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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 33
CHAMBER ONE
AWARD NO. 135-33-1

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده
FILED - ثبت شد
Date ۱۳۶۳ /۴/ ۱ تاریخ
22 JUN 1984
No. 33 شماره

SEA-LAND SERVICE, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
PORTS AND SHIPPING ORGANIZATION,
Respondents.

AWARD

Appearances:

For the Claimant:

Mr. C. S. Heard,
Mr. R. A. Klein,
Attorneys-at-Law,
Mr. H. Sabi,
Ms. Sharon D. Spring,
Mr. S. F. Wahl,
Mr. O.J. Kinsey,
Counsel to Sea-Land,
Mr. M. S. Palen,
Vice-President,
Sea-Land Industries, Inc.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Islamic Republic of Iran,
Mr. A. Ghaemi,
Ms. E. Mirvahabi,
Legal Advisers to the Agent of the Islamic Republic of Iran,
Mr. M. S. Ziaie,
Mr. A. Badpa,
Representatives of

Ports and Shipping Organization.

Also present:

Ms. Jamison M. Selby, Deputy Agent of the United States of America,
Mr. M. Hertz, Legal Adviser to the Agent of the United States of America.

I. Facts and Contentions

i) The legal basis of the claim

The Claimant in this case, Sea-Land Service Inc. ("Sea-Land") is a corporation registered under the laws of Delaware in the United States engaged in the international transportation by water of containerised cargo. The Respondent Ports and Shipping Organization ("PSO") is the governmental instrumentality in Iran charged with the administration and control of Iranian port facilities, and was throughout the period material to this claim under the direction of the Ministry of Roads and Transportation. The essence of Sea-Land's claim, filed on 16 November 1981, is that it was deprived by PSO of the right to continued use of a containerised cargo facility constructed and operated by it at the port of Bandar Abbas, and that it suffered losses as a result.

The case presents no serious issues of jurisdiction. An objection was raised by PSO to the lack of evidence of Sea-Land's United States nationality at the Pre-hearing conference, some six months after the filing of PSO's Statement of Defence. In its Order filed on 19 November 1982 the Tribunal found that PSO's objection to the Tribunal's jurisdiction on this ground had not been timely

PSO filed a Statement of Defence denying liability on the basis that Sea-Land was not entitled to enforce any contract against it; it further contends that there was no expropriation or taking such as to give rise to a right to compensation; and that it did not make use of the facility. PSO has in addition filed a counterclaim for various revenues and charges allegedly arising out of Sea-Land's use and subsequent abandonment of the facility, totalling 1,640,108,835 Rials.

ii) The factual background

Common to the principal alternative legal grounds advanced by Sea-Land is the underlying assertion that an oral agreement had already been reached with PSO by February 1976 the cardinal elements of which were that Sea-Land would construct and operate a container terminal on land made available by PSO, and that PSO would guarantee it priority in the provision of tugboats, pilots, customs, health and immigration clearance, in order to minimize the delay between the arrival of Sea-Land's container vessel and its unloading. It has been emphasised throughout Sea-Land's oral and written pleadings that "priority berthing" in this sense was an essential term of the agreement as such assistance was fundamental to the viability of a container system.

Sea-Land contends that its relationship with PSO commenced in about August 1975 when its representatives held discussions with senior officials of PSO, the Ministry of Roads and Transportation, and the Plan and Budget Organization of Iran with a view to instituting a system of containerised cargo handling at the port of Bandar Abbas. Negotiations continued into early 1976, and a formal written proposal to the Ministry of Roads and Transportation and PSO was made in a document presented on 8 February 1976.

The existence of an agreement embodying the substance of that proposal was confirmed, Sea-Land alleges, at a meeting held on 23 February 1976 between Mr. M. Scott Palen, at that time its General Manager Middle East, Mr. Quartel, its Country Manager for Iran, Mr. Setayesh of the Iranian company, ILB, and Mr. Khataei of PSO on which occasion it was reported that Sea-Land's proposal had been accepted by all necessary government authorities.

While PSO does not dispute that such discussions were held, it denies that they resulted in any contractual relationship between itself and Sea-Land which might render it liable for damages.

PSO insists that its only contractual relations were those vis-à-vis ILB which arose out of the Facility Agreement dated 28 November 1976 between PSO and ILB, which reads as follows:

> "The following Agreement has been agreed upon between Port and Shipping Organization (hereinafter called Organization) represented by Mr. Mohammad Khataei on one part and I.L.B. Container Company registered under No. 13751 in the Registration Office of Companies represented by Mr. Ali Akbar Bagherzadeh (hereinafter called the Company) on the other part.
>
> 1. The organization agreed to allocate to the Company the parcel of land identified by "x" in the attached map located in Bandar-Abbas, and owned by the organization, to be used for loading, off-loading and storage of the goods imported by the ships represented by the Company for a maximum period of six years (subject to the provisions of paragraph 5 of this Agreement). Of course, the loading, off-loading, storage and upkeep of the goods will be the responsibility of the port contractor.
>
> 2. The Company undertook, at its own cost, to make all necessary preparations for the use of the said land within a maximum period of six months. If there is a need to build or establish facilities such as jetty, covered storage area, office space, pouring of concrete, asphalting. etc. The Company shall first obtain the approval of the

organization on the proposed work program, drawings and duration of execution and then proceed with the execution of the work, the Company, further, undertook to take necessary action in accordance with the determination of the organization, to build a suitable road adjacent to the above-mentioned land in order to give access to the land situated behind it.

3. In the event the Company fails to perform its obligations within the stipulated period, this Agreement shall be considered as no longer valid and the organization shall not be obligated thereunder and the Company shall not have any rights or claims therefor.

4. The Company shall not have the right to receive from the owners of the goods loaded, off-loaded or stored on the premises any sums of money on any account.

5. The Company agreed that in the event that the organization hands over to the Imperial Navy the existing port facilities prior to the expiration of the term of this Agreement, this Agreement can be terminated by a two-month prior written notice.

6. After the expiration of this Agreement, the Company shall be obligated to remove from the allocated land all of its movable property within two months and to hand over to the organization all immovable facilities and improvements made by the Company without any right or claim and the organization shall not pay any sums therefor to the Company."

ILB was an Iranian transportation company operating as local agent for various cargo handling enterprises. Sea-Land contends that ILB had been involved in the discussions as Sea-Land's agent, and had entered into the Facility Agreement in that capacity with PSO as an "administrative formality" only, Sea-Land having been advised that a grant of land such as that envisaged for the construction and operation of a container facility would not be made in the name of a foreign corporation. Evidence was submitted by Sea-Land to show that ILB was retained in November 1975 and was present at the meeting of 23 February 1976. However, no formal

agency agreement was signed until 18 April 1977, though it was stated to have retroactive effect to 28 November 1976.

On the same date, 18 April 1977, ILB formally sub-licensed to Sea-Land the rights to use and improve the parcel of land allocated in the Facility Agreement, by means of a contract referred to as the Preferential Use Agreement. This latter recites that "the aforesaid licence was procured by I.L.B. Container for the uses and purposes of Sea-Land Service, Inc." and that the improvements to the site had been carried out by Sea-Land at its own expense. It provides, essentially, that "Sea-Land Service should have the sole, exclusive and preferential right to use, occupy and enjoy said land and improvements...".

PSO contends that ILB represented itself as principal to PSO in the negotiations and in the conclusion of the Facility Agreement. Mr. Bagherzadeh, the Managing Director of ILB, submitted an Affidavit stating that in the negotiation and conclusion of the Facility Agreement with PSO, ILB acted as principal, as it is stated on the face of the Agreement, that PSO granted the licence to ILB, that PSO did not see nor did it know the terms of the Preferential Use Agreement, and that it was up to ILB to operate the terminal either by itself or through its sub-licensee. PSO further contends that the provision in the Preferential Use Agreement between Sea-Land and ILB that the Agreement may be renewed if Sea-Land notifies ILB 90 days prior to the expiration date and only if PSO "renews the licence in favour of I.L.B. Container" indicates that both parties to the Agreement knew that ILB had acted as principal in obtaining the licence (Facility Agreement). In the Preferential Use Agreement Sea-Land seeks assurance ("security") from ILB for its investment in the improvements on the land and ILB gives such "security" with the condition that Sea-Land at all times abides by the provisions of such licence and that the licence is not revoked, limited, or restricted in any way by

PSO or any other Iranian governmental authority.

iii) Contentions of the Parties

The Parties place two completely different interpretations on the form and content of these agreements. Sea-Land asserts that it was the true - and fully disclosed - principal party to the Facility Agreement which was signed by ILB as agent for Sea-Land with the full knowledge of PSO. Its purpose was formally to implement an oral agreement which had already been reached between PSO and Sea-Land but in such a way as not to involve PSO in allocation of land directly to a foreign enterprise. Sea-Land claims to be able to enforce the Facility Agreement against PSO either as principal or at the least as a third-party beneficiary for whose benefit it was entered into.

PSO does not acknowledge any such rights on the part of Sea-Land. It contends that its only contractual relations are with ILB. PSO's representative argued at the Hearing that allocation of the land to a foreign corporation would have been illegal under Iranian law; further, that ILB could only undertake as agent activities which would have been legal if done by Sea-Land itself. In any event, Sea-Land had recourse to its remedies against ILB through an ad hoc arbitration under the Preferential Use Agreement - the very existence of which PSO claims was unknown to it until the Statement of Claim was filed. PSO has submitted evidence annexed to a Supplementary Statement of Defence filed after the Hearing, on 8 July 1983, that ILB applied in its own name using PSO's prescribed form for the allocation of land in the Bandar Abbas port area and thereby undertook to carry out all construction and improvement works at its own expense. It denies that ILB was granted the land as agent for Sea-Land, and maintains that any works carried out by Sea-Land at the site were unauthorised and undertaken without PSO's knowledge. Mr. Khataei, Deputy Port Operations and Deputy

Administration and Financial Director of PSO's Head Office until 1980, stated in an Affidavit submitted by PSO that:

> "Through correspondence with the other concerned agencies in connection with these companies both generally and individually, it was decided that in the national interest, and in order to promote shipping and handling of cargo, the land would be turned over only to private Iranian companies, and under such conditions as would not give rise to any subsequent right or claim against the Ports and Shipping Organization on the part of the applicant companies. It is to be noted that Article 5 of the Agreement, which would have been the only instrument providing for creation of such a right or claim at that time, was included in the Agreement solely in consideration of the above intention." (Translation supplied by the Tribunal's Language Services).

PSO states in a letter to ILB dated 9 November 1976 that it allocated the land to ILB for construction of a container terminal under the condition that:

> "1. All modification expenses regarding platform located northside of the port area as well as expenses incurred for improvement of landscape behind the said platform, asphalting and fencing should be borne by the company and the relative work should be carried out by the company.
>
> 2. The said platform should not be used as a special private platform. Other companies too may use the platform provided that they operate similar vessels. But vessels of the company shall have priority in using this platform.
>
> 3. All expenses incurred for digging and filling, levelling, foundation work, asphalting and fencing and other necessary work in the proposed terminal area shall be borne by this company and should be carried out by this company."

Sea-Land contends that the plans for the improvements it carried out through its construction engineers Adibi Harris and Navtec were approved by PSO, with whom contact was maintained throughout. Its original proposal was to build a

floating jetty, but this had to be abandoned in favour of a fixed concrete "roll-on roll-off" ramp when the Iranian Navy, which had been consulted by PSO on this point, expressed concern that the presence of a floating jetty would interfere with access to its nearby naval base. Sea-Land made the further argument that it was inconceivable that it should have carried out such extensive and costly works - involving the expenditure of approximately $3 million - without the consent, let alone the knowledge, of the port authority.

Sea-Land states that the construction of the new facility was complete by about February 1977, and that from then until August 1978 its vessel, the Sea Bridge, made regular calls from Dubai and unloaded its cargo with the full co-operation of PSO in organising clearances and docking on an expedited basis. PSO does not dispute that this was the case. Among the evidence submitted by Sea-Land is a detailed account of the functioning of the container facility and the procedures involved in each disembarkation.

It is Sea-Land's contention that commencing in September 1978 PSO and other Iranian authorities engaged in conduct the effect of which was to deprive Sea-Land of the effective use of the Bandar Abbas facility and the garage it had constructed in Tehran to service its containers and vehicles. This allegedly came about as a result of PSO's failure to provide pilots and tugboats, at least without long delays; its refusal to organise visits by customs, health and immigration officials to the incoming vessel (without any one of which clearances the ship was not permitted to dock) and eventually in February 1979 by limiting the types of cargo allowed into the port. The local Labour Office is alleged to have interfered in the management of Sea-Land's enterprise by ordering the dismissal of all of the non-Iranian workforce. The Labour Office is also alleged to have dictated to Sea-Land the

wages, terms and conditions of employment of its work-force and to have prohibited Sea-Land from disciplining or discharging its Iranian employees. The movement of containers on which the business depended was severely disrupted, and Sea-Land suspended the service in November 1978, but continued to operate at a reduced level from February 1979 until it was terminated completely on 1 August 1979, by which time Sea-Land had made a judgment that there was no prospect of resumption in the foreseeable future. By the end of December 1978, the facility is said to have been rendered effectively unworkable, and Sea-Land chooses this as the date from which damages are to be assessed, whether for breach of contract, for expropriation of its enterprises, or on the basis of unjust enrichment.

iv) The Relief Sought

In its Memorial filed on 7 March 1983, Sea-Land presented a detailed damages claim in reliance on the principle of restitutio in integrum which it claims is applicable to all of the alternative bases for its claims. The claim based on contract seems to be directed against PSO, the claim based on expropriation against the Government of Iran and the claim based on unjust enrichment against the Government of Iran or PSO. It claims $ 25,202,186.93 comprising immediate damages of $ 3,770,667.00 (including inter alia the book value of certain items of rolling stock, inventories and equipment; the balance of an Iranian bank account; demurrage, salvage and removal costs; and receivables which it was prevented from collecting) and lost net revenue, discounted to present value as of 31 December 1981, of $21,431,519.93 (which figure is alleged to reflect the value of the enterprise as of 31 December 1978). Interest is claimed at rates available on commercial deposits throughout the periods in question, amounting to $ 16,863,215.63. Continuing interest is also claimed up to the date of the Tribunal's Award. Legal costs are claimed of at least

$ 126,667.13. A detailed exposition of the accounting principles utilised in the damage calculations is contained in the Affidavit of Mr. E. Toben who also gave evidence at the Hearing.

PSO has not commented specifically on the method used in the calculation of damages claimed, except to observe that account should have been taken of the possible effects of "the people's movements, U.S. economic sanctions and the imposed war". Mr.Khataei in his Affidavit estimates the value of the installations at about 10 million Rials, approximately $133,000. In another Affidavit, Mr. M. M. Ansari, the then Director General of the PSO Bandar Abbas Department estimates the value of the installations as being between 10 and 12 million Rials, approximately $133,000 to $175,000.

PSO has asserted four counterclaims, three of them raised in the Statement of Defence filed on 30 March 1982 and the fourth contained in an amended Statement of Counterclaim filed on 30 August 1982. They can be summarised as follows:

1. 1,600,230,000 Rials for estimated lost revenues for unloading, porterage and storage charges that PSO would have earned had Sea-Land continued to operate at Bandar Abbas and not left the facility unused after 20 February 1979;

2. 27,931,000 Rials for porterage and storage charges in respect of 19 empty containers left behind by Sea-Land at Bandar Abbas;

3. 5,105,263 Rials in port charges incurred by a transportation company called "Sealand" at the port of Khorramshahr, evidenced by twelve invoices;

4. 6,842,572 Rials in insurance premiums owed to the Tehran and Bandar Abbas branches of the Iranian Social Security Organization in respect of Sea-Land's employees.

Sea-Land argues for the dismissal of all four counterclaims on the grounds that none of them arises out of the "same contract, transaction or occurrence that constitutes the subject matter" of Sea-Land's claim, as required by Article II paragraph 1 of the Claims Settlement Declaration. Sea-Land further contends that counterclaims 1 and 2 arise out of PSO's own actions in forcing Sea-Land to abandon its facility. As to counterclaim 1, nowhere did Sea-Land guarantee PSO any volume of traffic or any revenue from port charges. Moreover, Sea-Land contends that the nature of its use of the facility meant that it performed its own stevedoring, porterage and storage services, and that PSO never received payment from Sea-land for any such services. In relation to counterclaim 3, Sea-Land claims never to have received the invoices, which in any event refer to an unrelated company using a different port which Sea-Land vessels never visited. As to the social security premiums, Sea-Land contends that all due payments were made to the Iranian Ministry of Finance on a monthly basis and that nothing further is owed.

The Hearing took place before the Tribunal on 18 and 19 April 1983 at which argument and evidence were presented by both Parties to supplement the written pleadings and evidence already before the Tribunal. Both Parties subsequently filed further material.

II. Reasons for Award

A. The Legal Theories

i) The Claims based on contract

Sea-Land claims that it is entitled to enforce the Facility Agreement against PSO on either of two main alternative contractual grounds. The first is that it was the fully disclosed principal and that ILB was acting as its agent. The second is that it was a third-party beneficiary to the Facility Agreement as both parties to that contract had intended Sea-Land to derive benefit from it.

The Facility Agreement of 26 November 1976 between PSO and ILB must be taken to have been governed by the laws of Iran. Both parties to it were Iranian, and its subject-matter was a parcel of land in the port of Bandar Abbas. It was, in substance, a licence, whereby a piece of land was "allocated" to ILB for certain specified purposes for a maximum period of six years. It did not constitute a transfer of title, or even a lease.

a) The agency theory

The relevant provisions of the Civil Code of Iran, referred to by PSO, are Articles 196, 231 and 662. They respectively provide:

> "ARTICLE 196. Anyone who enters into a transaction does so for himself, unless when entering into the transaction he expressly provides for the contrary, or unless the contrary is subsequently proved. When entering into a transaction for himself, however, anyone can make provision for the benefit of a third party."
>
> "ARTICLE 231. Transactions and contracts are only binding on the two parties concerned or their legal substitutes except in cases coming under Article 196."

> "ARTICLE 662. An attorneyship must not be given except for a matter which the principal himself is entitled to engage in; and the attorney must be a person who has the capacity to execute that matter."

Thus it would appear from Article 196 that, where it is not otherwise stated on the face of the document, a named party to a contract must be taken to be acting as a principal and not an agent. This may be rebutted by evidence to the contrary. The Tribunal is not satisfied that it has been rebutted by Sea-Land in the present case. ILB accepted the grant of a licence in respect of the proposed jetty area in its own name, and Sea-Land is nowhere mentioned in the Facility Agreement. The evidence of the standard form of preliminary questionnaire submitted by ILB at PSO's request suggests that PSO was evaluating ILB in its own right as a suitable candidate for the granting of a licence. ILB was part of a substantial and reputable Iranian transportation concern which had in the past acted as onshore agent for a number of major shipping companies. To find that PSO intended to grant the actual licence to ILB itself and not to Sea-Land is entirely consistent with the evidence.

This is not to say that Sea-Land's involvement in the project was not known to PSO. But both parties acknowledge that, whether for legal or policy reasons, it was generally understood that no grant of land would be made by the Iranian authorities to a foreign entity. Given that the land in question was adjacent to an important naval facility, this is hardly surprising. Whether Sea-Land was legally "entitled" to take such a licence itself within the meaning of Article 662 is not relevant. It was clearly not PSO's intention to enter into contractual relations - at least insofar as the formal allocation of the land was concerned - with Sea-Land, but with an approved Iranian entity. Indeed, it appears to have been an important aspect of ILB's participation in the project, though its principal

role was that of onshore transportation agent.[1] The fact that it was within the contemplation not only of both Sea-Land and ILB but also, as it appears to the Tribunal, of PSO, that Sea-Land would be using that land to develop a jetty and institute the container service, does not entitle it to step into ILB's shoes and enforce the actual licence as against PSO.

b) The third-party beneficiary theory

Likewise, Sea-Land's claim to be entitled to enforce the contract as third-party beneficiary must be evaluated in the light of Iranian law. Article 196 of the Civil Code would seem to require an express mention of such a beneficiary in the contract. There is none. If it had been envisaged that Sea-Land should stand in any kind of contractual relationship with PSO, direct or indirect, that relationship would have been reflected in the original Facility Agreement. As matters stand, however, it was ILB who had obtained the licence over the land by virtue of the Facility Agreement. Sea-Land secured the right to use the parcel of land in question when it entered into the Preferential Use Agreement with ILB some five months later, on the date that the two parties formally concluded their Agency Agreement. The Preferential Use Agreement acknowledged that, "the aforesaid licence was procured by I.L.B. Container for the uses and purposes of Sea-Land Service, Inc." In substance it amounted to a sub-licence by ILB to Sea-Land of the right to develop, improve and use the land "provided that Sea-Land Service at all times abides by the provisions of such license, and/or such license is not revoked, limited or restricted in any way by the Iranian Port and Shipping Organization or any other Iranian governmental authority." It did not, however, transfer any interest in the land

[1] See the Agency Agreement dated 18 April 1977. Although co-extensive in dates with the term of the Facility Agreement, its substance relates to the provision of services associated with the handling of containerised cargo.

itself, which was to remain in ILB.[2]

Even if no express reference to Sea-Land in the Facility Agreement were necessary, the claim is open to another, equally fundamental, objection. The relief Sea-Land now seeks against PSO as third-party beneficiary in the present claim extends far beyond PSO's obligations to ILB under the Facility Agreement. The Facility Agreement relates only to the formal allocation of the land and its authorised use; it nowhere deals with such matters as expedited customs clearances, priority berthing and other management-related functions which, while they form an essential part of Sea-Land's claim, go beyond the provisions of the Facility Agreement itself. In order to succeed in its claim as third-party beneficiary, Sea-Land would have to establish not only that these matters were discussed and agreed upon between PSO and ILB, but that these were precisely the benefits that PSO and ILB intended should be conferred upon Sea-Land by operation of the Facility Agreement itself. The Tribunal finds it impossible to construe such a broad interpretation either from the contract itself or from the surrounding circumstances.

c) General conclusions

The preceding analysis gives rise to an observation of general importance to this case. Although the focus of attention of the Parties has largely been directed towards the Facility Agreement, and to a lesser extent the Preferential Use Agreement, the Tribunal cautions against any tendency to construe these documents independently of

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[2] Sea-Land has advanced the further alternative proposition that ILB entered into the Preferential Use Agreement as PSO's agent. The Tribunal finds no support for this characterisation of ILB's role, particularly in the light of the Agency Agreement between Sea-Land and ILB.

each other, or without reference to the surrounding circumstances. It is not without significance that the Memorial of Sea-Land filed on 7 March 1983 insists that there was already a pre-existing arrangement arrived at by Sea-Land, PSO and ILB and that it was "to assist in implementing" this underlying agreement that the two successive contracts were signed. In the view of the Tribunal, this broader perspective is critical to an understanding of what took place, and to the correct legal characterisation of the relationship of the three protagonists.

Although only a few elements of the project were reduced to clear contractual form, the Tribunal is satisfied that very much more was discussed among the three entities concerning the detailed operation of the proposed container facility, including the need for priority berthing, expedited clearances and a high level of efficient administrative co-operation on the part of PSO as an essential prerequisite to the successful functioning of a sophisticated transportation system. PSO has denied that it undertook any contractual obligation in this regard vis-à-vis Sea-Land. But PSO has not rebutted to the satisfaction of the Tribunal the allegations contained in the Affidavit of Mr. Palen, and extensively substantiated by the documentary exhibits thereto, that consultations had taken place between itself, ILB and Sea-Land as to the implementation of the project, and that these discussions had reached an advanced stage. Sea-Land's formal proposal, submitted to PSO by ILB on 8 February 1976 set out in detail the essential mechanics of the operation of the proposed container facility and was clearly itself the product of a highly developed course of negotiations. The proposal envisaged that Sea-Land would construct and operate the facility at its expense and in collaboration with ILB, and PSO would guarantee certain operational assistance, including priority berthing. There is no question but that PSO was fully apprised of Sea-Land's

involvement and was prepared to accept the scheme, subject only to any objections the Iranian Navy might raise in connection with its adjacent installations.[3] Indeed, Sea-Land is mentioned by name in the correspondence in this connection between PSO and the Naval Commander.

Sea-Land has not, however, been able to satisfy the Tribunal that this broad, underlying understanding between itself and PSO ever crystallised into a sufficiently precise formulation to constitute an enforceable contract obliging PSO to perform certain functions for the express benefit of Sea-Land. The conclusion might have been otherwise if acceptance of the specific terms of Sea-Land's proposal by PSO or the Ministry of Roads and Transportation had been proven. In the absence of such proof, the Tribunal is left with a proposal, albeit a detailed one, evidently accepted in principle but never reduced to a clear contractual formula. Apart from the limited aspects covered by the Facility Agreement itself, the rest of the "arrangement" appears to have proceeded on the basis of the good faith of the parties.

In conclusion, the Tribunal denies the claims insofar as they are based on contracts.

ii) The "acquired rights" argument

Sea-Land argues that PSO's actions "violated Sea-Land's lawfully acquired rights to use the Bandar Abbas and Tehran facilities" and thus give rise to a claim for damages.

Essential to this argument is the premise that Sea-Land had

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[3] Correspondence provided by PSO indicates that the Iranian Navy objected to the original proposal involving a floating jetty. It evidently raised no further objection to the revised proposal for a fixed "roll-on roll-off" ramp, in which form the construction eventually proceeded.

acquired any "rights" in the sense in which that term is understood in international law. O'Connell insists that the right in question must have been acquired under some system of municipal law, and that "there must be a title of acquisition and the recognition by the law of some concrete power."[4]

In the absence of any actionable contractual relationship with PSO, it is difficult to identify what form such an "acquired right" might take. The only such contractual right Sea-Land enjoyed under Iranian Law was the sub-licence by ILB in the Preferential Use Agreement of the use of the jetty facility. There is no indication that Sea-Land has sought to enforce that right against ILB. Further, for the reasons stated in section (iii) below, the Tribunal does not consider that PSO can be taken to have intended any interference with its exercise.

The position of Sea-Land is not dissimilar to that of the British national in the Oscar Chinn case, who was forced out of business as a river carrier in the Belgian Congo when an increase in government funding for his state-owned competitor resulted in a de facto monopoly. The Permanent Court of International Justice disposed of the argument that reparation was due for violation of an acquired right in the following terms:

> "The Court.....is unable to see in his original position - which was characterised by the possession of customers and the possibility of making a profit - anything in the nature of a genuine vested right." 5

The Tribunal does not deem it necessary to pursue the present argument any further.

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[4] D.P.O'Connell, International Law, 2nd ed., 1970, Vol. Two, p.764

[5] P.C.I.J. Ser.A/B No. 63 (1934) at p.88.

iii) The claims for expropriation against the Government of Iran

a) Sea-Land's rights at Bandar Abbas and Tehran (except Sea-Land's bank account)

Sea-Land has made a claim based on the expropriation of its rights by the Government of Iran. Insofar as any such rights existed, the Tribunal concludes that the evidence would be insufficient to justify a finding that any expropriation of them occurred.

Sea-Land bases its claim for expropriation on the assertion that PSO's actions in interfering with the operation of the container terminal at Bandar Abbas effectively deprived Sea-Land of the use of the facility, and the Tehran garage facility, by 31 December 1978.

Sea-Land claims that it had operated the container terminal successfully and with PSO's full co-operation from February 1977 until September 1978. The Affidavit of Mr. Roel Bos, Sea-Land's Port Manager, gives a lucid account of the complex and finely-balanced system of movement of containerised cargo, the efficient flow of which depended on a high degree of prompt administrative and managerial assistance from PSO.

From September 1978 onwards, Sea-Land claims, the system began to break down. Increasingly frequently, Sea-Land encountered the unexplained absence of immigration or health officials to perform on-board inspections; pilots or tugboats to enable the Sea Bridge to berth; and customs officials to clear the cargo for onward transportation. The absence of even one key official could prevent the ship from berthing. Such officials as were present often performed their duties only after considerable delay. The disruptive effect on the flow of containers was immediate, and this in turn is said to have affected Sea-Land's worldwide service,

leading to its suspension of inbound services in November 1978 and its eventual termination of all operations on 1 August 1979.

Until February 1979 at least, all Sea-Land's problems appear to have been attributable to the gradual deterioration of PSO's management and supervision of the port. Sea-Land itself characterises the situation as one in which PSO had ceased to perform its managerial and administrative duties. Mr. Bos goes so far as to refer to PSO's "refusal to manage the port". Sea-Land describes "confusion and lack of continuity in the Iranian government operations at Bandar Abbas" and relates how the PSO Port Manager, Assistant Port Manager and Chief Pilot were all replaced in early 1979, thus creating confusion as to who, if anyone, was in control. It is significant that throughout the period from September 1978 to February 1979 no specific, overt or discriminatory acts are complained of.

In the Tribunal's view, all this tends to indicate a state of upheaval in PSO's internal management which is consistent with the general picture of disruption which characterised Iran in the months leading up to the success of the Revolution. It does not suggest that PSO had embarked upon a policy of deliberate disruption or non-co-operation directed at Sea-Land in particular.[6] There is no evidence to suggest that other carriers fared any better. The difference lies in the fact that the nature of Sea-Land's operation rendered it peculiarly vulnerable to disruption as it depended so totally on the speed and expedition with which PSO had hitherto been able to clear the incoming vessel.

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[6] PSO specifically denies any disruption in the unloading of Sea-Land's ship: further, it claims to have "extended every kind of co-operation" to shipping companies, including Sea-Land.

Sea-Land relies on two other instances of interference, not ascribed to PSO itself but to other governmental agencies, which took place in early 1979. The first of these was the imposition by customs officials of restrictions on the types of cargo which could be unloaded at Bandar Abbas, limiting them to foodstuffs and medicine. The Tribunal considers this to be a reasonable and legitimate measure during a time of civil unrest. There is nothing to suggest that it did not apply equally to other carriers. It is well recognised that in comparable situations of crisis governmental authorities are entitled to have recourse to very broad powers without incurring international responsibility. As the Mexican-U.S. General Claims Commission said in the case of Dickson Car Wheel Co. v. United Mexican States:

> "States have always resorted to extraordinary measures to save themselves from imminent dangers and the injuries to foreigners resulting from these measures do not generally afford a basis for claims..... The foreigner, residing in a country which, by reasons of natural, social or international calamities is obliged to adopt these measures, must suffer the natural detriment to his affairs without any remedy....." 7

The second allegation relates to interference in Sea-Land's internal management by officials of the Iranian Labour Office in February 1979. It appears that efforts were made to enforce a policy of employment of exclusively local labour. However, two factors appear significant; the first is that the disruption to Sea-Land's operation had already reached the point of inducing a suspension of the service some three months earlier. Also, it is not established that the replacement of manpower in this particular case would have rendered it unrealistic for Sea-Land to contemplate the resumption of its operation. The second is that it is

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7 U.N.R.I.A.A. Vol.4, p.669 at p.681-2

generally acknowledged that the state of administrative chaos which prevailed in Iran throughout the first few months of 1979 make it unsafe to attribute any such ostensibly governmental acts to the revolutionary Government that subsequently came to power. Mr. Bos relates in his Affidavit that it was at about this time that the head of the Labour Office at Bandar Abbas was replaced. Against a background of continued uncertainty and changes in control, it strikes the Tribunal as virtually impossible to use such acts as the basis of a finding of expropriation. The Tribunal is mindful of the fact that the events of which Sea-Land complains all took place before 1 August 1979, during the very period of foment and disorder which preceded and accompanied the Revolution, and not as a result of the implementation of post-revolutionary policies. (See, also, Gould Marketing, Inc. and Ministry of National Defence of Iran (Award No. 24-49-2) at pages 11-14; Starrett Housing Corporation et al. and The Government of the Islamic Republic of Iran et al. (Award No. ITL 32-24-1) at page 54.)

A finding of expropriation would require, at the very least, that the Tribunal be satisfied that there was deliberate governmental interference with the conduct of Sea-Land's operation, the effect of which was to deprive Sea-Land of the use and benefit of its investment.[8] Nothing has been demonstrated here which might have amounted to an intentional course of conduct directed against Sea-Land. A claim founded substantially on omissions and inaction in a situation where the evidence suggests a widespread and indiscriminate deterioration in management, disrupting the functioning of the port of Bandar Abbas, can hardly justify a finding of expropriation.

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[8] See, for example, the Oscar Chinn case, P.C.I.J. Ser.A/B No.63 (1934) at page 86; G.C. Christie, What Constitutes a Taking of Property Under International Law? [1962] B.Y.I.L, 307, at page 311.

Thus the claim against the Government of Iran based on expropriation must be dismissed.

b) Sea-Land's bank account

There is another aspect of Sea-Land's claim which relates to the Government of Iran. Among the items of immediate damage claimed by Sea-Land is a balance expressed as $240,901 representing 16,983,549 Rials held in account No. 0152978 at the Tehran branch of Mercantile Bank of Iran and Holland, now part of Bank Tejarat since the nationalization of Iranian banks in June 1979. Sea-Land claims that this account was expropriated as it was unable to obtain permission from Bank Markazi to convert it into dollars.

Sea-Land has presented evidence showing that between April and August 1979 repeated requests were made for the transfer of the Rial account to Bank of America in Rotterdam, and that certain information was supplied at the request of Bank Markazi. The request was ultimately neither granted nor denied but subjected to considerable delays, and the attempt was abandoned when it became clear that no progress was being made.

Neither Bank Tejarat nor Bank Markazi are named as Respondents in the present case. PSO in its Statement of Defence denies any unreasonable interference and says that the balance in Rials is still available on the account for Sea-Land's use. PSO further states that conversion into foreign currency is subject to the approval of Bank Markazi on a case by case basis pursuant to certain regulations.

The Tribunal accepts that repeated attempts were made by Sea-Land to transfer the balance of the Rial account into dollars. However, there is insufficient evidence that Bank Markazi intentionally obstructed the progress of the application, or that it interfered unlawfully in any way with Sea-Land's use of its account. Bank Markazi was

invested with a certain margin of discretion in granting permission for such transfers into foreign currency, and it is not possible to derive from the evidence available to the Tribunal any indication that it was seeking to exercise this discretion in an unreasonable or discriminatory way such as to involve the Government in liability.

In the case of Harza Engineering Company and The Islamic Republic of Iran (Award No. 19-98-2) the Tribunal held that the refusal of Bank Melli to honour four cheques drawn on the Claimant's account could have been motivated by reasons of legitimate banking practice, and did not constitute an interference with the Claimant's right to deal with the account as a whole. The same problem is present in the case of Sea-Land. The account remains in existence and available, in Rials, at Sea-Land's disposal. The Tribunal therefore finds that no international liability on the part of the Government has been satisfactorily proven.

iv) The Treaty of Amity, Economic Relations and Consular Rights

Sea-Land makes extensive reference in its pleadings to the Treaty of Amity between Iran and the United States which, it says, lays down the standards which apply to the taking of property of each other's nationals and the conduct of business in each other's territory. Sea-Land claims that the Treaty "sets a particularly high standard for protection of the property or enterprises of foreign nationals".

Aside from any conclusions as to the continued validity or effect of the Treaty, the Tribunal has one fundamental observation to make as to its interpretation in such a context as the present. There is nothing in either Article II or Article IV of the Treaty which extends the scope of either State's international responsibility beyond those categories of acts already recognised by international law as giving rise to liability for a taking. The concept of

taking is the same in the Treaty as in international law, and, though the Treaty might, arguably, affect the level of compensation payable, it does not relieve a Claimant of the burden of establishing the breach of an international obligation. Accordingly, on the basis of its conclusions with regard to Sea-Land's assertion of expropriation, the Tribunal does not consider that any benefit can be derived in this case from reliance on the provisions of the Treaty.

(v) The prohibition of unjust enrichment

A further alternative argument advanced by Sea-Land is that PSO or the Government was unjustly enriched at the expense of Sea-Land, and that Sea-Land should be compensated accordingly.

The concept of unjust enrichment had its origins in Roman Law, where it emerged as an equitable device "to cover those cases in which a general action for damages was not available".[9] It is codified or judicially recognised in the great majority of the municipal legal systems of the world[10], and is widely accepted as having been assimilated into the catalogue of general principles of law available to be applied by international tribunals.[11]

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[9] Francioni, Compensation for nationalisation of foreign property : the borderland between law and equity, 24 I.C.L.Q. (1975) p.259 at p.273.

[10] A principle of unjust enrichment exists in specific circumstances in Iranian law.

[11] G. Schwarzenberger, International Law, Vol.1, Third ed. 1957, p.579; see also Lena Goldfields arbitration (award reprinted in Cornell L.Q. Vol. 36, No.1, p.31 with commentary by A. Nussbaum); E. Jiménez de Aréchaga, International Law in the Past Third of a Century in Recueil des Cours, 1978 at pp.299, 300; C.H. Schreuer, Unjustified Enrichment in International Law, A.J.C.L. Vol. 22 (1974), p.289, passim; O'Connell, op. cit. Vol. One, pp.12, 13.

The rule against unjust enrichment is inherently flexible as its underlying rationale is "to re-establish a balance between two individuals, one of whom has enriched himself, with no cause, at the other's expense."[12] Its equitable foundation "makes it necessary to take into account all the circumstances of each specific situation."[13] It involves a duty to compensate which is entirely reconcilable with the absence of any inherent unlawfulness of the acts in question. Thus the principle finds an obvious field of application in cases where a foreign investor has sustained a loss whereby another party has been enriched, but which does not arise out of an internationally unlawful act which would found a claim for damages.

There are several instances of recourse to the principle of unjust enrichment before international tribunals. 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.

In the Landreau claim[14], the Arbitral Commission set up

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[12] Francioni, loc. cit.

[13] Jiménez de Aréchaga, loc. cit.

[14] U.N.R.I.A.A. Vol.1, 1922, p.347. Here, it should be noted, the compromis d'arbitrage required that the arbitrators determine, "what sum if any is equitably due..." An example of a rather different kind is the case of The Edna, (Cited by Schreuer, op. cit. at p.290) in which the arbitrator awarded compensation to the U.S. owners of a vessel requisitioned and used by the British government in a situation where no legal basis of reparation existed.

between the U.S.A. and Peru held that the Peruvian Government was bound to account to the Claimant on a quantum meruit basis for guano deposits worked by the Government as the result of discoveries he had communicated to it, even though the pre-existing contract was held to have been repudiated.

B. The enrichment

Opinions differ as to the basis of computation of damages. The predominant view seems to be that damages should be assessed to reflect the extent by which the state has been enriched. Judge Jiménez de Aréchaga[15] considers that where the "enriched" state has obtained no benefit, no compensation should be payable at all.

Equity clearly requires that cognisance be taken of the de facto situation, and this explains why there is no discernible uniformity in the practice of international tribunals in this respect. Important factual circumstances to be taken into account are the level of investment; the period during which the foreign investor has been able to make a profit; and the benefit actually derived by the host country from its acquisition.

It must not be overlooked that PSO had a long-term interest in the project: at the end of the six-year term of the Facility Agreement, on 28 November 1982, the facility, developed and improved by Sea-Land at its own expense, was to revert to PSO. Sea-Land stated at the Hearing that it was only on the understanding that a satisfactory level of profitability could be achieved, with PSO's co-operation, in those six years that Sea-Land was prepared to invest some three million dollars in setting up the container terminal. The efficiency and success with which Sea-Land and PSO

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[15] Loc. cit.

operated it for some eighteen months is evident from the figures laid before the Tribunal in the Affidavit of Mr. Bos. Sea-Land was thereafter able to continue its operations at a reduced level until August 1979. Thus from the beginning of August 1979 the container terminal was, in effect, at PSO's disposal - three years and four months before Sea-Land anticipated that the facility would revert to PSO.

i) The use of the facility

Sea-Land expresses its claim for damages in terms of restitutio in integrum. Sea-Land calculates that it would have achieved an average $6.4 million annual net revenue for the period until 31 December 1982. It seeks to recover, inter alia, future net revenues, representing the profit it could reasonably have been expected to make from its operation of the container facility had it continued in possession for the intended duration of the Facility Agreement.

Compensation for unjust enrichment cannot encompass damages for loss of future profits. The Tribunal must aim instead to place a monetary value on the extent to which PSO was enriched by its premature acquisition of the facility.

Sea-Land has adduced extensive evidence in the form of Facility Improvement Records supported by the Affidavit of Mr. A. Scotti, who testified at the Hearing, that the sum of $2,878,807.00 was spent on preparing and improving the Bandar Abbas facility (this figure takes no account of the additional $159,679.00 attributable to the Tehran terminal and maintenance garage).

The Respondents dispute the amounts asserted by the Claimant for future net revenues and for the construction of the facility. Mr. Khataei and Mr. Ansari in their Affidavits have estimated the value of the installations to 10 million

Rials and 10-12 million Rials, respectively.

The Tribunal must establish whether PSO did in fact avail itself of the facility after Sea-Land's departure. PSO in its Statement of Defence denies having used the installations and facilities at the terminal but there is some evidence that it did make use of them.

There is a statement by PSO that it terminated the Facility Agreement with ILB on 21 November 1981 "due to nonfulfillment of obligations on the part of ILB Co."

In this connection it is perhaps also instructive to refer to PSO's own estimation of the revenue it could have expected to achieve from February 1979 to November 1980, when the facility allegedly was lying idle except for Sea-Land's greatly reduced throughput. On 16 November 1981, reporting to its Legal Department, PSO states:

> "But the said land remained unused from Feb. 1979 (1.12.57) through Nov. 1981 (Aban 59) for a period of 611 days, while it could handle about 123 thousand tons of loading and unloading, had it been used in this period. The potential revenue of the said loading and unloading operations plus storage charges (only for 50% of goods and 203 days i.e. 1/3 of 611 unused days) is estimated to Rials 1,610,230,00 (Rials 3,690,000 for port services, Rials 9,840,000 for unloading, Rials 88,560,000 for porterage and Rials 1,498,140,000 for storage). As the land has not been used this revenue has not been earned." 16

It appears that the quoted reference to "Nov. 1981" should be to November 1980. This corresponds with "a period of 611 days" running from 20 February 1979; moreover "Aban 59" corresponds with October - November 1980.

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16 The figure of Rials 1,610,230,00 appears to be a typographical error. The figure should read "1,600,230,000".

Using an exchange rate of 75 Rials to the dollar, this gives a figure of approximately $20 million for 611 days.[17] The figure of Rials 1,600,230,000 appears to be an assessment of revenues that would have been earned for this period based on the tariff of port charges appended to the Statement of Defence as Exhibit 3.

It is of course not possible for the Tribunal to ascertain how much of this figure would represent net profits. Nor is it clear on what basis these figures were compiled. They are, however, used by PSO as the basis of its own counterclaim for lost revenues.

However, the Tribunal takes these statements as suggesting that the facility was brought back into active use at least after November, 1980 - with two years left of the original period of the Facility Agreement. Thus the Tribunal considers it a reasonable conclusion on the evidence before it that after Sea-Land's departure PSO made active use of the facility, either itself or through others.

On this basis it is left to the Tribunal to assess a level of damages corresponding in equity with the extent to which PSO was enriched.

An appropriate level of compensation for PSO's actual use and benefit of the facility during the relevant period will, of necessity, be an approximation. In view of the scanty evidence submitted in respect of such use and benefit, a fair assessment of compensation for Sea-Land would seem to be $750,000.00.

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[17] Rial amounts have been converted to dollars for illustrative purposes. A conversion rate of 75 Rials to the Dollar has been used as being within the range of rates prevailing during the relevant period.

ii) Damages claimed by Sea-Land in respect of moveable property

An application of the theory of unjust enrichment requires that Sea-Land be compensated for those items and assets left in Iran of which PSO or the Government obtained the use and benefit. It does not permit the Tribunal to compensate Sea-Land for the loss of unpaid debts, freight charges, and termination expenses, none of which resulted in the enrichment of PSO or the Government.

The emergency payments claimed by Sea-Land for permission to export 401 chassis are not shown to have been improperly levied, and the claim in respect of them must be dismissed.

The items which could potentially found a claim for unjust enrichment in the Tribunal's view, can be dealt with as follows:

a) The 36 chassis, 38 containers and one Ottowa tractor

Sea-Land claims $242,300 in respect of this item as representing the net book value of the rolling stock at 30 December 1979, calculated by Mr. Toben. Though there is no evidence as to the precise whereabouts of the other items, it seems clear that 19 of the containers have been stored at the site of the container facility. One of PSO's counterclaims relates to storage charges in respect of them. In view of the assertion in the counterclaim concerning the non-use of these containers, the Tribunal finds a fair solution to be to allow nothing to either the Claimant or Respondent in respect of them. The Tribunal finds no reason to doubt the assertion that the remaining items of rolling stock were left in Iran; it is however, difficult in the absence of any evidence, to infer from this that PSO or the Government has had access to them and benefited from their use.

b) The other equipment

There is no evidence as to the whereabouts of the automobiles allegedly left behind. Given the climate of disruption that prevailed, it cannot be assumed that they remained in Bandar Abbas and came into the hands of PSO. Neither is there evidence that Sea-Land has left in Bandar Abbas the power equipment, tools and office equipment, and that PSO has taken possession of them and enriched itself. If this equipment was of value to the Claimant, it appears, the Claimant would have taken them out of the country as it did so with respect to 401 chassis and other items. Therefore, this claim is dismissed.

c) The garage inventories

Sea-Land claims $88,203.00 in respect of garage inventory items that it was allegedly forced to leave behind in Iran. But it has provided no evidence as to the whereabout of the items when it left the country or that PSO took possession of them and enriched itself. When comparing the items the Claimant brought to Bandar Abbas on commencement of its operation with the list of those it took out of Iran on termination, it may well indicate that the items the Claimant allegedly left in Bandar Abbas were to be considered as res derelicta. Therefore this claim is also dismissed.

C. Interest

In view of the special circumstances in this case, interest could be awarded at most from the date of the Award to the date of payment from the Security Account. However, in view of the existing mechanism for making payments promptly after Awards are issued, only a few days of interest can be anticipated. Accordingly, recognizing the very small amount involved, no interest is included in the Award.

D. The counterclaims of PSO

i) The claim for estimated lost revenues of 1,600,230,000 Rials

PSO contends that it would have earned substantial unloading, porterage and storage charges if Sea-Land had continued to operate out of Bandar Abbas. Sea-Land contests this on the basis that there was no provision in the Facility Agreement or elsewhere for any such revenue to be earned by PSO. Furthermore, Sea-Land performed its own unloading and porterage services, and never paid any such charges.

Having found no contractual relations between PSO and Sea-Land which would entitle PSO to unloading or porterage charges, the Tribunal concludes that there is no basis for this counterclaim and it must be dismissed.

ii) The claim for storage charges of 27,931,000 Rials in respect of 19 containers

The Tribunal has dealt with the subject matter of this counterclaim in section (a) of Part B above.

iii) The claim for 5,104,263 Rials in port charges incurred at Khorramshahr

PSO seeks to hold Sea-Land liable for the amount of 12 invoices rendered to an entity called "Sea-Land Company" in respect of port charges incurred at Khorramshahr. Sea-Land contends that it never did business there, and that the proper party to such a claim was a completely unrelated Iranian concern. No evidence has been offered which links this operation with Sea-Land itself; nor are there any grounds for finding that the charges arise out of the same

contract, transaction or occurrence so as to bring them within the jurisdiction of the Tribunal. This counterclaim must therefore also be dismissed.

iv) The claim for social insurance premiums amounting to 6,842,572 Rials

PSO has filed a further counterclaim seeking recovery of social security premiums payable in respect of Sea-Land employees to the Tehran and Bandar Abbas branches of the Social Security Organisation. Leaving aside the jurisdictional questions presented by this counterclaim, the Tribunal concludes that it must be dismissed. Sea-Land contends that, insofar as it concerns premiums becoming payable before March 1979, payment was duly made to the Ministry of Finance. Mr. Sakhuja gave evidence to this effect at the Hearing, and explained how payments were made on a monthly basis. The Tribunal is satisfied with this testimony. As to the premiums allegedly due to the Tehran branch from March 1979 to November 1980, which include late penalties, the Tribunal finds this claim inconsistent with the progressive departure of Sea-Land personnel and the termination of the service in August 1979. There is no evidence that, if any further premiums were owed after March 1979, they were not paid in the same manner as previously.

For the foregoing reasons,

The Tribunal determines as follows:

(1) The claims of Sea-Land Service, Inc. against the Government of the Islamic Republic of Iran and the counterclaims of the Ports and Shipping Organization are dismissed.

(2) The Ports and Shipping Organization is obligated to pay

Sea-Land Service, Inc. Seven Hundred Fifty Thousand United States Dollars (US $750,000.00).

Each party shall bear its own costs of the arbitration.

The above 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.

The Award is submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague,
20 June 1984

Gunnar Lagergren
Chairman
Chamber One

Mahmoud M. Kashani
I concur with the chairman as to the dispositive part and will file a separate opinion as to other parts of the Award.

Howard M. Holtzmann
Dissenting Opinion as to Award on the claims; concurring Opinion as to dismissal of counterclaim.