IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 260
CHAMBER TWO
AWARD NO. 531-260-2

SEACO, INC.,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE IRANIAN MEAT ORGANIZATION,
IRAN EXPRESS LINES,
Respondents.

FINAL AWARD

Appearances:

For the Claimant :

Mr. Robert M. Riggs, Representative and Attorney,
Ms. Rosalind J. Krakauer, Attorney,
Mr. Edwin S. Hetherington, Attorney and Secretary,
Mr. Nigel J. Tatham, Representative,
Mr. Brian E. Bennett, Representative,
Mr. John M. Weinen, Representative.

For the Respondent :

Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran,
Mr. Seifollah Mohammadi, Legal Advisor to the Agent
Mr. Kooros Mokhberi, Attorney for Iranian Meat Organization,

Mr. Abbas Rahbari,
Representative for Iranian
Meat Organization,
Mr. Behrouz Salehpour,
Legal Assistant to the Agent

Also present : Ms. Lucy F. Reed,
Agent of the Government of
the United states of America
Mr. D. Stephen Mathias,
Deputy Agent.

I. INTRODUCTION

1. The Claims in the present Case arise out of various shipping activities undertaken primarily between 1976 and 1980 by Claimant SEACO, INC. ("SeaCo"), a United States corporation, and its subsidiary and affiliated companies. In its Statement of Claim, filed 14 January 1982, SeaCo advanced nine separate Claims for recovery. As a result of settlements and withdrawals, only five of those Claims remain pending.

2. A Pre-hearing Conference was held on 26 January 1984. On 11 March 1986, the Tribunal held a Hearing to address various jurisdictional issues presented by this Case, and on 20 June 1986, the Tribunal issued an Interlocutory Award with respect to those issues. See SeaCo, Inc. and The Islamic Republic of Iran, Award No. ITL 61-260-2 (20 June 1986), reprinted in 11 Iran-U.S. C.T.R. 210. On 13 December 1991, the Tribunal held a final Hearing on both the remaining jurisdictional issues and the merits.

II. PARTIES

3. In addition to itself, SeaCo seeks to recover damages on behalf of three affiliates: SEA CONTAINERS LIMITED ("SCL"), OCEANIC MEAT TRADERS (W.A.) PTY. LTD. ("Oceanic"), and SEA CONTAINERS PACIFIC ("SCP"). The Tribunal's Interlocutory Award held that both Oceanic and SCP were wholly-owned SeaCo subsidiaries and accordingly that SeaCo had standing under the terms of Article VII, paragraph 2, of the Claims Settlement Declaration to present indirectly the claims of those two companies. With respect to SCL, which is incorporated under the laws of Bermuda but is more than 50 percent owned by U.S. nationals, the Tribunal found that at the time the claims arose SeaCo held approximately 4 percent of SCL's stock. While determining that SeaCo had standing to represent SCL to the extent of its ownership of SCL stock, the Tribunal joined to the merits the question whether SeaCo could have standing to

represent SCL in excess of that amount. At the final Hearing, SeaCo conceded the Respondents' contention that it in fact owned only 3 percent of SCL's stock, rather than the 4 percent stated in the Interlocutory Award.

4. SeaCo named five Respondents in its Statement of Claim: THE ISLAMIC REPUBLIC OF IRAN, THE IRANIAN MEAT ORGANIZATION ("the IMO"), STAR LINE IRAN CO. ("Star Line"), IRAN EXPRESS LINES ("IEL"), and AUSTIRAN LIMITED ("AustIran"). In its Interlocutory Award, the Tribunal determined that as to the first four Respondents it has jurisdiction. SeaCo withdrew at the 1986 Hearing Claims 1 and 2, the ones in which AustIran was named as a Respondent, and thus by its Order of 17 March 1986 the Tribunal terminated the proceedings concerning Claims 1 and 2, and AustIran has not subsequently been a Party to the Case.

III. CLAIMS

5. In addition to Claims 1 and 2, Claims 6 and 9 no longer remain at issue. Claim 6 sought $500,000.00 plus interest against the Government of Iran for costs incurred by SeaCo and its subsidiaries in attempting to recover ocean containers and other shipping equipment the Government allegedly expropriated. SeaCo withdrew this Claim at the final Hearing. Claim 9 sought $1,652,189.00 plus interest against Star Line for various lease-related charges on containers and other equipment that Star Line allegedly had rented from SeaCo and its subsidiaries. The Parties subsequently settled Claim 9; on the basis of this settlement the Tribunal issued Partial Award on Agreed Terms, Award No. 422-260-2 (1 June 1989), reprinted in 22 Iran-U.S. C.T.R. 370, terminating this Claim.

6. The Claims still remaining at issue are as follows:

A. Claims 3 and 4

7. As presented at the final Hearing, Claims 3 and 4 seek $4,601,000.00[1] against the IMO for unpaid charter hire and rent in connection with SCL's shipping of Australian meat and sheep to the IMO between 1976 and late 1978. According to SeaCo, between 1975 and 1976 the IMO and AustIran entered into three separate five-year contracts under which AustIran was to furnish Australian meat and sheep to the IMO. AustIran in turn hired SCL to ship the products to the IMO. Between 1976 and 1978, AustIran chartered from SCL for this purpose four specially designed Strider class refrigerated containerships and other related equipment. According to SeaCo, the refrigerated containers permitted unloading of the cargo at Iranian ports and subsequent delivery of the cargo by truck to various inland destinations without the risks attendant upon break/bulk carriage of refrigerated food products.

8. SeaCo maintains that in mid-1977 the IMO began falling behind on payments due to AustIran. This in turn caused AustIran to fall behind on its obligations to SCL. SeaCo maintains that it would have ceased providing additional services to AustIran had AustIran not executed two additional agreements with the IMO in the Fall of 1978. The first is what SeaCo calls the "Reconciliation Agreement" of 3 September 1978 purporting to resolve the financial differences arising from the three previous meat supply agreements. SeaCo alleges that under this agreement the IMO was obligated to pay all amounts due to AustIran as of 21 June 1978. The second was a fourth 9-month meat and sheep supply agreement, entered into on 21 September 1978 ("September 1978 Meat Supply Agreement"). Ostensibly, SeaCo maintains that SCL derived from these agreements sufficient confidence in AustIran's continuing viability to continue providing shipping services to AustIran.

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[1] Claims 3 and 4 initially sought $32,778,595.00, and were reduced by the Claimant to $4,601,000.00 at the final Hearing.

9. SeaCo admits that following the so-called "Reconciliation Agreement" the IMO paid $5 million but claims that the IMO failed to pay the remainder due after the completion and presentation of an audit report on 13 December 1978. Additionally, SeaCo asserts that the IMO breached the September 1978 Meat Supply Agreement by refusing to accept further deliveries from AustIran after December 1978.

10. In its Statement of Claim, SeaCo initially attempted to recover on behalf of AustIran for the IMO's alleged breach of these two agreements.[2] Paragraph 13 of the Interlocutory Award held, however, that the Tribunal did not have jurisdiction over these Claims, insofar as they were asserted on behalf of AustIran, because SCL did not have any ownership interest in AustIran. On the other hand, in paragraph 20 of the Interlocutory Award, the Tribunal determined that

> [t]o the extent that claims can validly be asserted on the basis of [alternative] theories, and to the extent that the Tribunal has determined ... that the Claimant has standing to present indirectly the claims of Sea Containers Limited and Sea Containers Pacific, the Tribunal ... has jurisdiction to consider these claims.

SeaCo's alternative indirect claims against the IMO were initially raised under the theories of unjust enrichment, detrimental reliance (promissory estoppel), and third party beneficiary.

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[2] As noted above, SeaCo asserted Claims 1 and 2 in its Statement of Claim against AustIran. Apparently, SeaCo's rationale for proceeding against AustIran in Claims 1 and 2 and then on behalf of AustIran in Claims 3 and 4 is that during the time that intervened between when Claims 1 and 2 arose on the one hand and Claims 3 and 4 arose on the other SCL allegedly had acquired ownership and management interests in AustIran. However, the Tribunal in paragraph 13 of its Interlocutory Award dismissed Claimant's assertion regarding this ownership interest in AustIran.

11. At the final Hearing, SeaCo represented that Claims 3 and 4 are best understood as one claim in the amount of $4,601,000.00 for damages suffered by SCL from the IMO's alleged breach of the two 1978 agreements. For analytical purposes, the Tribunal will treat them as one claim, but, for reasons of consistency, they will continue to be referred to as "Claims 3 and 4."

B. Claim 5

12. SeaCo brings Claim 5 on behalf of itself and a number of its subsidiaries against the Government of Iran both for alleged expropriation of ocean containers and for alleged deferred rentals and other charges related to the containers.

13. SeaCo presently seeks $782,950 plus interest as the replacement value of the containers leased to Hansa Line, Seatrain Lines, Inc.; Seatrain S.A. and AustIran. Another part of Claim 5 relating to the replacement value of containers leased to Star Line was terminated by Partial Award on Agreed Terms, Award No. 422-260-2, supra. Moreover, on 29 May 1989, SeaCo submitted a Partial Withdrawal of Claims in which it requested withdrawal of so much of Claim 5 as related to the replacement value of equipment allegedly leased to IEL. This partial withdrawal was made conditional upon the Tribunal entering an award releasing to the Uiterwyk Corporation ("Uiterwyk") the portion of the proceeds of such award set aside by the Tribunal in Paragraph 98 of Uiterwyk Corp. and The Government of the Islamic Republic of Iran, Partial Award No. 375-381-1 (6 July 1988), reprinted in 19 Iran-U.S. C.T.R. 107. ("Uiterwyk Corp.") (The relationship between this Case and Uiterwyk Corp. will be discussed in more depth infra.) On 8 January 1991, Chamber One of the Tribunal issued a final award that met SeaCo's condition. Accordingly, on the same date, the Tribunal issued an order that accepted SeaCo's Partial Withdrawal of Claims.

14. With respect to that portion of Claim 5 relating to deferred rentals and other charges, SeaCo seeks $33,581.89 plus interest in connection with its contract rights to certain containers leased to Hansa Line and Seatrain Lines.

C. Claim 7

15. Claim 7 is brought against the IMO for $104,640.02 in demurrage charges allegedly incurred by Oceanic, plus interest. According to SeaCo, in March 1980 the IMO entered into an agreement with Oceanic under which Oceanic would supply Australian meat to the IMO for a two-year period. SeaCo maintains that under the agreement Oceanic was to deliver the meat at Iranian ports, and the IMO for its part was obligated to arrange for the berthing and discharge of the Oceanic's vessels within 48 hours of notice of arrival in port and readiness to discharge. SeaCo contends that the IMO breached this obligation on four separate occasions between June and September 1980, resulting in Oceanic incurring demurrage charges from the vessel owners.

D. Claim 8

16. SeaCo brought Claim 8 against IEL for alleged breaches of container and shipping equipment leases entered into from April 1976 through mid-1979, due to failure to pay rent, repair and other charges under the contracts. According to SeaCo, it and its subsidiaries executed the leases with Uiterwyk, whom SeaCo maintains procured the equipment on IEL's behalf as its general agent. Initially, SeaCo claimed that IEL defaulted on 1 January 1979 by failing to pay rent and other charges under the leases. Because under the award in Uiterwyk Corp., supra, these rents and charges covering the period until 29 February 1980 were paid to Uiterwyk for SeaCo, at the final Hearing SeaCo limited this claim to rents and charges due for the period between 29 February 1980

and 19 January 1981. On this Claim, SeaCo seeks $177,331.56 plus interest.[3]

IV. REASONS FOR THE AWARD

A. Jurisdiction

17. Before turning to the merits of these five Claims, the Tribunal notes that the question remains open whether SeaCo has standing to recover on behalf of SCL in excess of its 3 percent ownership of SCL stock. SeaCo has presented two arguments for why it has such standing. First, Seaco asserts that it should be permitted to recover 100 percent of the losses suffered by SCL. To support its contention, SeaCo has advanced an agreement between it and SCL, dated 4 December 1981, that assigns to SeaCo all right, title, and interest in SCL's claims before the Tribunal and requires SeaCo to remit to SCL all damages won on its behalf. According to SeaCo, under the Tribunal's award in Harza and The Islamic Republic of Iran, Award No. 232-97-2 (2 May 1986), reprinted in 11 Iran-U.S. C.T.R. 76, a U.S. national may assert the Claims of a non-U.S. national corporation when the U.S. national claimant is legally obliged to turn over to the non-U.S. national corporation the proceeds of the award.

18. In the alternative, SeaCo maintains that, at minimum, it is entitled to assert its claim for its 3 percent interest in SCL and the claims of U.S. nationals who cumulatively hold 42.4 percent of SCL. SeaCo asserts that it has secured the authorization of these shareholders to bring their claims before the Tribunal in the manner endorsed in Harza and that, if SCL's claims were to succeed on the merits, it would be obligated to remit the proceeds of the award to SCL. SeaCo, however, has not

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[3] The Tribunal notes that its Order of 8 January 1991 accepting SeaCo's 29 May 1989 Partial Withdrawal of Claims terminated Claim 8 insofar as it related to the replacement value of equipment on lease to IEL. Because Claim 8 further seeks recovery for rental, repair, and other charges under the alleged leases, it remains at issue.

submitted copies of these shareholder authorizations or proof of U.S. nationality of those shareholders. Respondents, on their part, argue that the extent of SeaCo's recovery for SCL's claims, provided that it succeeds on the merits, is limited to 3 percent because SeaCo simply failed to produce any evidence establishing the ownership of more than that percentage by United States nationals or the assignment by such nationals of their claims to SeaCo. Even if SeaCo had managed presentation of probative evidence to meet the above requirements, the Respondents argue, it still would not have been entitled to 100 percent recovery but only to the percentage owned by United States shareholders of SCL, as was the case in Harza. Otherwise, the Respondents maintain, non-U.S. nationals would benefit from the recovery, contrary to the letter and spirit of the Algiers Declarations.

19. The arguments presented by the Parties raise difficult questions concerning the interpretation and application of the relevant jurisdictional provisions of the Algiers Declarations. Of course, the extent of SeaCo's standing -- whether it may recover only its 3 percent share of SCL's losses, its 3 percent share plus the 42.4 percent share of other U.S. national shareholders, or the entire amount -- becomes relevant only if SCL's claims succeed on the merits.[4] For the reasons stated below, the Tribunal has concluded that all claims involving SCL must fail. Because SCL is not entitled to any recovery, there

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[4] The Tribunal notes that in the Harza Award the claimants were not allowed one hundred percent recovery. Finding that there was no evidence that the Claimants were legally obligated to pay any amounts recovered under the claim to the corporation, and that the Tribunal cannot compel the Claimants to share the awarded amounts with the Corporation or the other shareholders, the Tribunal decided that claimants' recovery should be limited to the percentage of shares owned by US nationals. See Harza, supra, para. 32. Furthermore, in Blount Bothers the Tribunal also noted that "to grant 100% in such an indirect claim would still not fully exclude the admitted risk that the corporation itself might at some point bring an action based on the same set of facts against the same Respondent in another forum." Blount Brothers Corp. and The Government of the Islamic Republic of Iran, Iran Housing Company, Award No. 515-52-1, at 11 (28 Feb. 1986), reprinted in 10 Iran-U.S. C.T.R. 56, 64.

is no need to resolve the percentage of SCL's losses that SeaCo may recover in this action.

B. Merits

1. Claims 3 and 4

20. The Interlocutory Award permitted SeaCo to pursue these Claims on SCL's behalf under theories of unjust enrichment, detrimental reliance, and third party beneficiary. On 27 October 1988, SeaCo withdrew its reliance on the theory of third party beneficiary based on Schlegel Corp. and National Iranian Copper Indus. Co., Award No. 295-834-1 (27 March 1987), reprinted in 14 Iran-U.S. C.T.R. 176, stating that "SeaCo was not specifically named in the Reconciliation Agreement and the September 1978 Meat Agreement." Since then, SeaCo has proceeded only on the basis of the first two theories.

a. Unjust Enrichment

21. In its claim for unjust enrichment, SeaCo maintains that over the course of the IMO's relationship with AustIran the IMO received the benefit of the services SCL provided in shipping AustIran's meat and sheep to Iran. Because the IMO failed to pay AustIran fully for the meat and sheep, AustIran in turn was unable to pay SCL for the shipping services. Accordingly, SeaCo asserts that the IMO was unjustly enriched, for it benefitted from the shipping services essentially without paying for them.

22. Respondents argue that because the IMO contracted only with AustIran, the IMO's obligations in this case flow exclusively to AustIran. Respondents add that even if the IMO's legal obligations were not limited solely to AustIran, the connection between the SCL's provision of services and the IMO's benefit from them is too attenuated to hold the IMO liable to SCL. Finally, Respondents claim that this dispute is governed

exclusively by Iranian law and that Iranian law does not permit recovery under these circumstances.

23. The standard that a claimant must meet to prevail upon a claim of unjust enrichment is well-established:

> There must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched.

Sea-Land Service, Inc. and The Islamic Republic of Iran, Award No. 135-33-1 at 28, (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 169.

24. Based upon the evidence presented, it seems plain that the first two of the four requisite elements have been met. Clearly, the IMO was enriched by SCL's provision of shipping services to AustIran, which resulted in the carriage of meat to Iran. And it is equally clear that SCL suffered a detriment, because it was not paid in full for these services by AustIran.

25. A more difficult issue is presented in connection with the third element, which requires the Tribunal to consider whether any possible IMO enrichment and SCL's detriment "ar[o]se as a consequence of the same act or event." The Tribunal concludes that they have not.

26. It is undisputed that there was never any contract in this Case between SCL and the IMO. In this context the Tribunal notes the evidence which indicates that in late 1975 SCL approached the IMO, seeking to enter into a deal directly with the IMO under which it would provide shipping services to transport frozen and chilled Australian meat to Iran. On 2 August 1976, the IMO rejected this proposal. In the letter notifying SCL of the rejection, Dr. Mahmud Oloomi, then-General Director of the IMO,

wrote, "[a]s many of the many conditions you have written in your offer are not suitable for us ... we are unable to employ your services." By this time, the IMO already had contracted with AustIran to have AustIran furnish Australian meat and sheep. SeaCo fails to identify anything in the four supply contracts between the IMO and AustIran that would suggest a designation of SCL as the carrier to perform the shipping. Nor does SeaCo offer any evidence to show that the IMO at all directed or supervised SCL's performance, or that the IMO was anything other than a passive beneficiary of SCL's services. In short, the IMO contracted with AustIran for delivery of meat and sheep, and AustIran in turn hired SCL for shipment purposes. And as SeaCo acknowledged at the final Hearing, SCL's position in this relationship thus was analogous to that of a subcontractor of AustIran, the contractor.

27. The Tribunal has followed the rule that a subcontractor generally has no right to recover for unjust enrichment against the party that has contracted with the main contractor -- i.e., the ultimate purchaser. See Schlegel Corp., supra, at para. 13 (citing Chas T. Main International, Inc. and Mahab Consulting Engineers, Inc., et. al., Award No. 70-185-3, at 9 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 270, 271). The rationale for this rule is that in the ordinary case the link between the subcontractor's provision of goods and services and the ultimate purchaser's receipt of them is not direct; rather, the main contractor stands as an intermediary between the two. Put differently, the subcontractor's detriment and the ultimate purchaser's benefit generally do not "arise as a consequence of the same act or event."

28. In Schlegel Corp., supra, the Tribunal recognized an exception to this general rule. In that case, respondent National Iranian Copper Industries Company ("the Copper Company") contracted with Fassan Construction Company ("Fassan") to have Fassan serve as the general contractor on a water development project. Fassan engaged claimant Schlegel Corp. ("Schlegel") to

provide and install lining material in a reservoir. Although Schlegel fully performed, Fassan failed to pay. Schlegel then sought to recover against the Copper Company based upon unjust enrichment.

29. Notwithstanding the general rule cited above, the Tribunal found in favor of Schlegel, concluding that the link between Schlegel's performance and the Copper Company's enrichment was "sufficiently direct" to satisfy the Sea-Land standard (see supra). In reaching this determination, the Tribunal stressed three considerations: (1) that the Copper Company had dictated the reservoir liner specifications into the original contract; (2) that the Copper Company's consulting engineers had ordered Fassan to make Schlegel a "nominated subcontractor" as defined in the contract; and (3) that the Copper Company's consulting engineers supervised Schlegel's work. "When Schlegel had performed its work," the Tribunal concluded, "the result was that the Copper Company had acquired a reservoir lining to its specifications provided by a company it had effectively nominated to do work supervised and approved by its own engineers." Id., para. 16. Under Schlegel Corp., then, for a subcontractor to escape the general prohibition upon an unjust enrichment claim against the ultimate purchaser, the subcontractor must show that its work was elicited and directed by the ultimate purchaser. SeaCo has not done this.

30. Moreover, in Schlegel Corp. the Tribunal found that the enrichment of the Copper Company was unjust, noting that the Copper Company had never paid Fassan the balance due for Schlegel's work. In contrast, it has not been shown in the present Case that the IMO did not fully pay AustIran for the shipping services provided by SCL. For these reasons, the Tribunal concludes that SeaCo is not entitled to direct recovery from the ultimate purchaser, the IMO. Accordingly, insofar as Claims 3 and 4 rely on the theory of unjust enrichment, they are dismissed.

b. Detrimental Reliance (Promissory Estoppel)

31. Alternatively, SeaCo contends that the IMO, through its actions leading up to and including the execution of the Reconciliation Agreement and the September 1978 Meat Supply Agreement, induced SCL to continue to provide shipping services to AustIran. According to SeaCo, given the precarious financial footing on which AustIran stood by September 1978, but for these two agreements, SCL would have discontinued the charterparties and equipment leases. Seaco maintains that the IMO was or should have been aware that SCL committed further resources to AustIran in reliance upon these two agreements. Seaco argues that the IMO should be held liable for SCL's resulting losses under the theory of detrimental reliance (promissory estoppel).

32. The Parties disagree about the extent and applicability of this basis for recovery. The Claimant asserts that the doctrine of promissory estoppel is widely accepted both under international law and under most municipal systems, including the United States. The Respondents argue that this doctrine is not available under Iranian law governing the issue or under the law of any civil law country and that even in common law such a concept is only applicable between the Parties to the contract and that no third party is allowed to rely on this theory. They also consider as questionable the very availability of detrimental reliance in contemporary international law and further argue that in English common law, which is the origin of the concept, this theory is always used as a defense and not as a cause of action.

33. While acknowledging that neither this Tribunal, nor any other international arbitral tribunal, has recognized detrimental reliance as a basis of recovery, SeaCo urges the Tribunal to adopt the standard of the American Law Institute's Restatement (Second) of Contracts (1981) Section. 90(1), which states,

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

Respondents argue that American law had no connection with the underlying transaction, the place of performance, or the principal places of business of the Parties, and thus that the Restatement standard should not apply in this Case.

34. The Tribunal first notes that the concept of promissory estoppel has not emerged as a rule of international law or as a general principle of law, and consequently is not available as such to be applied by this Tribunal. The Claimant, however, has further pleaded that in this Case the Tribunal should exercise its discretion pursuant to Article V of the Claims Settlement Declaration and should select the Restatement standard as an applicable rule of law in this Case. Although pursuant to Article V the Tribunal could select a municipal law as the governing law, in this particular Case the Tribunal finds that there is not a sufficient connection between U.S. law and the transactions underlying this Claim. Consequently, U.S. law should not govern this Claim. Moreover, the Tribunal observes that even if it were to accept that the Restatement standard should govern this Case, this standard has not been met by the Claimant. At the threshold, the rule requires SeaCo to establish, first, that the promises made by the IMO to AustIran in the Reconciliation Agreement and the September 1978 Meat Supply Agreement induced SCL to continue servicing AustIran and, second, that the IMO knew or should have known of SCL's reliance. Even assuming that SeaCo has demonstrated the first element, it has not established the second.

35. The Tribunal agrees with Respondents that SeaCo has tendered little useful evidence to show that the IMO knew or should have known of any reliance by SCL upon the IMO's promises to AustIran.

According to SeaCo, SCL's involvement in the project "received world wide press" -- a bold assertion SeaCo purports to establish by advancing only a short article in what appears to be an Australian trade publication. Additionally, SeaCo notes that the products were trucked through Iran using containers that bore AustIran's and SCL's logos. Finally, SeaCo maintains that the IMO's knowledge of SCL's reliance upon the IMO's promises was unavoidable, because the IMO was "closely tied" to the Ministry of Agriculture and Natural Resource, which in turn was "closely tied" to the Agricultural Development Bank of Iran, which in turn owned 40 percent of AustIran and served as the conduit through which payments were made from the IMO to AustIran.

36. The elaborate chain through which SeaCo invites the Tribunal to impute knowledge of SCL's reliance upon the IMO's promises via first the Agricultural Development Bank of Iran and then the Ministry of Agriculture and Natural Resources is too speculative to credit. The remainder of SeaCo's evidence merits little additional comment; it simply is not probative of what the IMO knew or should have known of SCL's actions and intentions around the time of the execution of the so-called Reconciliation Agreement or the September 1978 Meat Supply Agreement. As already noted, supra, para. 26, in 1976 the IMO expressly rejected SCL's offer to enter into a commercial relationship, and the Tribunal finds nothing in the evidence to indicate that the IMO thereafter should have believed that SCL was acting in reliance upon it.

37. Insofar as Claims 3 and 4 are based upon the theory of detrimental reliance, they are dismissed.

2. Claim 5

a. Expropriation of equipment

38. This Claim concerns 137 shipping containers leased by SeaCo and its affiliates to AustIran, Hansa Line, Seatrain Lines and

Seatrain S.A. that SeaCo contends were expropriated by the Government of Iran. The Tribunal has previously held that "a deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected." Tippetts, Abbett, McCarty, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2. at 10-11 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225.

39. Respondents deny any expropriation of SeaCo's containers and assert that, in any event, SeaCo has failed to prove the expropriation. The Tribunal is in agreement with the Respondents that this portion of the Claim must be dismissed for failure of proof.

40. Most fundamentally, SeaCo's allegations of a taking fall far short of the mark. As the Tribunal understands SeaCo's argument, the alleged taking resulted from the confluence of two events. First, according to SeaCo, turmoil starting in 1979 resulted in an affective closure of Iranian ports, preventing shipping companies from removing their equipment. Second, SeaCo maintains, its efforts to remove its equipment were further impeded by the Government of Iran's enforcement of its customs laws.

41. SeaCo offers little concrete evidence to support its first point. Indeed, SeaCo's assertion that Iranian ports were inextricably gridlocked by 1979 is belied by its admission at the final Hearing that it and other companies nonetheless managed to move their equipment in and out of the ports in 1979 and thereafter.

42. To the extent that SeaCo's allegation of a taking stems from its second point -- the enforcement of Iranian customs laws -- the Tribunal notes that its allegation is exceedingly vague. At the final Hearing, SeaCo did not explain precisely what customs laws impeded the recovery of its containers, nor did SeaCo

indicate whether customs laws were applied in an unfair or discriminatory manner. Moreover, the Tribunal observes that the events alluded to by SeaCo in relation to the enforcement of the customs laws allegedly occurred in 1982 and 1983. Because Article II of the Claims Settlement Declaration limits its jurisdiction to claims that were outstanding as of 19 January 1981, the Tribunal cannot take cognizance of claims grounded in events occurring after that date.

43. Absent further details regarding the alleged government interference and without any further indication as to how and under what circumstances the alleged expropriation occurred, the Tribunal concludes that the Claimant has failed to prove its claim for expropriation.

44. Consequently, that part of Claim 5 that alleges expropriation of the 137 containers leased to AustIran, Hansa Line, Seatrain Lines and Seatrain S.A. is dismissed.

b. Expropriation of Contract Rights

45. To prevail upon its contention that the Government of Iran expropriated contract rights on containers leased to the Hansa Line, Seatrain Lines and Seatrain, S.A., SeaCo must show that its contract rights were breached and that the breach resulted from "orders, directives, recommendations or instructions" of the Government of Iran. See Flexi-Van Leasing, Inc. and The Government of the Islamic Republic of Iran, Award No. 259-36-1, at 20 (13 Oct. 1986), reprinted in 12 Iran-U.S. C.T.R. 335, 349.

46. SeaCo's sole evidence in support of this portion of the claim consists of two invoices, one to Hansa Line and another to Seatrain Lines, that together yield its $33,581.89 damage figure. The Tribunal concurs with the Respondents that these invoices do nothing to prove either a breach or any interference by the Government of Iran. In view of this manifest failure of proof,

the remainder of Claim 5 alleging expropriation of contract rights is also dismissed.

3. Claim 7

47. As noted, this Claim is for $104,640.02 in demurrage charges allegedly incurred by SeaCo's subsidiary Oceanic, plus interest. SeaCo has submitted what appears to be an English translation of a contract between the IMO and Oceanic. The text, however, is clearly a draft with comments and queries on some of the provisions apparently by the Oceanic. Although the IMO generally agrees that a contract existed between the two parties, it contended at the final Hearing that the provisions of the final Persian text are different in certain respects. Neither party gave any reason as to why the signed copy of the final contract has not been submitted. According to SeaCo, Article 9 of the draft contract that it has supplied is the provision that obliges the IMO to arrange for the unloading of Oceanic's vessels within 48 hours of the vessel's arrival into port. Article 9 states as follows:

> After arrival of vessel to the port the Captain of the ship is responsible to announce that the ship is ready to off load. If this announcement is made before noon the buyer will accept the notice to off load for the same day, but if this notice is given after noon (after 12 o'Clock) the buyer will accept to off load at 8 o'Clock the following day.
>
> From the time of acceptance to off load the buyer will arrange to berth the vessel within 48 hours ([e]xcepting ho[l]idays) and during working days will off load 300 MT per day on condition that the shipment be delivered on the harbor to the buyer's representative.

48. The IMO raises a number of objections to this claim. First, it maintains that Oceanic breached its contractual obligations on several occasions and that subsequently the parties agreed to rescind the contract. Second, it argues that the obligation to pay demurrage should be based on clear and detailed contractual

language, which is absent in the contract. Specifically, it refers to Article 4 (Clauses 2 and 3) of the contract which reads as follows:

> Clause 2 All customs and Tax duties and insurance of the goods from the port of the shipment to Khorramshahr or Bandar Khomeini is to buyer's account.
>
> Clause 3 Except for the above expenses all other expenses in any form from port of shipment to port of delivery are to the seller's account.

Based on these provisions, the IMO argues, any demurrage charges are clearly to the Oceanic's account. Third, it argues that the contract does not contain specific provisions, including the rate, for the calculation of the amount of any demurrage charges.

49. SeaCo does not contend that IMO has not met its obligation under Article 9 in off loading 300 MT per day from the time of berthing. Instead, SeaCo argues that the IMO breached its obligation under Article 9 with respect to four voyages to arrange for unloading within 48 hours of their arrival into port. To prove this contention, SeaCo has submitted the respective log records. The log records indicate that, contrary to the requirements of Clause 9, on none of the four occasions did the commencement of the unloading occur within 48 hours after the notice of arrival. The Tribunal notes, however, that it is difficult to give decisive weight to these logs. While all four are signed by the respective ship captains, only one of them is signed by a representative of the IMO, or, indeed, by any one except the vessels' masters.

50. Moreover, even if the Tribunal were to accept all of the logs as accurate and were to find that the IMO breached Clause 9, SeaCo has not provided any basis for computing damages. As Respondents observe, the contract does not contain a provision for calculating demurrage in the event of a breach of Article 9. Nor has SeaCo proffered a formula for doing so. Instead, in an

attempt to prove its damages, SeaCo has submitted demurrage invoices that Oceanic received from the respective vessel owners. Although these indicate the demurrage rates demanded of Oceanic by the vessel owners, they offer no assistance in discerning what demurrage rates Oceanic and the IMO contemplated would govern their contract. Without the means for making a reasonable assessment of damages, we cannot award SeaCo anything on this Claim.

51. For the foregoing reasons, Claim 7 is dismissed. In view thereof, the Tribunal does not need to decide whether the contract contained an obligation to pay demurrage charges.

4. Claim 8

52. Under this Claim, as noted, SeaCo maintains that IEL is liable for $177,331.56 plus interest in rental, repair, and other charges incurred under various container leases allegedly executed on IEL's behalf by Uiterwyk. Respondents, in turn, contest liability on three grounds: (1) that SeaCo has failed to prove that the equipment at issue in this Claim was rented by IEL; (2) that SeaCo has not proven damages; and (3) that an award in favor of SeaCo on this Claim is precluded by the Tribunal's award in Uiterwyk Corp., supra.

53. The Tribunal agrees with the Respondents that this Claim must be dismissed. As Respondents have argued, SeaCo has submitted no evidence to show that any charges incurred on containers leased to Uiterwyk involve containers procured on IEL's behalf. SeaCo has advanced a series of invoices for containers leased by Uiterwyk. None of the invoices mention IEL or contain cross-references to leases executed by Uiterwyk on IEL's behalf. It cannot be assumed necessarily that equipment leased to Uiterwyk was procured on IEL's behalf, for the Tribunal's Award in Uiterwyk Corp., supra, at para. 81, indicates that Uiterwyk acted as an agent for other companies using

shipping equipment. In other words, the containers that SeaCo leased to Uiterwyk conceivably could have been procured on behalf of any number of entities.

54. Moreover, even assuming that the invoiced charges are attributable to IEL, SeaCo has advanced no evidence to prove the validity of the charges -- i.e. that there was a breach by IEL at all. Without proof that IEL breached the container leases, this Claim of course cannot stand.

55. Finally, to permit SeaCo to recover on this Claim would effectively amount to double recovery against the Respondents. SeaCo acknowledges that the award in Uiterwyk Corp., supra, granted Uiterwyk recovery for lost rentals up until 29 February 1980 on the very equipment at issue in this claim. Id., paras. 99-102. SeaCo maintains that it seeks only lease charges incurred after that date. But this contention is foreclosed by Uiterwyk Corp., as well. In that Case, having found that on 29 February 1980 IEL had assumed ownership of the containers, the Tribunal awarded Uiterwyk the containers' replacement value as of that date. See id., paras. 96-8; see also Uiterwyk Corp. and The Government of the Islamic Republic of Iran, Award No. 501-381-1, para. 6 (8 Jan. 1991) ("Final Award"). SeaCo's property rights in the containers correspondingly terminated as of that date. Accordingly, SeaCo has no grounds to enforce leases against the Respondents beyond 29 February 1980.

56. No unfairness results to SeaCo as a result of this determination. The award in Uiterwyk Corp. took account of the fact that six other Tribunal claimants, including SeaCo, potentially had competing rights to the replacement values of the containers. Id., para. 98. For this reason, the Tribunal retained jurisdiction over the sum of the award that might be subject to these competing claims, so that in the event one of these claimants would directly recover with respect to the same containers, Uiterwyk's recovery would be proportionately reduced. In the Final Award the Tribunal released the sum previously

retained plus interest to Uiterwyk, having been informed that "Claimants in Cases Nos. 260, 445, 451, 452, 490, and 500 [had] reached settlement with Uiterwyk and withdr[awn] their claims for the replacement value of these containers against the Iranian Respondents in these cases." Id., para. 3. Although SeaCo stated at the final Hearing that it has not been paid by Uiterwyk, that is a matter solely between SeaCo and Uiterwyk. It does not entitle SeaCo to seek recovery against the Respondents.

57. In its Hearing Memorial, SeaCo also advanced two alternate theories of recovery under Claim 8. These can be disposed of summarily. First, SeaCo contends that the Government of Iran should be held liable for expropriation of contract rights. To the extent that this additional contention relates to the period prior to 29 February 1980, it is foreclosed by the award in Uiterwyk Corp. To the extent that it relates to lease charges after that date, such a claim lies solely against Uiterwyk. Consequently, this argument must also fail. Second, SeaCo maintains that the Respondents should be held liable for unjust enrichment. Because SeaCo has not proven that any of its equipment fell under control of the Respondents, it has failed to prove that the Respondents were enriched. Additionally, because on these facts SeaCo's unjust enrichment contention essentially is a restatement of its breach of contract claim, albeit under a different label, to the extent SeaCo could prove that Respondents were enriched, SeaCo's sole right of recovery lies against Uiterwyk. Consequently, Claim 8 is dismissed.

V Award

58. For the foregoing reasons, all Claims of SEACO, INC., are hereby dismissed.

Each of the parties shall bear its own costs of arbitration.

Dated, The Hague
25 June 1992

Jose Maria Ruda
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring Opinion