IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

175

CASE NO. 43
CHAMBER ONE
AWARD NO. 258 -43-1

OIL FIELD OF TEXAS, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, NATIONAL IRANIAN OIL COMPANY,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL — دادگاه داوری دعاوی ایران-ایالات متحده
FILED - ثبت شد
Date 8 OCT 1986 تاریخ
۱۳۶۵/۷/۱۶
No. 43 شماره

AWARD

Appearances:

For the Claimant:

Mr. P. W. Davis III, Attorney
Mr. J. M. Ballengee, Representative

For the Respondents:

Mr. M. K. Eshragh, Agent of the Government of the Islamic Republic of Iran
Mr. A. Nouri, Legal Adviser to the Agent
Mr. A. Hashemi,
Mr. H. Piran, Assistants to the Agent
Mr. A. Mouri, Legal Representative of NIOC
Mr. M. Sadri, Technical Representative of NIOC

Also Present:

Mr. J.R. Crook, Agent of the Government of the United States of America

I. THE PROCEEDINGS

1. On 16 November 1981, the Claimant Oil Field of Texas, Inc. ("Oil Field") filed its Statement of Claim against the Islamic Republic of Iran ("Iran"), the National Iranian Oil Company ("NIOC") and Oil Services Company of Iran ("OSCO") seeking compensation for amounts allegedly unpaid for equipment leased, equipment sold, destroyed lease equipment, unreturned equipment, interest on unpaid amounts and costs. During a Hearing on jurisdiction on 26 to 28 July 1982 the Claimant withdrew its claim against OSCO, which had never appeared.

2. Pursuant to an Order of 15 March 1982, Iran and NIOC filed a "Preliminary Defence" on 30 April 1982, raising the issue of whether the Tribunal had jurisdiction over claims arising out of obligations of OSCO. The Case was relinquished to the Full Tribunal to determine the question "as to whether the Tribunal has jurisdiction over claims based on contract between the Claimant and Oil Service Company of Iran."

3. Following submissions by the Parties on this issue, a Hearing was held before the Full Tribunal on 26 to 28 July 1982. On 9 December 1982, the Full Tribunal held that "NIOC is the de facto successor to OSCO's rights and obligations and that the Tribunal has jurisdiction over Oil Field's claims"; Interlocutory Award No. ITL 10-43-FT (9 December 1982), reprinted in 1 Iran-U.S. C.T.R. 347.

4. On 14 September 1983, NIOC filed its Statement of Defence and Counterclaim. On 23 January 1984, the Claimant filed a Response to the Counterclaim and a Reply to the Statement of Defence. On 22 August 1984, NIOC filed a Rejoinder. On 5 August 1985, the Claimant filed a "Memorandum in Support of Claim No. 43" and a "Supplemental

Appendix". On 29 November 1985, NIOC filed a "Memorial & Documentary Evidence in Rebuttal."

5. On 5 December 1985, NIOC filed an appraisal of the equipment allegedly expropriated. As this document was filed beyond the prescribed period, the Tribunal permitted the Claimant to file by 13 January 1986 a response to NIOC's appraisal and to its memorial and rebuttal evidence, or else to explain why the Claimant would not be able to file such a response in time. The Tribunal left open the issue of whether any of the late filed material and response would be admitted. On 13 January 1986 the Claimant filed a response with respect to NIOC's filings of 29 November and 5 December 1985.

6. The Hearing on the remaining issues of this Case was held on 29 and 30 April 1986. Mr. Richard M. Mosk participated in that Hearing and in the Award in this Case pursuant to Article 13, paragraph 2, of the Tribunal Rules and pursuant to an agreement between the Governments of the Islamic Republic of Iran and the United States of America.

7. At the Hearing, objections were made as to allegedly late filed materials. It is the Tribunal's position that evidence should be submitted within the time requirements. Evidence that could have been submitted during these time periods will normally not be accepted at the Hearing without adequate justification. The Tribunal concludes that NIOC's material can be admitted insofar as it contains rebuttal evidence and taking into account that the other Party had adequate opportunity to respond to it in light of the procedural circumstances of this Case. Consequently, the Claimant's response is also admitted. The Tribunal concludes that there is therefore no need for any post-Hearing submission.

8. At the Hearing, objections were also made to NIOC's showing of slides. In this context the Tribunal notes that, as with other evidence, any means of explanation or clarification of previously submitted evidence during the Hearing is in principle admissible, unless new evidence is introduced in that way. As such, the showing of slides is also not objectionable in principle as long as it conforms to these standards. In the circumstances of this Case, there is no need to decide whether the slides shown by NIOC constituted all or in part new evidence, as the Tribunal does not rely on them for its decision.

II. FACTS AND CONTENTIONS

9. Many of the facts and contentions are set forth in the Interlocutory Award of the Full Tribunal. Award No. ITL 10-43-FT, supra. That Award sets forth the claims of the Claimant as follows:

> "Through a Contract dated 26 February 1975 with subsequent additions and amendments ("the Lease Agreement") concluded between Claimant and Oil Service Company of Iran ("OSCO"), Claimant agreed to lease certain equipment to OSCO. This lease agreement concerned four systems ("stacks") of blowout preventors with related equipment for use in a petroleum exploration and drilling programme in Southern Iran that OSCO conducted for National Iranian Oil Company ("NIOC") pursuant to a service contract. A blowout preventor is a device designed to prevent uncontrolled flow of fluids from a well.
>
> Under the terms of the Lease Agreement, OSCO is obligated to pay Claimant a certain daily rate for the four stacks of blowout preventors which were leased to OSCO. The Lease Agreement also provides that OSCO is liable for any loss of or damage to the equipment during the lease and that, in case of total loss or destruction of any set of equipment, the rental payment shall continue with respect to such set of equipment until an acceptable replacement has been delivered or funds sufficient to buy such replacement have been

delivered to Claimant. Claimant contends that one stack of blowout preventors was completely destroyed by a blowout fire on 1 August 1978 while the stack was leased to and in the possession of OSCO. In addition to the equipment originally leased by Claimant to OSCO under the Lease Agreement, Claimant leased to OSCO a further blowout preventor, which according to Claimant was returned on 15 February 1978 in damaged condition. Lastly, OSCO agreed to purchase some equipment to be used in the operation of the blowout preventors leased by Claimant to OSCO. Claimant asserts that this equipment was delivered to OSCO, which failed to compensate Claimant for the equipment, notwithstanding repeated demands for payment.

Claimant contends that NIOC is liable for OSCO's contractual obligations and that NIOC is an agency, instrumentality or entity controlled by the Government of Iran. Thus, based on the contracts with OSCO, Claimant seeks compensation in the instant case from NIOC for the following loss and expense, together with interest thereon: (a) the present value of the leased equipment allegedly destroyed by fire in Iran, (b) the accrued unpaid daily rents, including rents for the destroyed stack of blowout preventors from 1 August 1978, (c) the expense incurred in repairing the alleged damage to the equipment returned in February 1978, (d) the present value of the equipment which OSCO, according to Claimant, ordered and received but did not pay for, and (e) the present value of the remaining stacks of blowout preventors which, according to Claimant, have not been returned to it. By its Statement of Claim, Claimant seeks compensation for these alleged losses and expenses also from the Government of Iran.

Respondents deny that the Government of Iran or NIOC is liable for OSCO's obligations and assert that the Tribunal has no jurisdiction over the above-mentioned claims.

In addition to these contract-related claims, Claimant also seeks compensation from NIOC inter alia on the theory of unjust enrichment and from the Government of Iran on the theory that this Government expropriated Oil Field's property-rights under the Lease Agreement in violation of international law."

10. After a full discussion of the relationship between OSCO and NIOC, as noted above, the Tribunal held that NIOC was the de facto successor of OSCO in the Lease Agreement with the Claimant.

11. The Claimant's specific claims are as follows: $417,488.49 plus interest for rental of the three existing blowout preventers, or if the Claimant's expropriation claim is not granted, $1,757,603.20 plus interest for rental through June 1979; $632,764.45 plus interest for rental payments on a destroyed blowout preventer; interest on an invoice of $582,657.22 covering the destroyed blowout preventer (which interest amount the Claimant asserts was $250,542.81 through November 1985); $13,033.89 plus interest for NIOC's failure to pay for repairs required with respect to another blowout preventer damaged while in use; $1,485,692 plus interest for the taking of three blowout preventers referred to in the first claim specified above. At the Hearing, the Claimant indicated that its claim for rental payments on the destroyed blowout preventer and the claim for interest on the amount of the invoice for the destroyed blowout preventer until it received an insurance payment might overlap. The Claimant seeks its costs of arbitration, including its reasonable attorneys' fees.

12. The Claimant asserts that the Lease Agreement was entered into lawfully and properly and that it performed all of its obligations under that Agreement. The Claimant notes that the equipment was utilized by OSCO and NIOC and that rental reductions were negotiated during the term of the lease. The Claimant alleges that the obligations of the Lease Agreement were fulfilled until the latter part of 1978, at which time lease payments were delayed and ultimately ceased.

13. The Lease Agreement provides that "this contract and any legal relationship arising therefrom shall be subject to English law." The Claimant asserts that either English law or United States law applies.

14. The Claimant bases its claim on theories of a breach of the Lease Agreement; expropriation of property, including breach of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran ("Treaty of Amity"); and unjust enrichment.

15. NIOC contends that the Claimant has not established that it is a United States national, and thus the Tribunal has no jurisdiction over the claim. It asserts that the Lease Agreement was procured through bribery and was not executed by an authorized party. Also NIOC argues that even as a de facto successor it should not be liable for the claims asserted in this Case. NIOC asserts that as a result of the circumstances surrounding the execution of the Lease Agreement, the rents provided for therein were inflated. NIOC contends that the equipment was defective and was received late. NIOC also states that the equipment was not expropriated, but rather was being held pursuant to Iranian judicial proceedings, in effect, as security for payment of damages claimed in the Counterclaim. At the Hearing, NIOC argued that the doctrine of force majeure should be applied to absolve it of any liability. If the equipment is deemed expropriated, NIOC's appraisal of the property is $716,935.

16. NIOC further argues that the Claimant maintains an action in United States courts contrary to the Algiers Declarations.

17. As a result of its contentions, NIOC counterclaims for a total amount of $977,138.12 for excess payments made

to the Claimant; for $2,474,696 for the return of payments made to the Claimant; and for unspecified damages for the Claimant's breaches of the Lease Agreement and improper filing of a United States action.

18. The Claimant denies the allegations of the Counterclaim. Furthermore, it asserts the defences of the statute of limitations, laches, waiver, ratification and estoppel. At the Hearing, the Claimant relied primarily on doctrines of waiver and ratification. Also the Claimant asserts that the defence of force majeure was not timely raised, was never invoked at the appropriate time and is not applicable.

III. REASONS FOR AWARD

1. Jurisdiction

19. The Claimant was incorporated in 1973 in the State of Texas with the name of Oil Field Rental Service Company. In 1980, the name was changed to Oil Field of Texas, Inc. The claim arose in 1979. As confirmed by its certified public accountants, at that time all of the Claimant's stock was owned by Philadelphia Suburban Corporation ("PSC"), a Pennsylvania corporation. On 28 December 1979, all of the Claimant's stock was transferred to a wholly-owned subsidiary of PSC, Oil Field-Delaware, which has been a Delaware corporation. Thus, from 28 December 1979 to 19 January 1981, all of the Claimant's stock was owned by Oil Field-Delaware.

20. PSC is a public company. There are affidavits showing that at the relevant times in excess of 97% of PSC's voting stock was held by stockholders with United States addresses. Proxy statements for PSC show that during the relevant period, at one point only one shareholder held more

than 5% of PSC's outstanding common stock. That shareholder had 5.9% of said stock. At other relevant times, no shareholder had more than 5% of such stock. Based on the requirements applied by the Tribunal, and absent any contrary evidence, the Tribunal is satisfied that the Claimant is a national of the United States and has continuously owned the claims it is asserting in this Case from the date the claims arose until 19 January 1981. Under the Claims Settlement Declaration, the Tribunal therefore has jurisdiction over the Claimant.

21. There is no question that, under the Claims Settlement Declaration the Tribunal has jurisdiction over the Respondents and over the subject matter of the claim. The Claimant having withdrawn the claim as against OSCO during the Hearing on jurisdiction, OSCO has not been a Respondent in this Case since then.

22. At the Hearing, NIOC asserted that demands for certain relief had not been made prior to 19 January 1981, the deadline set forth in Article II, paragraph 1, of the Claims Settlement Declaration for the accrual of claims within the Tribunal's jurisdiction, and, consequently, such claims were not outstanding on 19 January 1981 and are therefore not within the Tribunal's jurisdiction. That there may not have been demands specifying particularly the relief sought does not exclude the claims from the Tribunal's jurisdiction as not being outstanding on the required date. In any event, as will be seen below, with regard to the claims upon which relief is granted, demands were in fact made prior to 19 January 1981. Accordingly, the Tribunal has jurisdiction over such claims.

2. Merits of the Claims

a) Validity of the Lease Agreement

23. The Full Tribunal has held that NIOC is the successor to OSCO with respect to the obligations of the Lease Agreement. The Lease Agreement was executed by Iranian Oil Services Limited on behalf of OSCO. That Iranian Oil Services Limited had authority to execute the Lease Agreement on behalf of OSCO was confirmed in writing by way of a telex from OSCO to the Claimant.

24. NIOC contends that the Lease Agreement was procured by bribery and collusion and is therefore unenforceable. In this connection, NIOC mainly relies on a letter of a Mr. Diamond to OSCO suggesting that certain discounts were later given to OSCO to compensate for favourable terms obtained by the Claimant by virtue of the alleged bribery. NIOC suggests that terms favourable to the Claimant in the Lease Agreement, including the amount of rental payments and other circumstances, support its position that the Lease Agreement was obtained by bribery.

25. The burden is on NIOC to establish its defence of alleged bribery in connection with the Lease Agreement. If reasonable doubts remain, such an allegation cannot be deemed to be established. The letter by Mr. Diamond which NIOC invokes is not unambiguous, and the circumstances in which it was written are not clear. The copy of the letter submitted by NIOC was not authenticated, and two former employees of the Claimant stated at the Hearing that the assertions implied by NIOC from the letter were not correct. It may indeed be true that the Lease Agreement contains provisions that are generally rather favourable for the Claimant. But it is as plausible, as was asserted by the Claimant, that this can be explained, if not by the general practice in the business of lease of blowout preventers, then by the bargaining position of the Parties at the time

- i.e., when a high demand for such equipment met with a shortage of such pieces available on the market for leasing. In addition, the Lease Agreement was approved by the board of directors of OSCO, which included representatives of NIOC. The Tribunal therefore concludes that there is not sufficient evidence of bribery in connection with the Lease Agreement, nor are in the circumstances described the terms of the Agreement such as to make it one-sided, violative of bonos mores and public order and therefore illegal or unenforceable, as is alleged by NIOC.

26. Moreover, even if later discounts in rental payments were attributable to the discovery of bribery, from those discounts, later payments by OSCO and later amendments to the Lease Agreement a decision can be inferred as to the affirmance of the existence of the Lease Agreement, despite any possible improper means of its procurement. Accordingly, the Tribunal concludes that the Lease Agreement is an enforceable contract.

b) Performance of the Lease Agreement

27. NIOC asserts that delivery of the equipment was delayed and that the equipment was defective and not tested as required.

28. There is no evidence of any objections as to such alleged delays or defects at or around the time of delivery of the equipment or thereafter - prior to this proceeding. The equipment was delivered in 1975 to OSCO's shipping agent, and payments were made into 1979 without any objection. The only instance of OSCO requiring replacement of certain parts of the equipment occurred in April 1976, and the parts were replaced by the Claimant at its cost.

29. Under the Lease Agreement, it was the lessee's responsibility to provide for the transport of the goods.

By making available the equipment to OSCO's shipping agent, the Claimant therefore fulfilled its contractual obligations with regard to delivery. It was also the lessee's responsibility to inspect the goods prior to shipment. Favourable results of such inspections were a condition for shipment.

30. Accordingly, based on the record before it, the Tribunal concludes that there is not sufficient evidence to support NIOC's assertion that the Claimant did not perform its obligations under the Lease Agreement.

c) Destroyed Blowout Preventer

31. One of the four leased blowout preventers was destroyed by fire during August 1978. Under the Lease Agreement, in the event of the destruction of an item of leased equipment, the rental payments are to continue until a replacement is supplied by the lessee or the lessee provides sufficient funds to replace the equipment. The Claimant recovered the replacement cost for the destroyed blowout preventer from an insurer in June 1982. The Claimant contends that it is thus entitled to rental payments on this equipment from the time the replacement value was due until 19 January 1981. It seeks $632,764.45 in such accumulated rentals.

32. On 28 September 1978, the Claimant sent an invoice to OSCO for $582,657.72, representing the amount of the replacement cost of the leased blowout preventer which was destroyed. The Claimant never sent an invoice for monthly rental payments for the destroyed blowout preventer after its destruction. The invoices for rent that the Claimant sent to OSCO charged rent for four blowout preventers until August 1978; yet they covered only the remaining three leased blowout preventers from and after September 1978 when one blowout preventer had been destroyed.

33. In March of 1979, the Claimant wrote to the NIOC representative who was administering the OSCO contracts and stated that the "[r]eferenced contract is in arrears as listed below." The list included the $582,657.72 for compensation for the destroyed blowout preventer and rental payments for the three existing blowout preventers, but it did not refer to rental payments for the destroyed blowout preventer.

34. Later correspondence from the Claimant requesting amounts due likewise omit any reference to monthly rental payments for the destroyed blowout preventer. The Claimant asserts that invoices were not a condition of payment and that the failure to invoice for these amounts should not be construed as a waiver.

35. Although it seems that the Claimant expected payment of the replacement cost of the destroyed blowout preventer to be made earlier than was actually made, the Claimant apparently decided that with respect to this device, it opted in favor of receiving a specified payment rather than rental payments and the possibility of a replacement supplied by the lessee. It also appears that despite specific demands for amounts owing, the Claimant repeatedly omitted reference to rental payments for the destroyed blowout preventer. This would suggest that the Claimant did not consider that amount owing. In the circumstances of this Case, the Tribunal concludes that the Claimant, in effect, waived whatever right it might have had to such rental payments for the destroyed blowout preventer after the destruction of that device.

36. In June 1982, the Claimant received the $582,657.72 from the proceeds of an insurance policy that covered the replacement value of the destroyed equipment.

The Claimant, OSCO and NIOC were the named insureds on that insurance policy.

37. The Claimant asserts that the delays in obtaining the insurance proceeds or any payment were attributable to OSCO and NIOC and that therefore the Claimant should receive interest on the $582,657.72 recovery for the period of that delay.

38. However, the Claimant executed a document which provided as follows:

> "Subject to Underwriters' and Insurers' accepting liability, we, the National Iranian Oil Company, Oil Service Company of Iran and Oil Field Rental Service Company agree to accept the sum of US$582,657.72 in full and final settlement of all claims we have now or may have in the future arising out of an incident that occurred on 28th January 1978 at Ahwaz 101 when the Blow-out Preventor was destroyed.
>
> We also agree that subject to Underwriters accepting liability a payment to the company Oil Field Rental Services shall constitute full and final settlement of the claim by all parties."

39. The Tribunal concludes that by signing this document, which does not mention any remaining claims for rental for the destroyed device or for damages for delay, the Claimant in effect confirmed that it did not consider any further rentals owing (see paragraph 35. above) and released any claim it might have had for interest with respect to any delay in receiving the $582,657.72.

40. Accordingly, the Claimant is not entitled to any further compensation with respect to the destroyed blowout preventer.

d) Taking of Three Blowout Preventers

41. NIOC has retained possession of the three existing blowout preventers leased pursuant to the Lease Agreement, despite the fact that the Claimant demanded their return if rent was not paid on them. NIOC asserts it can retain possession of the equipment as long as its claims against the Claimant are not settled, and it has not made any rental payments for the period beginning January 1979 and thereafter. In a telex dated 12 July 1979, Iranian Oil Services Limited quoted to Oil Field the contents of a telex dated 3 July 1979 from OSCO to it, in which OSCO stated "that the Islamic Court of Ahwaz has instructed NIOC to stop any payment to [Oil Field] until further instructions. It will be helpful if you nominate a lawyer to pursue and resolve outstanding matters here". In answer to questions at the Hearing, NIOC confirmed that this Court order prohibited NIOC not only from making payments, but also from returning the equipment to Oil Field. The Claimant never obtained any other information concerning the Court order than what was reflected in the telex from Iranian Oil Services Limited. In particular, there is no evidence that it was summoned to appear before the Ahwaz Court, nor was it served any documents from this Court.

42. It is well established in international law that the decision of a court in fact depriving an owner of the use and benefit of his property may amount to an expropriation of such property that is attributable to the state of that court. As the French-Italian Conciliation Commission held in its Decision No. 136 of 25 June 1952, concerning a dispute over Italian property in Tunisia:

> "La sentence rendue par l'autorité judiciaire est une émanation d'un organe de l'Etat, tout comme la loi promulgée par l'autorité législative, ou la décision prise par l'autorité éxecutive. La

> non-observance d'une règle internationale, de la part d'un tribunal, crée la responsabilité internationale de la collectivité dont le tribunal est un organe, même si le tribunal a appliqué un droit interne conforme au droit international".[1]

43. The interference with the use of the three blowout preventers as caused by the Ahwaz Court order amounts to a taking of this equipment. NIOC's representative stated unequivocally that it was prohibited by the order of the Ahwaz Court to make further payments or to return the equipment. The Government's representative did not object to this statement. The Court order did not only have temporary effect, but, as evidenced by NIOC's continued retention of the equipment, amounted to a permanent deprivation of its use. In these circumstances, and taking into account the Claimant's impossibility to challenge the Court order in Iran, there was a taking of the three blowout preventers for which the Government is responsible. It is concluded that the date of the taking was not later than the beginning of July 1979, as reflected in the telex from Iranian Oil Services Limited to the Claimant. Consequently, the Claimant must be compensated for this expropriation in

---

[1] RIAA, Vol. XIII, 390, 438, with further references. Also see, e.g., R. Bindschedler, La protection de la propriété privée en droit international public, R.d.C., Vol. 90 (1956 II) 179, 213; G.A. Christenson, The Doctrine of Attribution in State Responsibility, in: R.B. Lillich (ed.), International Law of State Responsibility for Injuries to Aliens (1983) 321, 331. See also the Draft on State Responsibility by the International Law Commission, Article 6 of Part 1 of which reads: "The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organization of the State." ILC-Yearbook 1980, Vol. II, Part Two, p. 31.

an amount equivalent to the full value of the equipment; see, e.g., Sedco Inc. and National Iranian Oil Company, Interlocutory Award No. ITL 59-129-3 (27 March 1986); Phelps Dodge Corporation and The Islamic Republic of Iran, Award No. 217-99-2 (19 March 1986). The Claimant asserts that it is entitled to the replacement value of the three blowout preventers. The Tribunal finds that the replacement value, in the circumstances of this Case, is an appropriate measure of the value of the equipment.

44. The question whether the equipment at issue was used or new is not as such determinative as to its value. Rather, as the Claimant seeks and is entitled to its replacement value, what has to be determined is the amount it would have cost to replace the three blowout preventers that had been leased to and were retained by NIOC, based on the market conditions for such equipment at the time. The evidence shows that as of the beginning of July 1979, the equipment in question was in great demand and that new equipment of the type leased under the Lease Agreement was not readily available. There is evidence that in 1979, one would have to wait eighteen months to obtain a new blowout preventer. In addition, as evidenced by the Lease Agreement, the equipment commanded significant rental income.

45. The appraisal submitted by NIOC was based on the assumption that the equipment was defective - an assumption not borne out by the evidence. If this assumption is discounted, NIOC's appraisal is not significantly different from the values submitted by the Claimant. Also, the insurance proceeds on the destroyed blowout preventer reflected a significant sum, which more or less corresponds to the figures given by the Claimant. Based on the foregoing, the Tribunal determines that, as of the beginning of July 1979, the value of the three blowout preventers taken by NIOC was $1,485,692, the amount to which the Claimant is entitled.

e) Rental for Three Existing Blowout Preventers

46. Neither OSCO nor NIOC made rental payments for any month after December 1978 for the three existing blowout preventers leased pursuant to the Lease Agreement. The Lease Agreement remained in effect. The Lease Agreement specifically provides that rental payments continue until the equipment is returned - even if the Lease Agreement is terminated. The Lease Agreement also provides that the rental payments are not subject to offset, either by counterclaim or otherwise. In the alternative of its expropriation claim being granted, the Claimant seeks rental for the period January through June 1979, which it calculates at $417,488.49. The reason given by NIOC for non-payment of rentals was the order by the Ahwaz Court not to make such payment. This Court order cannot be invoked as a reason for non-payment of rentals through June 1979, because the order was not issued before that time. At no time before the Hearing did NIOC invoke force majeure, and there is no evidence of any condition that would have prevented payments.

47. The Tribunal concludes that the Claimant is entitled to the unpaid rental payments of $417,488.49 for the three existing blowout preventers for the period January 1979 to 30 June 1979, the date as of which it found expropriation of the equipment.

f) Repair Charges

48. Under the Lease Agreement, the lessee was to pay for "all repairs to the [e]quipment" other than for normal

wear and tear. On 15 February 1978, OSCO returned certain equipment to the Claimant to repair certain damages thereon. The Claimant notified OSCO that repairs would be required and that an invoice would follow. On 30 October 1978, such an invoice for the amount of $13,033.89 was sent covering the repairs and related transportation costs. There is no evidence that this invoice was contested or paid. A Works Test Certificate, the submission of which was needed according to NIOC and in the absence of which NIOC contends it is not liable for repair costs, was not actually required under the Agreement. Accordingly, the Claimant is entitled to $13,033.89, the amount of the invoice.

g) Interest

49. The Claimant seeks interest on the amounts claimed at the rate of 12 percent. NIOC argues that the Claimant is not entitled to interest of more than 9 percent on the rental amounts, which is the rate specified in an earlier price list published by the Claimant. That earlier published price list was not incorporated into the Lease Agreement, however. Consequently, the Claimant is entitled to interest on all amounts claimed in accordance with the approach that the Tribunal developed and applied in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985). With regard to the rate of interest, in the absence of a contractually stipulated rate, it is the Tribunal's policy to derive a rate of interest based approximately on the amount that the successful claimant would have been in a position to have earned if it had had the funds available to invest in a form of commercial investment in common use in its own country. Six-month certificates of deposit in the United States are such form of investment for which average interest rates are available from an authoritative official source.

50. The relevant period for the expropriation claim begins on 1 July 1979, for the rental claim one month after the beginning of each rental period, the first being 1 February 1979, and for the claim for repair costs on 1 December 1978. The average rates of interest paid on six-month certificates of deposit from those dates through the date of this Award were approximately 11.00/11.25 percent, and it is those rates which the Tribunal applies to the various claims.

3. Counterclaims

a) Overpayments and Excess Payments

51. NIOC counterclaims for reimbursement of over $3,450,000 in overpayments and excess payments made as a result of alleged delays and defective equipment. In view of the findings on the Claimant's performance of the Agreement, supra, these counterclaims cannot be sustained.

b) The Claimant's Lawsuit in the United States

52. On 5 June 1981, the Claimant filed suit against NIOC in the United States District Court for the District of Columbia for claims essentially identical to the ones filed here. NIOC requests that the Claimant be obligated to withdraw this lawsuit. The Claimant states that the suit has been suspended and that it will withdraw it if its claim before the Tribunal is sustained.

53. Article VII, paragraph 2, of the Claims Settlement Declaration provides in its second sentence, that claims referred to the Tribunal "shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court". See E-Systems, Inc. and The

Government of the Islamic Republic of Iran, Interim Award No. ITM 13-388-FT (4 February 1983). The Tribunal decides by this Award that it has jurisdiction over the Claimant's claims. These claims are essentially identical to the ones before the United States District Court. The effect of the Tribunal's assumption of jurisdiction over these claims is that as of 16 November 1981, the date when the Claimant filed its claim with the Tribunal, the United States District Court must be considered to have been deprived of jurisdiction over the lawsuit brought by the Claimant on 5 June 1981. In view of this clear legal consequence of Article VII, paragraph 2, of the Claims Settlement Declaration, there is no need for the Tribunal to make any further order with respect to the lawsuit pending in the United States District Court. See Questech, Inc. and The Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, p. 41 (25 Sept. 1985).

54. This decision does not prejudice the claim filed by the Islamic Republic of Iran in Case No. A15, Part IV:D, in which the Islamic Republic of Iran alleges that by authorizing legal proceedings in United States courts to prevent prescription, the United States Government has violated General Principle B of the General Declaration and Article VII, paragraph 2, of the Claims Settlement Declaration.

4. Costs

55. The Claimant seeks reimbursement of costs and fees which it has estimated at approximately $280,000. Having regard to the criteria of the kind outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985), and taking into account the outcome of this Case, the

Tribunal determines that the Claimant should be awarded costs in the amount of $25,000.

IV. AWARD

56. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to the Claimant OIL FIELD OF TEXAS, INC. the sum of One Million Four Hundred Eighty Five Thousand Six Hundred Ninety Two United States Dollars (U.S.$1,485,692), plus simple interest at the rate of 11.25 percent per annum (365-day basis) from 3 July 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) The Respondent NATIONAL IRANIAN OIL COMPANY is obligated to pay to the Claimant OIL FIELD OF TEXAS, INC. the sum of Four Hundred Thirty Thousand Five Hundred Twenty Two United States Dollars and Thirty Eight Cents (U.S.$430,522.38), plus simple interest at the following rates per annum (365-day basis) from the following dates all up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account:

i) 11.00 percent on $71,503.53 from 1 February 1979;

ii) 11.25 percent on $64,583.96 from 1 March 1979;

iii) 11.25 percent on $71,503.53 from 1 April 1979;

iv) 11.25 percent on $69,196.97 from 1 May 1979;

v) 11.25 percent on $71,503.53 from 1 June 1979;

vi) 11.25 percent on $69,196.97 from 1 July 1979; and

vii) 11.00 percent on $13,033.89 from 1 December 1978.

(c) The Respondents THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and NATIONAL IRANIAN OIL COMPANY are obligated to pay to the Claimant OIL FIELD OF TEXAS, INC. costs of arbitration in the amount of Twenty Five Thousand United States Dollars (U.S.$25,000).

(d) These obligations 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.

(e) With regard to the request of NIOC that the Tribunal order Oil Field of Texas, Inc. to withdraw its lawsuit against NIOC in the United States District Court for the District of Columbia, the Tribunal determines that the claims over which this Tribunal has found that it has jurisdiction were, as of the date such claims were filed in this Tribunal, and continue to be, excluded from the jurisdiction of that Court or any other court by the terms of the Claims Settlement Declaration.

(f) The remaining Claims and Counterclaims are dismissed.

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

Dated, The Hague,
8 October 1986

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Mohsen Mostafavi
Dissenting in part,
Concurring in part.
See Separate Opinion.

Richard M. Mosk
Concurring