3 (8 June 1983); Chorzów Factory Case (Merits) (Ger. v. Pol.), 1928 P.C.I.J., ser. A, No. 17 (Judgment of 13 September); Shufeldt Claim (U.S. v. Guat.), 2 R. Int'l Arb. Awards 1079, 1099 (1930); Lena Goldfields Arbitration (1930), reprinted in 36 Corn. L.Q. 42 (1950); Lighthouses Arbitration, Claim No. 27 (Fr. v. Gr.), 23 I.L.R. 299 (1956). The United States Foreign Claims Settlement Commission has valued business enterprises as going concerns. See Lillich, "The Valuation of Nationalized Property by the Foreign Claims Settlement Commission" in I The Valuation of Nationalized Property in International Law 95, 113-16 (R. Lillich, ed. 1972).

account of the legitimate expectations of the owners." Kuwait and American Independent Oil Company, 21 I.L.M. 976, 1041 (Reuter, Sultan, Fitzmaurice, arbs.)(Award of 24 March 1982). The Tribunal applies the well-recognized principle that, in determining the value of the company, it must disregard the negative effects of certain actions of the Government of Iran, as well as developments subsequent to the taking.[14]

Since there has never been an active market in the shares of Iran America, the Tribunal must resort to other means to determine the fair market value of that company and the Claimants' shares therein. In this connection, Claimants submitted appraisals by qualified actuaries.

Although conceding the competence of the Claimants' principal expert, Respondents relied primarily on the

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[14] See ITT Industries, Inc. and The Islamic Republic of Iran, Award No. 47-156-2 (Concurring Opinion of George H. Aldrich)(26 May 1983); Restatement (Second) of Foreign Relations Law of the United States §188, comment b, at 565 (1965); Organization for Economic Cooperation and Development, Draft Convention on the Protection of Foreign Property, Art. 3, comment 9(a) at 27 (1967), reprinted in 7 I.L.M. 126 (1968); Draft Convention on the International Responsibility of States for Injuries to Aliens, Art. 10, paragraph 2(b), reprinted in 55 Am.J. Int'l L. 548, 553 (1961); Lillich, supra, at n. 13 p. 97; Lighthouses Arbitration, Claim No. 27 (Fr. v. Gr.), 23 I.L.R. 299, 301(1956).

statements of one of their own representatives and a critique of the appraisal of Claimants' principal expert, an English actuary. Respondents based their estimate of the value of the company on its alleged book value without giving any consideration to the company as a going concern. Moreover, Respondents' audit figures are unreliable for purposes of an evaluation because they are based upon the assumption that the company ceased to operate on the date of nationalization and other arbitrary assumptions, upon government instructions to take into account post-nationalization events and upon non-standard accounting practices. Respondents basically left unrebutted much of the evidence provided by Claimants' experts.

The Tribunal has not, in my view, accorded sufficient weight to the material supplied by the Claimants' experts. The Tribunal has made certain unjustified assumptions and has reached questionable conclusions in discounting the opinions of those experts.

Contrary to the Tribunal's view, I believe that Claimants' experts were justified in asserting that Iran America's performance from 21 March 1978 - the end of its 1978 fiscal year - to the date of nationalization, should be disregarded. Because of events surrounding the Revolution, that period appears to have been an abnormal one. It should be noted, however, that Claimants' principal expert, at the hearing, took into account 1979 figures.

The Tribunal points to the supposed impact of Iranian taxes as a deficiency in the report of Claimants' principal expert. Although the expert acknowledged that he did not take into account certain taxes, he stated that such taxes would not have had a significant effect on his evaluation. The Tribunal lacked sufficient evidence of the effect of taxes to draw any conclusions concerning them. There were suggestions that taxes on insurance companies in Iran were less than those on other companies. Apparently, taxes on AIG's dividends had not yet been assessed. Even if they had been and even if they are relevant, presumably AIG would receive a credit for such taxes against United States tax obligations.

The Tribunal states that the appraisals of Claimants' experts "do not sufficiently consider the changes in general social and economic conditions in Iran...." There is no evidence, however, that such changes would have affected the Iranian insurance market except in the short term. The Tribunal's assertion that many wealthy Iranians left Iran assumes, without any evidentiary foundation, that such wealthy Iranians constituted a significant proportion of the likely market for the insurance offered.

The Tribunal, in noting that the company had only been doing business for 4½ years, ignores the fact that Claimants' expert took into account a "pessimistic" view of the company's future. Moreover, the company had established certain business and growth patterns.

AIG has done business in countries throughout the world, including many in which there have been revolutions, social turmoil and economic disruption. The evidence demonstrates that when AIG invested in Iran America, there was not a highly developed insurance industry in Iran. Thus, Iran America had significant untapped business prospects. Indeed, in the Law of Nationalization of Insurance Corporations, Iran justified its action on the ground that it was necessary in order "to expand the insurance industry over the entire State." Paragraph 1. This was also the purpose of Iran America and was among the opportunities upon which its future prospects rested. The principal reason for the nationalization appears to have been to prevent participation in these opportunities by "representatives of foreign insurance companies." Paragraph 2. Whatever the reason for the nationalization, the nationalization law supports the Claimants' position that Iran America had substantial business prospects in Iran.

Iran America began business in late 1974. Each year its business increased. Its profits increased almost 50% from 1977 to 1978. There is no significant evidence before

the Tribunal that, but for the nationalization and actions attributable to the Government of Iran after the Revolution, Iran American could not have continued to operate successfully. Indeed, the evidence shows that, during 1979, economic and social dislocations that might affect the company had begun to wane.

In short, the assumptions which caused the Tribunal to discount in part the opinions of Claimants' experts are based on inadequate evidence.

The fact that Claimants' own experts came to different conclusions suggests the inexactness of valuations of insurance companies. Undoubtedly, uncertainties resulting from events in Iran can and should be considered and might lead one reasonably to reduce the values estimated by the Claimants' experts. Based on the factors set forth above, however, I believe that a higher valuation of the nationalized property than that arrived at by the Tribunal would have been justified. I also continue to believe that the interest awarded should be based on prevailing interest rates and that costs, including reasonable attorneys' fees, should be awarded. See Granite State Machine Co., Inc. and The Islamic Republic of Iran, Award No. 18-30-3 (Concurring Opinion of Richard M. Mosk)(25 January 1983), 1 Iran-U.S. C.T.R. 442, 449, 450-51. I see no reason why the rate of

interest in this case should be less than that awarded by the Tribunal at about the same time in another expropriation claim. Dames & Moore and The Islamic Republic of Iran, Award No. 97-54-3 (19 December 1983).

Nevertheless, for the reasons stated at the outset of this opinion, I concur in the Tribunal's Award.

Dated, The Hague
30 December 1983

Richard M. Mosk