IRAN-UNITED STATES CLAIMS TRIBUNAL

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** DECISION - Date of Decision _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات

DUPLICATE ORIGINAL

دونسخه برابر اصل

CASE NO. 128/129
CHAMBER TWO
AWARD NO. 419-128/129-2

SEDCO, INC., for itself
and on behalf of
SEDCO INTERNATIONAL, S.A.

Claimant,

and

IRAN MARINE INDUSTRIAL COMPANY,
NATIONAL IRANIAN OIL COMPANY, and
THE ISLAMIC REPUBLIC OF IRAN

Respondents.

AWARD

Appearances:

For the Claimant:

Mr. Robert B. Davidson,
Counsel to Claimant,
Mr. Hugo Muller,
Counsel to Claimant,
Mr. E. Blake Redding,
Sedco/Forex General
Counsel,
Mr. William Ruppert,
Sedco/Forex
Representative,
Mr. Ronald Bannister,
Witness.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Government of the Islamic Republic of Iran,
Mr. Ali Hayrani Nobari,
Deputy to the Agent,
Mr. Jafar Niaki,
Legal Adviser to the Agent,
Mr. Abdul Majid Haghighi,
Legal Adviser to the Agent,
Mr. Arsalan Tavasoli,
Financial Advisor,
Mr. Jalil Khobreh,
Former Managing Director of IMICO,
Mr. Yahya Alizadeh Dehnavi, Attorney for IMICO,
Mr. Vali Khobreh,
Attorney for IMICO,
Mr. Mahmood Golrokhi,
Advisor to IMICO,
Mr. Mehdi Sadri, NIOC's Representative,
Mr. M. Reza Saadatpourm,
NIOC's Representative,
Mr. S. Abbas Hashemi,
NIOC's Representative,
Mr. John Allday,
Witness,
Mr. E. Leesson,
Witness,
Mr. Robert Johns Ashley,
Witness,
Mr. Matash Azami,
Witness,
Mr. Akbar Ansari,
Witness,
Mr. Alan Siddall,
Witness.

Also present:

Mr. Timothy Ramish,
Agent of the Government of the United States of America,
Mr. Michael Raboin,
Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. This claim was filed by SEDCO, Inc. ("SEDCO"), a Texas corporation, on behalf of itself and its wholly-owned Panamanian subsidiary, SEDCO International, S.A. ("SISA") on 19 November 1981. The claim seeks compensation in the amount of U.S.$7,202,047.77, plus interest, for the alleged taking by the Government of the Islamic Republic of Iran ("Iran") of Iran Marine Industrial Company ("IMICO"),[1] a shipyard, marine repair, and warehouse facility in which it asserts it held an 81 percent ownership interest, and for the recovery, plus interest, of two promissory notes in the total amount of U.S.$20,508,022.90, and, through later additions to the claim, various other debts totalling U.S.$2,094,882.63 allegedly owed by IMICO to SEDCO and SISA at the time Iran assumed control of IMICO. SEDCO named both IMICO and Iran as Respondents to these claims. The Respondents deny that a compensable taking of IMICO has occurred, and contest, for jurisdictional, evidentiary, and substantive reasons, that IMICO should be liable for either the promissory notes or the other debts claimed by SEDCO. An additional claim by SEDCO against the National Iranian Oil Company ("NIOC"), which was brought originally in Case 129 and subsequently transferred by the President to this Chamber for decision along with this Case (see, para. 23, infra), sought recovery of U.S.$798,568.95, plus interest, in accounts receivable due from NIOC to IMICO which were allegedly assigned to SEDCO on 16 November 1979. NIOC contested any liability by asserting that it had paid the debts in question and by denying that the alleged assignment

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[1] IMICO was established by SEDCO in large part to service its principal Persian Gulf activities, which involved the lease and operation of oil drilling equipment. Claims related to those activities were brought by SEDCO in Case 129 and resolved by the Tribunal in SEDCO, Inc. and National Iranian Oil Company, Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23.

had been properly authorized. At the Hearing, the Claimant acknowledged that the assignment was not properly authorized, thus, in effect, withdrawing this claim.

2. The Respondents filed a counterclaim seeking to recover unpaid income taxes allegedly due from SEDCO. The Respondents base their counterclaim on amounts of unpaid taxes they assert are due from IMICO for fiscal years 1974 through 1980, claiming that SEDCO is liable for forty-six percent of this tax liability because, according to the Respondents, it owned forty-six percent of the company.

3. A Hearing was held on 16 and 17 June 1988.

II. FACTS

4. IMICO was established in 1969 as a shipbuilding company located near the port city of Bushehr in southern Iran. In its Articles of Association, drafted at the time of its establishment, IMICO is identified as a private joint stock company with a stated capital of 10,000,000 Iranian rials (approximately U.S.$133,000), divided into ninety registered and ten bearer shares, all of equal value.[2] As revealed in registration documents filed with several Iranian Government departments, and in minutes of shareholder meetings, forty-six percent of IMICO's shares were held directly by SEDCO, while three percent of the shares were held by three SEDCO employees, and thirty-two percent of the shares were held by a fourth SEDCO employee, Mr. Nasser Esphahanian, who held dual U.S.-Iranian nationality. The remaining nineteen percent of the shares were held by several Iranian nationals. SEDCO alleges, however, that apart from its own

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[2] IMICO's capital was increased in 1972 to 48,125,000 Iranian rials (approximately U.S.$633,000) by an increase in the value of each registered and bearer share to 481,250 rials.

capital contribution of forty-six percent, it also contributed all the initial and subsequent capital investment for the shares held by its four employees, and that it was at all times the beneficial owner of those shares despite their being nominally registered or held by those employees. Thus, SEDCO claims it owned eighty-one percent of IMICO and is therefore entitled to eighty-one percent of its value on the date of expropriation. Evidence presented by the Respondents, including an internal IMICO memorandum, indicates that in representations made to the Iranian Government, SEDCO did not disclose that it was the beneficial owner of the shares registered in Mr. Esphahanian's name so that it could assert that foreign ownership in IMICO was only forty-nine percent. While the Respondents have not alleged in the written pleadings that majority foreign ownership of IMICO would have been unlawful, they asserted at the Hearing that IMICO could not have registered its tugs and barges under Iranian law if it had majority foreign ownership. In any event, there is evidence that IMICO's former management was concerned that acknowledging a greater than forty-nine percent foreign ownership of IMICO could have resulted in disapproval by the relevant Iranian authorities of various licenses.

5. To evidence its beneficial ownership and possession of Mr. Esphahanian's shares, SEDCO has submitted copies of those shares, as well as several written agreements signed by Mr. Esphahanian in which he assigned and transferred all his rights to these shares to SEDCO and acknowledged that he had never actually owned the shares. SEDCO also submitted an affidavit by Mr. Esphahanian in which he acknowledged owning the shares in name only, as well as public financial reports filed by SEDCO in the United States during the relevant years in which it consistently revealed its ownership of eighty one percent of IMICO's shares. The Respondents contest SEDCO's claim to any ownership of IMICO greater than forty-six percent. They cite the documents

mentioned above in which SEDCO claimed only a forty-six percent ownership interest in IMICO, and argue that Iranian law in any case does not permit beneficial ownership of company shares. The Respondents do not dispute that a majority of the Board of Directors, as well as the managing director, were SEDCO nominees, and that SEDCO accordingly exercised predominant, if not exclusive, control over IMICO's affairs until 1979.

6. SEDCO maintains that, subsequent to IMICO's formation, SEDCO and SISA regularly performed inter-company services for IMICO and that SEDCO also transferred a significant amount of cash to IMICO. SEDCO asserts that beginning with fiscal year 1969-70 these cash transfers and the debts incurred by IMICO from the inter-company transactions were regularly consolidated into successive promissory notes, one payable to SEDCO and the other to SISA, to reflect the amounts then due to each company. SEDCO further maintains that each succeeding promissory note consolidated the previous note amount with any intercompany debts incurred since its issuance, including, except for the last two notes, the accumulated interest from the previous year's debt. The last two of these promissory notes were executed by IMICO on 1 July 1978 in the amount of U.S.$14,936,569.53 payable "on demand" to SEDCO and U.S.$5,571,453.37 payable "on demand" to SISA. SEDCO seeks to recover the full amount of both of the 1 July 1978 promissory notes.

7. According to SEDCO, these notes reflect cash transfers of U.S.$9,524,593; inter-company services, or "accommodation payments," (which it defines as payment of salaries of certain IMICO employees and payment for various goods and services provided by outside suppliers to IMICO) of U.S.$5,549,428; assignment to SEDCO of notes for equipment transferred to IMICO from a SEDCO joint venture company called Shahpour Engineering and Drilling Company of

U.S.$3,664,171; and interest charges of U.S.$2,461,281.[3] SEDCO acknowledges that it directed IMICO to report these interest charges as "sundry expenses" in its Iranian tax filings in order to avoid paying the taxes which Iranian law would have levied on them; such taxes would have been SEDCO and SISA liabilities, but were required to be withheld and paid to the Iranian Government by IMICO whether or not the interest amounts were actually transferred to SEDCO. A July 1978 IMICO memorandum presented in evidence by the Respondents calculated this tax exposure on interest charges on the SEDCO and SISA notes up to 30 June 1978 as U.S.$1,954,000. The Tribunal notes, however, that the Respondents have not filed a counterclaim to recover this tax liability, but they have alleged that IMICO would be liable in the full amount for its failure to withhold these taxes and have suggested that SEDCO's and SISA's accounts should be debited accordingly. The Claimant has not responded or commented on these matters.

8. In its pleadings, SEDCO has alleged that IMICO owes it and SISA an additional amount of U.S.$2,094,882.63, which was not incorporated into the claimed promissory notes. This amount includes U.S.$1,685,790.09 in interest charges accumulated on the SEDCO and SISA notes in effect immediately prior to issuance of the notes claimed, U.S.$232,245.37 for insurance premiums SEDCO allegedly paid on behalf of IMICO, and U.S.$176,847.17 for other debts IMICO incurred in transactions with SEDCO. SEDCO offers no explanation why the interest charges, unlike those for previous years, were not aggregated into the claimed notes. Moreover, SEDCO did not list these charges anywhere on the 1 July 1979 IMICO

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[3] A cash payment of U.S.$691,450 by IMICO to SISA in fiscal year 1971-1972 was apparently the only amount of these sums paid back by IMICO.

balance sheet which it constructed for purposes of showing IMICO's net worth on that date.

9. SEDCO also alleges that between 1 July 1979 and 30 June 1981, it paid insurance premiums on behalf of IMICO of U.S.$232,245.37. It seeks to recover these payments. To support its claim, SEDCO has presented a list of such charges it allegedly paid, with references to the year in which such payments were made and the corresponding SEDCO file number which, presumably, would contain evidence concerning these payments. The Tribunal notes, however, that any documentation which may be contained in those files was not presented in evidence.

10. Finally, SEDCO has asserted that it is owed the amount of U.S.$176,847.17 for other current account debts IMICO allegedly incurred in transactions with SEDCO between April 1976 and June 1979, none of which were aggregated into the SEDCO note. SEDCO has presented a list itemizing these debts and referencing the month and year in which they were allegedly incurred. The Tribunal notes that, in its expropriation claim in this Case, SEDCO has presented a balance sheet showing IMICO's net worth on 1 July 1978 in which it claims it was owed U.S.$692,218 by IMICO in current account debts on that date. SEDCO has not explained whether this latter amount includes the U.S.$176,847.17.

11. IMICO's incurrence of the large debts reflected in the promissory notes may be traced to the low initial capitalization of the company, which, as mentioned, was U.S.$133,000. A SEDCO loan to IMICO of U.S.$500,000, which was capitalized in February 1972, increased the company's capital to U.S.$633,000.[4] However, no further contributions

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[4]SEDCO accepted a promissory note from the independent
(Footnote Continued)

to capital were made. Meanwhile, IMICO made large investments in equipment, machinery, buildings, and a waterfront extension, as well as barges and tugs which it built before finding purchasers and several of which it later could not sell profitably. Despite the debts covered by the promissory notes, which were apparently incurred largely due to these investments, IMICO's operations produced a profit for the company during fiscal years 1975 through 1977 according to IMICO income statements presented by the Respondents. However, IMICO memoranda dated July and September 1978, reported that the company was sustaining substantial losses during that fiscal year and that IMICO's total 1978 fiscal year net loss would probably reach U.S.$3,000,000, with a reduction of U.S.$4,200,000 in sales. SEDCO asserts that the drop in IMICO's business was directly attributable to the revolutionary events occurring in the country at that time, the unexpected loss of several contracts, as well as the cyclical nature of the shipbuilding industry in general. The Respondents allege that IMICO's poor financial performance was due primarily to its incompetent organization and staff, and its inability to attract customers. Whatever the source of these financial difficulties, it is clear that around this same time SEDCO began reevaluating its investment in IMICO. One report prepared by the company in July 1978 suggested the possibility of eventually selling IMICO to a larger shipyard organization. A later report prepared by IMICO in September 1978 mentioned the possibility of selling the company to an Iranian-SEDCO joint venture, Sediran Drilling Company. Apparently in the context of these proposed sales, the IMICO and SEDCO managements began to consider options for eliminating the outstanding loan balances due to SEDCO and SISA. These options included

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(Footnote Continued)
Iranian shareholders to cover their share of this contribution in order to maintain their ownership interest at nineteen percent.

forgiving all or part of the notes, capitalizing the debt, and receiving payment of the loans from an outside lending source.

12. Neither the sale of IMICO nor the elimination of the loans ever occurred. SEDCO asserts that by January 1979 the expatriate personnel of IMICO, which included all of its top management resident in Tehran and Bushehr, had relocated to Dubai for reasons of personal safety related to the Islamic Revolution and were running the business from there. While the date of this departure is not in dispute, certain of the circumstances surrounding it are. The Claimant acknowledges that IMICO's former managers removed several IMICO barges, with certain equipment loaded on board, when they left Iran in January. The Claimant also acknowledges that IMICO's former management arranged thereafter for several additional barges, also loaded with certain equipment, to be removed from Bushehr. The Claimant asserts that a total of eight IMICO barges were thus removed from Iran. However, it also asserts that all but three of these barges were returned to IMICO's facility in Bushehr, and that the equipment on board the vessels when they left Bushehr did not belong to IMICO. The Claimant states that the three barges not returned to IMICO were transferred to SISA for 94,161,951 Iranian Rials. SEDCO asserts that its reconstruction of IMICO's 1979 balance sheet includes this amount as an associated company account receivable of IMICO.

13. While the Respondents agree that IMICO's former management removed a number of barges from Iran, they have not articulated consistently how many barges in total they believe were removed and whether any of these barges were ever returned, although the Respondents' auditor appears to agree that eight barges in total left IMICO in late 1978 and early 1979. Moreover, the Respondents' auditor acknowledged that IMICO's books reflect an account receivable for the sale of "marine transportation equipment" to a related SEDCO

company of 94,161,951 Iranian rials. The Respondents also allege that equipment on board the barges when they left Iran belonged to IMICO, and that this property has not been returned to the company. However, aside from ambiguous statements in two affidavits, no evidence has been presented to substantiate this allegation. The Respondents have requested the Tribunal to deduct the value of any barges and equipment removed from IMICO at this time in determining any amounts due to the Claimant.

14. The Parties largely disagree on whether the expatriate management, and by extension SEDCO, intended to continue operating IMICO after the relocation to Dubai. While the Claimant asserts that it diligently attempted to pull the operation through the difficult revolutionary period, the Respondents assert that SEDCO abandoned the company. According to the Claimant's account, it left two Iranian employees in charge of the shipyard, while another Iranian national was left in charge of the main administrative office in Tehran. Meanwhile, the management in Dubai, which had removed many of the IMICO working files from Iran, maintained almost daily telephone contact with the shipyard. Finally, a member of the management staff, Mr. Rennie, returned to Bushehr in April 1979 carrying a "duffel bag" filled with money to pay salaries of the IMICO employees. SEDCO asserts that these and other efforts by the IMICO management to maintain operational control of the company were undermined, at first, by direct interference in IMICO's operations by the local revolutionary committee, and eventually, by outright expropriation of the company by Iran through its appointment of a new management and its total exclusion of SEDCO from participation in IMICO's affairs.

15. Evidence presented in the pleadings indicates that as early as November 1979, government authorities were involved in IMICO's management. For example, a check received by IMICO from NIOC, dated 6 November 1979, was processed

through the Bushehr Governor General's office. SEDCO argues that the new management must have been appointed sometime in the middle of 1979, because from that time onward it received no financial reports or other communications from the company and was otherwise excluded from any participation in the company's affairs.

16. The Respondents do not contest that government-appointed managers did at some point assume control of IMICO's operations and that, thereafter, SEDCO no longer participated in the company's affairs; at the Hearing they said the first appointment was made in mid-December 1979 and allege that this action was necessary due to the abandonment of the company by SEDCO and that it was carried out in accordance with applicable Iranian law. Moreover, the two Iranian employees left in charge of the shipyard filed affidavits stating they were neither prepared for nor given any guidance in carrying out company operations after the departure of the expatriate management, and that no funds were left to operate the company in any event. While the Respondents acknowledge that Mr. Rennie did return in April 1979 to pay the employees one month's salary, they suggest that the main purpose of this trip was to secure the transfer of several barges from the shipyard for work elsewhere in the Gulf, which all Parties agree did occur.

17. As noted in paragraph 1 supra, SEDCO effectively withdrew its claim for certain accounts receivable due to IMICO from NIOC and allegedly assigned to SEDCO in the amount of U.S.$798,568.95 by acknowledging that the assignment was not properly authorized and that it therefore had no effect. SEDCO maintains its alternative argument that, if the assignment was ineffective, IMICO's value on the date it was expropriated should be increased by the amount of the assignment, resulting in an increased recovery for SEDCO in its expropriation claim. NIOC disputes the amount due and

presented evidence, including payment vouchers, indicating it may have paid some, or all, of the amounts allegedly due.

III. PROCEEDINGS

18. An unusually large volume of documents was exchanged by the Parties in this Case, but the Respondents maintain that many documents relevant to the question of the validity of IMICO's debts to the Claimants were not furnished by the Claimant and they request that adverse inferences be drawn from that failure. Some description of these exchanges is necessary to lay a foundation for the Tribunal's consideration of this matter infra.

19. In response to a 29 July 1983 request from the Respondents for an eight-month extension of their deadline for filing evidence in this Case, the Tribunal issued an Order on 9 September 1983 requesting the Respondents to file a report with the Tribunal indicating the progress made and problems encountered in gathering such evidence. On 24 October 1983, IMICO filed its response to this Order wherein it stated that it was having difficulty locating five basic types of IMICO financial documents: documents which would enable IMICO to prepare the annual accounts for the fiscal year ending 30 June 1979; the computerized account records and books containing details of accounts and transactions except for the 17 month period ending 31 May 1979; a "portion" of documents, papers, and records related to the company's fixed assets; "elucidatory documents" related to transactions between IMICO, SEDCO, and SISA; and annual accounts, reports by legal inspectors and IMICO minutes of meeting.

20. On 1 November 1983, the Tribunal issued an Order drawing the attention of the Claimant to the Respondents' 24 October 1983 filing, and requesting the Claimant to file with the Tribunal any of the documents mentioned by the

Respondents therein "should these records be available to the Claimants . . . ." On 24 January 1984, the Claimant responded to the Tribunal's Order by submitting seventeen boxes allegedly containing the following types of documents: all IMICO accounting vouchers for the period June 1978 to June 1979; computerized general ledgers for the period July 1978 to June 1979; computerized lists of intercompany accounts for the period September 1974 to June 1977; computerized property schedules; various IMICO financial statements; and warehouse reports. In an accompanying affidavit, a former IMICO board member stated that the accounting vouchers included in the seventeen boxes (those for June 1978 through June 1979) were the only vouchers for which the original documents were not in IMICO's possession. He further stated that the documents contained in the seventeen boxes always had been, and continue to be, in IMICO's possession. The Tribunal notes that shortly after these seventeen boxes were submitted to the Tribunal, but before they were delivered to the Respondents, IMICO filed a Supplementary Statement of Defense in which it stated that it had been unable to locate any IMICO accounting vouchers and supporting documents for the period prior to 31 December 1976, and that for the period from 1 January 1977 to 30 June 1979 it had located some, but not all, such documents.

21. In its 17 August 1984 response to the Claimant's filing of the seventeen boxes, IMICO alleged, inter alia, that their contents had not substantiated "the origins of the alleged promissory notes." In response to this filing, and to satisfy itself that the debts underlying the notes were based on valid intercompany transactions, the Tribunal thereafter requested the Claimant to file copies of its audited annual balance sheets as filed with the United States Securities and Exchange Commission ("SEC") for each of the fiscal years ending in 1970 through 1979, and "adequate supporting documents of the transactions with IMICO which gave rise to the debts underlying the notes claimed

upon, as recorded in the books of account of SEDCO and SISA for the same years." On 4 February 1985, SEDCO filed its audited annual balance sheets as filed with the SEC (10-K Reports), in addition to its internal accounting work papers and those of its independent auditor which were used to prepare the IMICO-related entries in the 10-K Reports. In several subsequent filings, in November and December 1985, IMICO reiterated its position that none of the filings made by the Claimant were sufficient to establish that the transactions underlying the notes actually occurred. In a 6 January 1986 filing, SEDCO maintained that the documents it had produced were more than adequate to establish the validity of those transactions. The Tribunal ordered no further production of documents.

22. On 28 March 1988, IMICO filed a "Clarification Memorial" in which it stated that it had recently received over a "thousand pages of documents" which had allowed IMICO's chartered accountants to examine "to some extent" the origin and merit of the alleged promissory notes. The Tribunal notes that the Respondents did not further identify these documents, or indicate how they had assisted the Respondents in their examination of the promissory notes.

23. A further and unrelated procedural development occurred when, on 7 July 1987, Chamber Three issued SEDCO, Inc. and National Iranian Oil Company, Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, wherein the Tribunal left undecided a claim by SEDCO against NIOC related to accounts receivable due to IMICO which it purportedly assigned to SEDCO on 16 November 1979.[5] After consulting with the Chairmen of Chambers Two and Three, the President transferred that claim to Chamber Two by a

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[5]This claim is described in paragraphs 1 and 17 supra and has effectively been withdrawn by the Claimant.

Memorandum dated 21 July 1987. This Chamber informed the Parties in this Case about the transfer of the claim in an Order dated 30 July 1987. On 21 September 1987, the caption in this Case was amended to include NIOC as a Respondent.

IV. JURISDICTION

24. In SEDCO, Inc. and National Iranian Oil Company, Award No. ITL 55-129-3 (28 October 1985), reprinted in 9 Iran-U.S. C.T.R. 248, the Tribunal found that SEDCO is a U.S. national pursuant to Article VII, paragraph 1, of the Claims Settlement Declaration, and that SISA is SEDCO's wholly owned subsidiary. Evidence, including proxy statements and an auditor's report, has been submitted by SEDCO in this Case to confirm its U.S. nationality and ownership of SISA, and to verify that more than fifty percent of its stock was held by U.S. citizens during the relevant period. Accordingly, the Tribunal is satisfied that this claim fulfills the requirements of Article VII, paragraph 1, of the Claims Settlement Declaration.

25. 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 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 the Claimant from the dates they allegedly arose until 19 January 1981, as required by Article VII, paragraph 2 of the Claims Settlement Declaration.

26. 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 Tribunal notes that SEDCO has named both the Government of the Islamic Republic of Iran and IMICO as Respondents. The Respondents have argued that IMICO is a

private joint stock company, and that therefore claims against it are not subject to the jurisdiction of the Tribunal. However, both in their pleadings and at the Hearing, the Respondents have acknowledged that government-appointed managers assumed exclusive control of IMICO prior to 19 January 1981, and that they have controlled the company ever since.

27. The Respondents argue that the Government appointed managers to run IMICO solely because of SEDCO's abandonment of the company. Whatever may have been the reasons why the Government assumed control of IMICO, they are irrelevant to the jurisdictional question whether the Government in fact controlled the company on 19 January 1981. The Tribunal has repeatedly held that a privately-owned company whose management is in the hands of government-appointed personnel on that date shall be considered a controlled entity of the Government of Iran for purposes of establishing the Tribunal's jurisdiction. See e.g., RayGo Wagner Equipment Co. and Star Line Iran Co., Award No. 20-17-3, pp. 5-6 (15 December 1982), reprinted in 1 Iran-U.S. C.T.R. 411; Rexnord Inc. and Islamic Republic of Iran, Award No. 21-132-3, p. 8 (10 January 1983), reprinted in 2 Iran-U.S. C.T.R. 6; Phelps Dodge International Corp. and The Islamic Republic of Iran, Award No. 218-135-2, para. 30 (19 March 1986), reprinted in 10 Iran-U.S. C.T.R. 157. Accordingly, the Tribunal finds that IMICO qualifies as an entity controlled by the Government of Iran and, therefore, that claims directed against IMICO are claims against "Iran" as defined in Article VII, paragraph 3 of the Claims Settlement Declaration.

28. A further jurisdictional issue raised in this Case is whether the claims for recovery of the promissory notes and debts were "outstanding" on 19 January 1981, as required by Article II, paragraph 1 of the Claims Settlement Declaration. It is uncontested that both notes at issue were made payable "on demand." It is also uncontested that neither

SEDCO nor SISA ever demanded payment of the notes or of the other alleged debts prior to 19 January 1981. The Respondents argue that because such demand for payment had not been made, any claims for recovery on the notes or the debts should not be considered to have been outstanding as of 19 January 1981. The Claimant asserts that on-demand promissory notes are mature debts upon issuance and without demand, and that therefore claims for their recovery were outstanding any time after 1 July 1978, and that no prior demand was required to make claims for the other debts outstanding within the meaning of the Claims Settlement Declaration.

29. The Claimant has asserted that the law applicable to a determination of whether the claims for recovery of the promissory notes should be considered to have been outstanding as of 19 January 1981 is that of the United States, and, more specifically, the Uniform Commercial Code ("UCC") as adopted in the State of Texas. There is no dispute that both promissory notes were issued in Texas and made payable in Texas. The Tribunal notes that both Texas law and the applicable provisions of the Commercial Code of Iran appear to provide that essential conditions and liabilities related to promissory notes shall be governed by the law of the place where they are drawn or issued. The Tribunal further notes that it is well-settled in Texas, as well as other United States jurisdictions, that a cause of action on a demand promissory note matures on the date of its issuance and does not require that a demand has been made.[6] This

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[6]The general rule that a demand note constitutes a mature debt upon issuance appears to have been deviated from by U.S. courts only where the written terms of the instrument itself, or in some limited instances, where the circumstances in which the note was executed, clearly indicate otherwise. This rule is stated by Williston as follows: "On demand paper a right of action against the maker arises immediately as soon as it is delivered. . . . unless a contrary intention appears expressly or impliedly

(Footnote Continued)

rule, which derives from the common law, has been codified in the Texas statutes through adoption of UCC Section 3-122.[7]

30. The Tribunal is therefore convinced that the law of Texas is the governing law and that under Texas law a cause of action existed for recovery of the two notes at issue at any time after their issuance and prior to 19 January 1981, even in the absence of a demand for payment. Accordingly, there can be no question but that these claims would be considered to have been "outstanding" as that word is used in Article II, paragraph 1 of the Claims Settlement Declaration.

(Footnote Continued)
upon the face of the instrument." Williston On Contracts, §1149. The terms of the notes at issue clearly bring them under the general rule because they do not point expressly or impliedly to any event which had to precede their maturity, nor do they otherwise indicate that they were not fully matured debts upon issuance. Moreover, even if the Tribunal were to look beyond the face of the instruments and at the circumstances in which the notes were executed, there is no evidence that SEDCO and SISA were prepared to settle for notes that were not demand notes. While they may not have intended to demand payment at any definite or early time in the situation prevailing at the time the notes were executed, that is, while SEDCO still owned and operated IMICO, the circumstances could in no way warrant the conclusion that the notes were given with the intention that they would not be considered fully matured debts should that situation change, as in fact it did in 1979.

[7] §3-122, Accrual of Cause of Action, provides:

(1) A cause of action against a maker or an acceptor accrues . . .
(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

The Official Comment to this Section provides that "it follows the generally accepted rule that action may be brought on a demand note immediately upon issue, without demand, since presentment is not required to charge the maker under the original Act or under this Article."

31. Moreover, the Tribunal has previously held that debts owed and payable prior to 19 January 1981, unlike bank accounts, constituted outstanding claims, even though payment of the debts had not been demanded prior to that date. See Linen, Fortinberry and Associates and The Islamic Republic of Iran, et al., Award No 372-10513-2 (28 June 1988) and Reliance Group, Inc. and Oil Service Company of Iran, et al., Award No. 315-115-3 (10 September 1987), reprinted in 16 Iran-U.S. C.T.R. 257. Therefore, claims for payment of the alleged intercompany debts between IMICO and the Claimants were also "outstanding" as that word is used in Article II, paragraph 1 of the Claims Settlement Declaration.

32. The Respondents argue further that the Claimant had no intention of demanding payment of the notes from IMICO, and they point to evidence which indicates that SEDCO considered forgiving the loans in the context of a possible sale of IMICO. Indeed, the evidence suggests that the debt represented by the notes was regarded as a long-term liability of IMICO and that SEDCO had no intention at the time of demanding payment of the notes in the foreseeable future. The fact that SEDCO did not demand payment of the notes between 1978 and 1981 is also cited by the Respondents as a further indication of a lack of intention by SEDCO to demand payment thereof. Whatever the likelihood that, had the Islamic Revolution not intervened, the notes or other alleged debts might ultimately have been written off, it is irrelevant to the jurisdictional question at issue. The Claims Settlement Declaration does not limit the Tribunal's jurisdiction over outstanding debt claims to those which a Claimant can somehow prove it intended consistently at all times to pursue. Moreover, no action was ever taken to forgive these debts. Accordingly, the Tribunal finds that the claims for recovery of the promissory notes and other debts allegedly owed were outstanding on 19 January 1981 pursuant to Article II, paragraph 1 of the Claims Settlement Declaration.

33. With regard to the Respondents' counterclaim for income taxes allegedly unpaid by IMICO and therefore allegedly due in part from SEDCO, the Tribunal has consistently held that tax assessments become payable by operation of Iranian law and therefore do not arise out of the "same contract, transaction, or occurrence" as the claim. See SEDCO, Inc. and National Iranian Oil Company, Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23; T.C.S.B., Inc. and The Islamic Republic of Iran, Award No. 114-140-2 (16 March 1984), reprinted in 5 Iran-U.S. C.T.R. 160; Houston Contracting Company and National Iranian Oil Company, Award No. 378-173-3 (22 July 1988). Nothing in this Case would require a different result.[8]

V. THE MERITS

34. The Tribunal notes that the expropriation claim against Iran, if meritorious, requires a determination of the value of IMICO on the date the Tribunal finds it was taken. This determination cannot be made until the outcome of SEDCO's other claims against IMICO are resolved, because those claims, to the extent found meritorious, will reduce IMICO's value proportionately. In this regard, the Tribunal notes that SEDCO's claims for recovery on the promissory notes and the other alleged debts of IMICO have been asserted independently from the expropriation claim and directly against IMICO; accordingly, the Tribunal considers it appropriate to decide the merits of those claims and to

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[8] The Tribunal notes, moreover, that in their later pleadings the Respondents appear to assert that the amount of any unpaid IMICO taxes is relevant only to the issue of IMICO's value on the date of its alleged expropriation. This approach appears well-founded, particularly given the acknowledgement of the Respondents that the unpaid taxes at issue were assessed against IMICO, not SEDCO. The Tribunal agrees that tax liabilities of IMICO must be taken into account in determining its value.

award any amounts which may be owed thereunder before considering the expropriation claim.[9]

A. The Promissory Note Claims

35. The Claimant seeks to recover U.S.$20,508,022.90 through enforcement of the two promissory notes. That the two notes were issued by IMICO's managing director on 1 July 1978 in the amounts now claimed by SEDCO, that these notes were made payable to the order of SEDCO and SISA "on-demand", that SEDCO and SISA now hold the notes, and that the notes have not been paid is not contested. In the Claimant's view, the agreement of the Parties on these basic points, and the evidence it has presented concerning the transactions which underlie the notes are sufficient to establish their validity and justify a recovery of the full amounts of the notes.

36. The Respondents' primary argument against enforcement of the notes is that insufficient evidence has been presented to establish the validity of the underlying transactions. They also argue that (a) the notes were not reflected in the legal books of IMICO; (b) the notes were procured by the Claimants through improper use of influence over Mr. Thorne, the signatory of the promissory notes, who was not only the managing director of IMICO but also the chairman of SISA and

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[9] But see Starrett Housing Corporation and The Government of the Islamic Republic of Iran, Award No. 314-24-1 (14 August 1987), reprinted in 16 Iran-U.S. C.T.R. 112, where the Tribunal awarded a recovery on the amounts due under loans extended to the Claimant's expropriated former subsidiary as part of the property rights it considered expropriated by the Government. A direct recovery of the loans as independent debts in that Case was clearly not possible because the recipient of the loans was not named as a Respondent, and, moreover, the claim was based exclusively on an alleged expropriation and did not seek recovery based on the existence of any independent debt.

a vice president of SEDCO; (c) Article 129 of the Commercial Code of Iran, reflected in Article 35 of IMICO's Articles of Association, prevented Mr. Thorne from signing the notes without prior permission of IMICO's Board of Directors, which permission is lacking in this Case; and (d) Mr. Thorne in any event was not authorized to sign to the notes. In connection with the primary argument of insufficient evidence, the Respondents also assert that a negative inference should be raised against the Claimant for its allegedly inadequate responses to the Tribunal's Orders requesting it to produce IMICO and SEDCO financial documents. The Tribunal notes that in its Statement of Defense, IMICO acknowledged debts to affiliated companies of U.S.$21,550,031, but argued that the company had never been financially able to pay them, was insolvent, and that the claim should therefore be dismissed. In subsequent filings, however, the Respondents asserted that the documentation presented by the Claimants to evidence the transactions underlying the notes was insufficient to establish that these transactions actually occurred and therefore that the notes and the debts may not be valid. The Respondents also pointed to the 1973 and 1974 audit reports of IMICO which expressed reservations concerning the value of assets taken over from Shahpour Engineering and Drilling Company. The value of these assets in the amount of U.S.$2,776,709 was consolidated into IMICO's note owed to SISA in fiscal year 1970-1971. However, other than these two audit reports, the Respondents have presented no evidence to indicate that the notes do not properly reflect antecedent debts of IMICO.

37. In support of its claim that the notes are a consolidation of valid antecedent debts, the Claimant has presented contemporaneous evidence, including the SEDCO 10-K Reports filed with the SEC for all the years in question. SEDCO's individual and consolidated financial statements, on which the 10-K Reports were based, were audited by SEDCO's independent auditors "in accordance with generally accepted

auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as [was] considered necessary in the circumstances." Moreover, the auditors also state in their opinion accompanying the 10-K Reports that the SEDCO balance sheets included therein "present fairly the financial position of SEDCO, Inc. and subsidiaries and SEDCO, Inc. (Parent Company) . . . in conformity with generally accepted accounting principles. . . ." Contemporaneous SEDCO and SISA balance sheets, and for 1979, the internal work papers of SEDCO's accountants, which indicate the precise amount of the IMICO indebtedness as it was consolidated in succeeding notes from year to year, and which were used to prepare the 10-K Reports, have also been presented in evidence. Moreover, the outside auditor's internal work papers for fiscal years 1977-78 and 1978-79, which reflect the IMICO indebtedness for those years as claimed by SEDCO, have also been presented. IMICO's balance sheets for 1975 through 1979, which were presented by the Respondents, also show that the amounts of the promissory notes now claimed were maintained as liabilities by IMICO in its financial statements for those years. These financial statements were also subject to yearly audits as part of SEDCO's consolidated audit filed with the SEC, which, as already mentioned, consistently confirmed the IMICO indebtedness alleged by SEDCO. Moreover, two management letters presented in evidence by the Respondents, which were sent to IMICO in 1976 and 1977 by its auditors following their examination of IMICO's financial statements, do not question IMICO's accounting practice in recording or documenting intercompany transactions, although these letters otherwise provided critical comments on several aspects of IMICO's record-keeping.

38. The Claimant also presented testimony at the Hearing by a Price Waterhouse accountant who stated that he had examined documents located in SEDCO's company archives related to a significant and random selection of the underlying

transactions at issue, and that his examination verified the legitimacy of the amounts claimed for each such transaction. Finally, the Tribunal notes that IMICO's current auditor, who filed several affidavits in this Case and testified for the Respondents at the Hearing, acknowledges having examined IMICO's accounting vouchers for fiscal years 1977, 1978 and the first six months of 1979, as well as the statutory books of account for the period up to 30 June 1979, the computerized general and subsidiary ledgers of the company, and "thousands" of pages of IMICO accounting documents, which have not been more specifically identified. The Tribunal notes that despite his having had access to vouchers covering two and a half years of the company's operations prior to the departure of the former management, as well as numerous other financial documents, the Respondents have not presented any evidence to indicate that IMICO's intercompany accounting system was either flawed or did not properly reflect bona fide debts.

39. As demonstrated above, the Claimant has presented adequate evidence in this Case to support the conclusion that the notes reflect valid antecedent debts incurred by IMICO in the ordinary course of business, including the testimony at the Hearing by the Price Waterhouse accountant who verified the debts through spot checks. Except for the remarks made in the two audit reports of IMICO for the years 1973 and 1974 concerning the unverified value of the assets taken over from Shahpour Engineering and Drilling Company, which were consolidated into the SISA note in 1971, the Respondents have been unable to present any evidence which would call this conclusion into doubt despite their acknowledged access to numerous IMICO financial records. The Tribunal does not believe that the two audit reports can serve as a basis for changing the stated value of the Shahpour assets, or the value of the components of the promissory notes in general, since it is no longer possible to verify independently the value of those assets in 1971,

and, standing alone, the comments in the two audit reports cannot outweigh the clear conduct of the Parties in continuing to carry the Shahpour assets at their originally stated value, which indicates their acceptance of that value. Under such circumstances, the Tribunal does not believe that it need go any further in examining additional evidence related to the promissory note debts to accept their validity. Moreover, the Tribunal notes that the Claimant's case is based on its rights to recover on the promissory notes or, alternatively, on the lump-sum totals of the debts represented by the notes, not on the individual transactions underlying them which, while antecedent, are legally separate debts. As negotiable instruments, properly executed promissory notes are generally considered to be sufficient evidence of debt in and of themselves and do not require the presentation of additional evidence to justify a recovery.[10]

40. Quite apart from the Tribunal's finding that the evidence that the notes reflect legitimate debts is compelling, the Tribunal cannot accept the Respondents' argument that it should draw a negative inference against SEDCO in this claim because of its allegedly inadequate responses to the Tribunal's Orders related to the production of IMICO and SEDCO financial documents. The Tribunal's 1 November 1983 Order, which, with regard to the promissory notes, referenced only the Respondents' vague request for "elucidatory documents" related to the transactions between IMICO, SEDCO, and SISA, was satisfactorily complied with by SEDCO in its 24 January 1984 filing. The Tribunal's later Order was also complied with by SEDCO in a reasonable fashion. In its

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[10] Under Texas law, for example, a holder of a properly executed promissory note is entitled to recover on it without presenting additional evidence unless the defendant otherwise establishes a defense by a preponderance of the evidence. See, also UCC §3-307(2).

response, SEDCO presented all the relevant 10-K Reports, in addition to its own and its outside auditor's work papers on which the sections of the 10-K Reports related to IMICO's promissory note debts were based. This response thus provided the 10-K filings requested as well as "supporting documents" of the transactions between IMICO, SEDCO, and SISA which gave rise to the notes in the form of the accounting work papers. While these supporting documents may have been less than desired by IMICO, they were responsive to the Tribunal's Order.

41. The Respondents' further argument that the amounts of the promissory notes should not be considered as independently recoverable loans, but rather as contributions by SEDCO and SISA to the equity of IMICO, is not persuasive. While the loans underlying the notes may well have been required because of the undercapitalization of IMICO, the loans and the notes were carried as loans, not equity, on the account books of both IMICO and SEDCO. Furthermore, tax filings in Iran and SEC filings in the United States also listed the amounts of the notes as loans, not equity. Moreover, although the possibility of converting these loans to equity was specifically discussed in July 1978 in the context of contingency planning that envisioned a possible sale by SEDCO of its interest in IMICO, no action to convert the loans to equity was ever taken. The Respondents maintain, however, that IMICO regarded the notes as long-term liabilities and that, accordingly, their true character more closely resembled equity contributions than loans. The Tribunal agrees, but the unwillingness of SEDCO and SISA to insist upon prompt repayment of loans extended to IMICO was understandable given IMICO's probable inability to make such repayments and given their interest in keeping IMICO in business. The Tribunal does not believe this conduct somehow transmuted loans into equity in the absence of some concrete actions to do so. Moreover, the Respondents have not cited any legal authority which would support this

proposition. Accordingly, the Tribunal finds no basis on which to characterize the promissory notes as equity rather than loans.

42. The Respondents' additional argument that a recovery of the notes should not be awarded because IMICO would not have been financially able to pay such amounts, except possibly upon liquidation of the company, must also be rejected. The hypothetical ability (or inability) of an entity controlled by Iran to pay an award rendered against it for a valid debt is irrelevant in determining the amount of the award, because Iran undertook in the Algiers Accords to pay the debts of its controlled entities and to maintain the Security Account for that purpose.[11] Moreover, the ability of an entity to pay clearly could not affect the Tribunal's findings on the extent of the Respondents' legal liability,[12] or serve as a substantive defense to the claim. Iran's undertaking is not limited to those debts which the controlled institution itself is today, or would have been in 1981, able to pay; it clearly applies to "all" debts of that controlled entity whether or not that entity would have been placed into bankruptcy through enforcement of the debt. Accordingly, the Tribunal does not need to consider IMICO's financial status in determining its award.

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[11] See Paragraph 7 of the General Declaration which states that funds in the Security Account are to be used to pay "claims against Iran in accordance with the Claims Settlement Agreement", and Article VII, paragraph 3, of the Claims Settlement Declaration, which defines "Iran" to include any "entity controlled by the Government of Iran". See also Paragraph 2 of the Undertakings by Iran and the United States which begins with the phrase: "Iran having affirmed its intention to pay all its debts and those of its controlled institutions . . . ."

[12] The assets of a controlled entity could be relevant in determining the extent of the Respondent's liability only where the claim is based on an expropriation and the Tribunal was required to determine the value of the controlled and expropriated company.

43. The Tribunal also cannot agree that the final two arguments of the Respondents should prevent a recovery of the notes in this Case. Article 35 of IMICO's Articles of Association, which is modeled after Article 129 of the Commercial Code of Iran for Joint Stock Companies, requires a board member to obtain permission from the Board of Directors prior to entering a proposed transaction in which the board member is either a party to the transaction or otherwise stands to gain personally from it. That was not the case here, and the article was therefore not applicable to execution of the notes in question. Moreover, even if Article 129 applied because SEDCO had an interest, thus making the notes voidable, Article 131 sets forth procedures to follow and time limits within which action could be taken to invalidate the notes; those procedures have evidently not been followed, and the time limits have expired. Concerning Mr. Thorne's authority, Articles 29 and 31 of IMICO's Articles of Association expressly authorized the Managing Director to execute promissory notes. Article 31 provides that "All documents committing the Company shall be signed by the Managing Director or by person or persons designated by the Board," while Article 29 provides that "the Company's Board of Directors or Managing Director within his powers, shall have unlimited authority to act on the Company's behalf in all matters relating thereto [including the power to "draw, sign and endorse . . . promissory notes . . . "] and in general shall have the right without any special power of attorney to take any such action as he may deem necessary . . . ." The Tribunal finds no basis on which to conclude that the notes were not executed in accordance with IMICO's Articles of Association. Moreover, the Tribunal notes that even if the execution of the notes had been technically defective, that would not prevent the Claimant's recovery of the loans they represented, the benefits of which IMICO had already received.

44. The Respondents' additional argument that the notes are invalid because they may have been procured through duress or undue influence is unsupported by any evidence, and accordingly must also be dismissed.

45. In light of the Tribunal's findings, the two promissory notes are found to be valid and enforceable debts, and their combined sum in the amount of U.S.$20,508,022.90 is awarded to the Claimant. In order to compensate the Claimant for its loss, the Tribunal also awards interest on the above amount, less any amounts found owing from the Claimant to the Respondent (see paras. 49 and 56, infra), at the rate of 9.0 percent. Such interest shall run from 19 November 1981, the date the claim was filed, as that was the first date on which a demand for payment of the notes was made.

B. The Assignment Claim

46. Due to the Claimant's acknowledgment during the Hearing that the document by which IMICO allegedly assigned to SEDCO the accounts receivable due from NIOC was not properly authorized and that the purported assignment was therefore of no effect, the assignment claim is therefore dismissed.[13]

C. The Other Alleged IMICO Debt Claims

47. The Tribunal notes that SEDCO's additional claims for interest payments (U.S.$1,685,790.09) and current account debts (U.S.$176,847.17), almost all of which were allegedly incurred before 1 July 1978, but which were not incorporated into the claimed promissory notes, are not supported by adequate evidence. The auditing work papers and financial

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[13] The Tribunal will determine whether the amount of the accounts receivable due from NIOC should be considered an IMICO asset in the context of the alleged expropriation in its discussion of the expropriation claim, infra.

reports presented by the Claimant do not clearly verify the current account debts or the dates of their alleged incurrence. The IMICO balance sheets, which reflect the promissory note debts, do not clearly account for the amounts of either of these additional claims. Moreover, the Claimant has not adequately explained why these debts, if they existed, were not incorporated into the SEDCO and SISA notes. Finally, the accountant presented by the Claimant at the Hearing did not testify that he had verified these debts. Under these circumstances, the Tribunal must dismiss these claims for lack of proof.

48. The claim for U.S.$232,245.37 for reimbursement of insurance premiums allegedly paid by SEDCO on behalf of IMICO must also be dismissed for lack of proof. SEDCO has presented no direct evidence that it paid these premiums, nor any other evidence on which the Tribunal could establish a presumption that it did so.

D. SEDCO's Debt for Removal of the Barges

49. The Tribunal notes that SEDCO acknowledges a debt to IMICO for the removal of three IMICO barges. The Tribunal further notes that IMICO has not presented any evidence to rebut SEDCO's claim concerning the number of barges removed and not returned by the former management. Such evidence, if it exists, is surely within the control of IMICO since it continues to operate the shipyard and, presumably, knows how many of the company's barges are no longer in its possession. Accordingly, the Tribunal finds that SEDCO owes IMICO the value of three barges, which amount must be deducted from any recovery awarded the Claimant. In its filings SEDCO has recognized a debt to IMICO in the amount of U.S.$1,455,622, which evidently is acknowledged as owed for the three barges it removed. Although there is evidence that the barges were in fact worth less than this amount (see para. 60, infra), the Tribunal accepts the amount

acknowledged by SEDCO as owing to IMICO. IMICO should also receive credit for interest on this amount as from April 1979 when the barges that were not returned left Iran until 19 November 1981 when this claim was filed. The Tribunal determines that interest to be U.S.$325,000. Therefore, the total amount of U.S.$1,780,622 shall be deducted from the amount of the Tribunal's award to SEDCO.

E. IMICO's Liability for Non-Withholding of Taxes on Interest

50. As noted in paragraph 7, supra, the Respondents filed no counterclaim for this alleged liability. A counterclaim based on the liability of SEDCO and SISA to the Islamic Republic of Iran pursuant to the tax laws of Iran would doubtless have faced the jurisdictional objection that it arose out of law, rather than out of the same contract, transaction, or occurrence as the claim, but a counterclaim by IMICO based on an alleged debt owed to it by SEDCO and SISA or on an indemnity undertaking by SEDCO and SISA for its benefit would not have faced the same objection. In any event, no counterclaim was made by either Respondent. Nevertheless, the question remains whether the Tribunal would be authorized by the record in this Case to deduct from the amount of its Award to SEDCO any amount to compensate IMICO for its acknowledged liability to the Iranian authorities as a result of its non-withholding of taxes due upon the accrual of interest by IMICO as part of its debts owed to SEDCO and SISA.

51. The record in the Case indicates the following. The first reference to this tax problem is found in an affidavit by an Iranian accountant concerning the financial books of IMICO. The only reference to it in a brief filed by IMICO is found in its "Clarification Memorial" filed shortly before the Hearing, where IMICO refers to the fact that its accountant in his affidavit estimated its tax liability in

this matter at approximately 150,000,000 Iranian rials and states that this "should be debited to SEDCO's or SISA's account as the case may be." Finally, an Ernst and Whinney report on ownership and valuation of IMICO which was submitted with the "Clarification Memorial" states: "In our opinion, the exposure to Iranian tax ($1,954,000) should be set off against the alleged amounts due to the Claimant." Appended to that report is a copy of a memorandum dated 4 July 1978 from one member of IMICO's Board of Directors, H.E. Malone, to the Managing Director and two other officials of the company. That memorandum quantifies the tax exposure as of 30 June 1978 as U.S.$1,954,000 and states, in part, the following:

> Inter-company Debt - Iranian Tax Exposure
>
> Interest is accrued monthly at nine percent on the debt owed to Sedco Inc. and Sedco International (hereafter referred to as the home office). Such accrual is recorded as interest expense on IMICO's English books but on the Farsi books, which books are used for computation of taxes, the entry states that the expense incurred is "Sundry Expenses." The IMICO debt to the home office on the Farsi books is recorded in the inter-company current account and is not shown as notes payable.
>
> For fiscal year 1976, the IMICO tax inspector has rejected the interest expense (sundry expenses) because we were not able to properly support the expense. We are working on such support currently. Interest expense is allowed in Iran as a deductible item for Iranian tax returns but since the required tax was not withheld and paid on the interest accrued, we certainly did not tell the tax inspector what the sundry expense entries were.

At the Hearing, no Party referred to this tax exposure question, although SEDCO did suggest several adjustments to any award to take into account other debts allegedly owing between IMICO and SEDCO and SISA (see paragraphs 47 and 48, supra).

52. In view of that record, the questions the Tribunal must decide are, first, whether SEDCO's failure to refer to this matter can fairly be interpreted as an admission of the tax liability of IMICO, second, whether, in the absence of a counterclaim, the Tribunal is authorized to deduct from the award a debt owing from SEDCO and SISA to IMICO, and third, whether such a debt is established by the evidence.

53. First, although IMICO's brief reference to this question in its "Clarification Memorial" was not a counterclaim, it, along with the accountant's affidavit, the Ernst and Whinney report and the 4 July 1978 Malone memorandum, should have been sufficient to alert SEDCO to the need to respond in some fashion to this question at the Hearing, particularly as SEDCO was itself proposing at the Hearing adjustments to any award to reflect debts allegedly owed between IMICO on the one hand and SEDCO and SISA on the other. Therefore, the Tribunal interprets SEDCO's silence as acknowledgement of the validity of the Malone memorandum and of its calculation of IMICO's tax liability.

54. Second, in the context of the record in this Case where all Parties have requested the Tribunal to adjust any award to reflect the net debts owing between IMICO on the one hand and SEDCO and SISA on the other, the Tribunal finds that it is authorized to do so with respect to debts clearly identified as such, even where no counterclaim has been filed by IMICO.

55. Finally, the Tribunal must decide whether a debt is established by the evidence. Here, there are serious difficulties. While the Malone memorandum establishes that IMICO's executives -- who were appointed by SEDCO -- believed that both the beneficiaries of the accrued interest (SEDCO and SISA) and the Party owing such interest (IMICO) would be liable to the Iranian tax authorities for tax on the accrued interest, there is no suggestion there or

elsewhere that either SEDCO or SISA undertook an obligation to indemnify IMICO with respect thereto. The evident effort of the SEDCO and IMICO executives was to find some way of disguising the accrued interest so that no Party would have to pay Iranian tax on it. Thus, these amounts were shown as accrued interest on the English books of the company and as "sundry expenses" on the Farsi books, which were the only ones used by the Iranian tax authorities. When those tax authorities began to reject deductions for those "sundry expenditures" as not properly supported, the search for alternative means of tax avoidance began, as explained at some length in the Malone memorandum. Several alternatives were considered, including substitutions of bills for "home office expenses", capitalization of the loans, and forgiving interest, but there is no reference to the possibility that SEDCO and SISA might either pay the tax or reimburse IMICO if the latter should be compelled to pay the tax. On the other hand, such a reference might be thought unnecessary, both because it was still hoped that the tax could be avoided in one way or another and because it was understood that SEDCO and SISA were the sources of the great bulk of IMICO's capital and that, the more taxes IMICO had to pay, the more contributions would be required in cash and in kind by SEDCO and SISA to keep IMICO solvent and operational.

56. Given the evidence of this extremely close relationship in which SEDCO and SISA treated IMICO almost as a branch office, the Tribunal believes that it is warranted by the evidence and by equitable considerations in concluding that SEDCO and SISA effectively recognized that IMICO's tax liability with respect to the interest accrued for their benefit constituted a potential expenditure that they would have to bear, in one way or another, and therefore that it should be deducted from the amount of the Tribunal's award. Accordingly, the amount of U.S.$1,954,000 shall be deducted from the amount of the Tribunal's award to SEDCO.

F. The Expropriation Claim

57. For SEDCO to recover compensation for the alleged expropriation of IMICO it must establish that acts attributable to Iran have deprived it of a valuable property interest in the company prior to 19 January 1981. The Tribunal need not decide that issue in this Case, however, because it is convinced that, given the validity of the promissory note debts, as held supra, IMICO could not have had a positive net worth on the date any such deprivation may have occurred. Accordingly, SEDCO could have sustained no loss from any expropriation. A review of the arguments and evidence presented by the Parties on the issue of valuation of the company bears out this finding.

58. In its pleadings and at the Hearing the Claimant made it clear that it does not seek to recover the "going-concern" value of its investment in IMICO. Rather, it seeks its share of IMICO's dissolution value, which it proposes to determine by calculating the value of IMICO's fixed assets, accounts receivable, and liquid assets on the date of expropriation and subtracting IMICO's liabilities on that date. The Tribunal agrees that this basic approach is appropriate to determine IMICO's value in the circumstances of this Case, but it must be carried out in a way that fairly assesses IMICO's probable liabilities and fairly reflects the fair market value of IMICO's individual assets.

59. The Claimant has calculated the "current net book value" of IMICO's buildings, equipment, and machinery, which together constitute the great majority of the claimed value of the company, at U.S.$23,712,263. The Claimant argues that "current net book value" is a better estimate of the actual value of a fixed asset if offered for sale on the market than "book value" since book value does not take into consideration the effects of inflation on the value of property, and otherwise reflects only historical cost less

an arbitrary rate of depreciation. While the Tribunal understands the argument that current net book value is more likely to reflect the fair market value of fixed assets than book value, in the circumstances of this Case, however, the Tribunal cannot agree that the current net book values presented by the Claimant necessarily reflect the fair market value of IMICO's property on 15 December 1979. While the Claimant has thoroughly documented and explained its valuation methodology, it has not presented any persuasive evidence to support its conclusion that its calculation of then current net book values fairly reflect fair market values of the property on the date of expropriation. This lack of evidence becomes more damaging to the Claimant's valuation estimates in view of the apparently limited market for the sale of most of the shipyard's fixed assets at issue and the likely difficulty in disposing of these assets given the departure almost a year earlier of all of the company's expatriate management. Moreover, some evidence has been presented which directly contradicts the Claimant's valuation estimates.

60. In view of these considerations, the Tribunal believes it necessary to adjust downward the Claimant's estimate of the value of IMICO's buildings, equipment, and machinery. The Claimant has estimated the value of these assets at U.S.$23,712,263, subdivided as follows:

Transportation Equipment-Marine	$3,729,522
Construction Equipment-General	$3,504,865
Buildings	$9,949,437
Major Installations	$2,549,570
Other Installations	$3,978,866

In light of all the evidence, including that presented by the Respondents which indicated that the marketable price of IMICO's barges was in fact only about half their book value, evidence of damage incurred to the waterfront extension,

evidence of the probable damage sustained by the syncrolift facility, and evidence of the apparently inflated original costing of IMICO's buildings by its former management, and in view of the fact that a principal purpose of IMICO -- to service SEDCO's other activities in the Persian Gulf -- had largely disappeared, and these largely fixed assets might have few other uses, the Tribunal finds it equitable to reduce their value by approximately U.S.$6,500,000. Thus, the Tribunal estimates the fair market value of IMICO's buildings, equipment, and machinery at about U.S.$17,000,000.

61. The Claimant has valued IMICO's inventory at the book value of U.S.$4,991,945. Evidence presented by the Respondents concerning the considerable amount of obsolete stocks ("dead stocks") in the warehouse, and the customary price - resistance by potential buyers and physical shortages encountered when seeking to sell a warehouse inventory require a downward adjustment of the Claimant's estimate. The Tribunal believes a reduction of approximately U.S.$1,000,000 fairly accounts for these contingencies in the circumstances presented. Accordingly, the Tribunal estimates the fair market value of IMICO's inventory at around U.S.$4,000,000.

62. Finally, the Tribunal must estimate the value of IMICO's accounts receivable. The Tribunal has already accepted the amount acknowledged by SEDCO, U.S.$1,455,622, as the amount due to IMICO for the removal of the three barges, whose value had been listed as an account receivable due from "associated companies." As mentioned, the Claimant withdrew at the Hearing its claim for U.S.$798,569 it had asserted it was due as accounts receivable from NIOC pursuant to an assignment of these receivables from IMICO to SEDCO. While SEDCO's claim against NIOC was thus removed from consideration, the Tribunal is convinced by the evidence that the amounts at issue were payable to IMICO.

indicates that IMICO's management during that time believed it likely that it would eventually incur some additional tax liability. Although it fought these assessments vigorously, and might have eventually come to a compromise agreement with the tax authorities on the amount due if it had remained in control of the company, nothing in the record indicates it would not have paid whatever was eventually determined to be owed. Accordingly, the Tribunal concludes that IMICO's liabilities at the date of taking should be increased by something between U.S.$1,500,000 and U.S.$2,500,000, which the Tribunal believes is a fair estimate of what these additional assessments would have eventually been. The precise amount is irrelevant because even with the lower figure, and quite apart from any liability for IMICO's failure to withhold tax on accrued interest, the total amount of IMICO's liabilities would be greater than its combined assets. Given the relative certainty of IMICO's liabilities (including the promissory notes of SEDCO and SISA) and the relative uncertainty of collecting the value of its assets if a dissolution of the company had occurred, the Tribunal finds that IMICO's fair market value was at, or below zero, on the date of its alleged expropriation. Accordingly, if the Tribunal were to find that an expropriation occurred, SEDCO would have sustained no loss and would therefore not be entitled to compensation. SEDCO's claim against Iran is therefore dismissed.

VI. COSTS

64. Each Party shall bear its own costs of arbitration.

VII. CALCULATION OF AWARD

65. Pursuant to paragraph 45 supra, the Tribunal has awarded SEDCO the amount of U.S.$20,508,022.90. Pursuant to paragraph 49, supra, the Tribunal has determined that

U.S.$1,780,622.00 should be deducted from the amount of the award to SEDCO in payment of SEDCO's debt to IMICO for removal of the three barges. Pursuant to paragraph 56, supra, the Tribunal has determined that U.S.$1,954,000.00 should also be deducted by virtue of IMICO's liability for the non-withholding of taxes on interest. Therefore, the Tribunal finds that the net amount due to the Claimant is U.S.$16,773,400.90 As mentioned in para 45, supra, the Tribunal also awards interest on this amount at the rate of 9.0 percent to run from 19 November 1981.

VIII. AWARD

66. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent, IRAN MARINE INDUSTRIAL COMPANY, is obligated to pay the Claimant, SEDCO, INC., the sum of Sixteen Million Seven Hundred Seventy Three Thousand Four Hundred Dollars and Ninety Cents (U.S.$16,773,400.90), plus simple interest at the rate of 9.0 percent per annum (365-day basis) 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. This obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

b. The expropriation claim of SEDCO, Inc. is dismissed on the merits.

c. The assignment claim against NIOC was withdrawn at the Hearing and is hereby dismissed.

d. All other claims of SEDCO, Inc. are dismissed for lack of proof.

e. The counterclaim of the Islamic Republic of Iran related to alleged unpaid income taxes is dismissed for lack of jurisdiction.

f. Each Party shall bear its own costs of arbitration.

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

Dated, The Hague
30 March 1989

Robert Briner
Chairman
Chamber Two

In the Name of God,

George H. Aldrich
Separate Opinion

Seyed K. Khalilian
Dissenting and
concurring opinion