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IRAN-UNITED STATES CLAIMS TRIBUNAL

[redacted]

INTERLOCUTORY AWARD

Award No.: ITL 10-43-FT

Case No. 43

Question as to whether the Tribunal has jurisdiction over claims based on contract between the Claimant and Oil Service Company of Iran. Jurisdiction relinquished by Chamber One to the Full Tribunal for the purpose of deciding this issue.

Parties:

Oil Field of Texas, Inc.,
Claimant,

and

The Government of the Islamic Republic of Iran,
National Iranian Oil Company,
Oil Service Company of Iran,
Respondents.

Claimant represented by:

Attorney for Claimant:
Mr. Platt W. Davis III, and
Mr. Lawrence W. Newman,
Counsel:
Mr. Carl R. Schenker, Jr.,
Mr. Anthony G. Petrello,
Mr. Axel H. Baum, and
Mr. Hamid Sabi ,

Mr. Alan Rauch, Chairman of the Board of Oil Field of Texas, Inc.

The Government of the Islamic Republic of Iran and National Iranian Oil Company represented by:

Mr. Mohammad K. Eshragh, Agent of the Islamic Republic of Iran,
Mr. A. Mouri, Representative of National Iranian Oil Company,
Professor D. W. Bowett, and
Mr. R. A. Brown, of Counsel.

Oil Service Company of Iran not represented.

Introduction

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.

The issue

According to Article II of the Declaration of the Government

of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("the Claims Settlement Declaration"), the Tribunal has jurisdiction over the following categories of claims:

(a) claims of nationals of the United States against Iran and claims of nationals of Iran against the United States;

(b) official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services;

(c) certain disputes as to the interpretation or performance of any provision of [the Algiers Declarations].

The term "Iran" is defined as follows in Article VII, paragraph 3, of the Claims Settlement Declaration:

> "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

In accordance with an order issued by the Tribunal, the Government of Iran and NIOC submitted on 30 April 1982 a Preliminary Statement of Defence on the issue of jurisdiction. The Government of Iran and NIOC asserted in this Statement of Defence that none of the claims brought by Oil Field of Texas ("Oil Field") are within the jurisdiction of the Tribunal, since these claims are not attributable to the Government of Iran or NIOC but lie solely against OSCO, a registered private joint stock company in Iran. Respondents contend that NIOC is not a branch of the Government or a political subdivision thereof, that neither

the Government of Iran nor NIOC exerted control over OSCO and that, consequently, OSCO does not fall within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration.

In an order dated 6 May 1982 Chamber One of the Tribunal - the Chamber to which this case is assigned - decided to relinquish jurisdiction to the Full Tribunal for the limited purpose of hearing and deciding the jurisdictional issues raised in the Preliminary Statement of Defence of 30 April 1982.

Following an order by the Tribunal, Claimant has submitted a Memorial in response to the Preliminary Statement of Defence. NIOC has filed a Reply Memorial on 19 July 1982. The parties presented their oral arguments at a Hearing before the Tribunal on 26-28 July 1982.

The issues thus presented by the parties, which they have referred to as jurisdictional issues, involve also the question of NIOC's liability for the claims.

Claimant has submitted the following alternative arguments in support of its contention that NIOC is liable for OSCO's contractual obligations and that the Tribunal has jurisdiction over the claims based on contract:

(1) OSCO acted as an agent of NIOC in connection with incurring the obligations at issue in the instant case;

(2) OSCO was controlled by NIOC;

(3) NIOC is the successor to debts and obligations incurred by OSCO; and

(4) NIOC's denials of liability are inconsistent with its prior conduct.

Claimant asserts that in the event the Tribunal does not find that it has jurisdiction over the claims based on the contracts entered into by OSCO on the basis of any of these arguments, NIOC would be liable under other theories, such an unjust enrichment, because NIOC received substantial benefits from the contracts.

OSCO - a brief historical and legal background

In March 1951 the Iranian Parliament enacted legislation nationalizing the Iranian oil industry. Later, following a coup d'état in Iran, a number of major multinational oil companies formed an Oil Consortium, which signed an Agreement ("the 1954 Agreement") for the exploration, production, refining and exportation of Iranian oil.

The 1954 Agreement provided for the creation by the Consortium members of two operating companies, Iranian Oil Exploration and Producing Company ("IOEPC") and Iranian Oil Refining Company ("IORC") to be incorporated under the law of the Netherlands. Their respective functions were to carry out exploration, production, refining, transportation and other operations specified in the Agreement. The 1954 Agreement provided that the Consortium would fund all activities of IOEPC and IORC and that the Consortium members would jointly and severally guarantee the performance of the operating companies.

In 1973 the 1954 Agreement was replaced by a new agreement ("the 1973 Main Agreement"). The preamble of the 1973 Main Agreement states:

> Iran is determined that the right of full and complete ownership, operation and control in respect of all hydro-carbon reserves, assets and administration of the petroleum industry shall be exercised by NIOC.

NIOC is an Iranian joint stock company which was incorporated by statute in Iran on 29 April 1951. All NIOC's shares are,

and have always been, owned by the Government of Iran. NIOC was established in order to exercise the ownership right of the Iranian nation in the oil and gas resources throughout the country and in the continental shelf and to be responsible for the exploration, development, production, exploitation and distribution of petroleum and petroleum products both within and outside Iran. The Iranian Ministry of Oil has subsequently assumed certain of NIOC's functions.

The 1973 Main Agreement ended the role of IOEPC and IORC, and provided for NIOC to operate and manage all oil-related operations.

This Agreement also required the Consortium members to form a "Service Company". That Service Company, OSCO, was to be formed as a non-profit, Iranian joint stock company. The relevant Articles of the 1973 Main Agreement provide:

ARTICLE 11

A. NIOC shall provide all capital and other funds required for the purpose of all operations provided for in this Agreement.

B. The Trading Companies [companies exercising the rights and obligations of the Consortium Members relating to the purchase and resale of crude oil] shall advance to NIOC by way of pre-payment for crude oil to be purchased by them, a proportion of the funds required by NIOC for annual budgeted capital expenditure, relating to the operations under this Agreement, and any revisions thereto, approved and issued by NIOC in accordance with Article 16 for each year in accordance with procedures agreed between the Trading Companies and NIOC.

C. The amount of such advance for each year by the Trading Companies shall be 40 per cent of such funds as are required by NIOC for such capital expenditure. The Trading Companies shall have the option to vary the proportion from time to time upon giving two years' prior written notice to NIOC, but no notice to vary the proportion shall be given to take effect earlier than five years after the Effective Date.

D. Each annual advance made by the Trading Companies under Section B above shall be set-off against any sums due from them in respect of subsequent sales of crude oil by

NIOC in equal annual instalments over a period of ten years following the year in which such advance was made, in accordance with procedures agreed between the Trading Companies and NIOC.

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ARTICLE 16

A. For the purpose of developing the programmes and budgets in respect of the operations to be carried out under this Agreement:

(1) during November of each year the Consortium Members shall submit to NIOC their offtake requirements of each grade of crude oil for the next year but one, and their estimated offtake requirements of each grade of crude oil for each of the four subsequent years;

(2) during December of each year NIOC and the Consortium Members shall meet for consultation concerning a provisional Exploration and Capacity Development Plan for the five years referred to in paragraph (1) above.

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D. During the term of the Service Contract referred to in Article 17 NIOC shall entrust to the Service Company the duty of working out the detailed programmes and budgets provided for in this Article as directed and controlled by NIOC. Such programmes and budgets shall be submitted for final approval to NIOC and shall become operative after such approval.

ARTICLE 17

A. The Consortium Members shall cause a Service Company to be formed in Iran as a non-profit private joint stock company to carry out operations as assigned to it by NIOC in accordance with a Service Contract to be entered into with NIOC. The Service Contract shall have an initial term of five years. It shall continue in effect thereafter subject to termination by either party on two years' prior written notice.

B. NIOC shall provide as necessary to the Service Company in accordance with the provisions of the Service Contract all capital and other funds to enable the Service Company to carry out the operations assigned to it.

On 2 July 1973 OSCO was incorporated as an Iranian corporation. Its Statutes provide that the object of the Company in its capacity as contractor to NIOC, and in accordance with the

terms and provisions of the service contract between NIOC and OSCO, is to implement the relevant provisions of the 1973 Main Agreement, relating to exploration, development and production of petroleum and petroleum products and the processing operations and transportation of such products. The capital of the company is fixed at 1 million Rials. All shares are, and have always been, owned ultimately by the Consortium members.

The Statutes also provide that Ordinary General Meetings of the Company shall be held at least once a year and that Extraordinary General Meetings may be called at any time by inter alia a decision of the Board of Directors.

According to the Statutes the Ordinary General Meetings shall have authority to act on the following: to hear reports and the proposals relating to the Company's financial status and the annual balance sheet; to fix the remuneration of the Directors, Inspector and Auditors; to effect the election of the Directors, the Inspector and the Auditors; to nominate the Chairman and Managing Director and the Vice Chairman and Deputy Managing Director from amongst the Directors.

At an Extraordinary General Meeting the shareholders shall have authority to decide upon the modification of the Statutes, any increase in the capital of the Company, the winding up of the Company or the alteration of its name, and any matter not within the authority of the Ordinary General Meeting.

As to the votes of the shareholders at General Meetings the Statutes provide that each shareholder, whose name appears in the Register of shareholders 21 days before the date of a meeting, shall have one vote for each share registered in his name. The vote of the holders of a majority of shares is required for adoption of resolutions at General Meetings.

The Board of Directors shall consist of not less than four and not more than seven members who shall be elected by the General

Meetings. According to the Statutes the Board of Directors is the fully authorised body and legal representative of the Company to manage and conduct its business at all times without any limitation.

Pursuant to Article 17(A) of the 1973 Main Agreement, NIOC entered into a service contract with OSCO dated 19 July 1973 ("the 1973 Service Contract"). The preamble of this contract states in part:

> WHEREAS NIOC as owner and operator in the Area defined in the Main Agreement desires to avail itself of the services of the Service Company for the conduct of operations in the Area, and whereas for the purpose of ensuring such operations are carried out with the greatest expedition and efficiency, during the terms of this Contract, the parties have entered into this Contract ....

The relevant provisions of the 1973 Service Contract read as follows:

ARTICLE 2: Operations

NIOC hereby assigns to the Service Company, such operations under the Main Agreement as relate to exploration, development and production of crude oil and natural gas and to NGL processing operations as well as to transportation to and loading at the relevant loading terminals of crude oil, bunker fuel and NGL products (hereinafter referred to as "the Operations"), with the exception of the functions in relation to the Operations carried out by NIOC prior to the effective date of this Contract.

The Service Company, as a contractor, shall carry out the Operations in accordance with good oil industry practice and sound engineering principles on behalf of and under the overall direction and control of NIOC.

ARTICLE 3: Planning and Budgeting

The Service Company shall, upon the receipt and within the limits of NIOC's directives given in accordance with Article 16 of the Main Agreement, work out for NIOC's approval, detailed programmes and budgets for the Operations as well as expansions and development thereof.

Programme and budget proposals developed by the Service Company in accordance with NIOC's directives with any alternative

solutions shall be submitted to NIOC for selection and approval. Budget proposals and any revisions thereof shall be implemented by the Service Company when approved by NIOC.

NIOC may in preparing for programmes, plans and budgets require the Service Company to carry out through consultants or sub-contractors such studies or investigations as may be required by NIOC to assist in developing forward planning.

ARTICLE 4: Engagement of Contractors and Consultants Materials Agency

The Service Company shall take over all contracts with contractors and consultants engaged in the Operations at the effective date of this Contract, or as soon as possible thereafter, to the extent to which the said contractors or consultants are so willing.

Within the budgets approved by NIOC, the Service Company may award contracts to sub-contractors and consultants and purchase and administer materials in accordance with the procedures in use in respect of operations within the Area at the effective date of this Contract, or with any amendments thereto, or any alternative procedures that may be agreed from time to time between the parties hereto.

ARTICLE 6: Personnel

The Service Company shall take over the contracts of service of all those persons employed in the Operations at the effective date of this Contract, who are willing to enter into the service of the Service Company on the terms of their said respective contracts at that date. Thereafter personnel will be selected by the Service Company and employed subject to the rules and regulations of the Service Company, which rules and regulations will be co-ordinated from time to time with those of NIOC.

The Service Company shall prepare in consultation with NIOC plans and programmes for industrial and technical training and education of employees of the Service Company as appropriate and shall be responsible to NIOC for the execution of those plans and programmes.

ARTICLE 7: Personnel and Accounting Policy and Procedures

The Service Company shall adopt personnel policies and accounting methods and procedures consistent with those relating to the Operations and in use at the effective date of this Contract, in accordance with amendments thereto, or any alternative procedures that may be agreed from time to time between the parties hereto.

ARTICLE 8: Services by NIOC

Housing facilities, medical care and other amenities to the extent required by the Service Company for its personnel and their dependents, shall be provided by NIOC. The parties shall consult with one another from time to time as necessary on the provision by NIOC of these services for the Operations.

ARTICLE 10: Costs: Funding: Account: Auditors:

The Service Company shall carry out its duties under this Contract without profit, and all costs and expenses incurred by the Service Company shall be on behalf and for the account of NIOC. The Service Company shall deliver to NIOC in respect of each year (and monthly on a provisional basis) accounts of such costs, in a form to be agreed with NIOC.

NIOC shall provide all capital and other funds required by the Service Company in performing this Contract and the parties will agree on a cash call procedure for the implementation of this funding.

The principal books and accounts of the Service Company shall be kept in U.S. Dollars and for this purpose any conversion from any currency other than U.S. dollars which may be required shall be made in accordance with Article 22 of the Main Agreement.

NIOC shall appoint an internationally recognised firm of Chartered Accountants to carry out an audit in respect of each year of the books and accounts of the Service Company and to certify the accounts delivered to NIOC in accordance with this Article. Notwithstanding this provision the Service Company shall have the right to employ and appoint auditors for its own purposes.

In addition, Article 5 of the 1973 Service Contract provides that OSCO shall contract with Iranian Oil Service Company Limited ("IROS"), a company incorporated under the laws of the United Kingdom. IROS would according to the same article provide services related to the procurement, inspection and expediting of materials and such administrative and technical services as OSCO may require to be performed outside Iran.

Reasons

The Statement of Claim originally filed by Claimant also named OSCO as one of the Respondents in this case. However, at the Hearing on 26-28 July 1982 Claimant clarified its position in this respect. As Claimant has eventually defined its position, it raises no monetary claim against OSCO and seeks consequently compensation for its loss and expense only from the Government of Iran and NIOC. Thus, the Tribunal does not have to decide the issue of whether it has jurisdiction over a claim against OSCO on the alleged ground that OSCO was at the relevant times an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration.

It remains, however, for the Tribunal to decide whether NIOC is an entity controlled by the Government of Iran within the meaning of that article.

Respondents do not admit that NIOC is such an entity and have consequently left to the Tribunal to decide this question.

The record in this case shows that NIOC was incorporated by statute in 1951, that all NIOC's shares are, and have always been, owned by the Government of Iran, that NIOC according to its Statutes has been established in order to exercise the ownership right of Iran in its oil and gas resources and to be responsible for the exploration, development, production, exploitation and distribution of petroelum and petroleum products within and outside Iran and finally that the Iranian Ministry of Oil has now assumed certain of NIOC's functions.

Furthermore, according to the Statutes, the shareholder shall be represented at the General Meetings of the company by the

Prime Minister and six other cabinet ministers.

Consequently, it is obvious that NIOC is, and was at all relevant times, totally controlled by the Government of Iran. In view of the above-mentioned purpose of the company and other available information it is also clear that NIOC is one of the instruments by which the Government of Iran conducted and currently conducts the country's national oil policy. It is therefore equally clear that NIOC is an agency or instrumentality controlled by the Government of Iran.

As to the question of liability Claimant first contends that NIOC is liable for OSCO's contractual obligations because OSCO acted as an agent of NIOC in connection with incurring the obligations at issue in the instant case.

In support of this contention Claimant asserts that general principles of commercial law should govern NIOC's liability and that these principles mean that NIOC must be held responsible, as OSCO's principal, for debts and obligations under the Lease Agreement. Claimant argues that a number of provisions in the 1973 Main Agreement, the 1973 Service Contract and the Lease Agreement itself indicate that OSCO acted as NIOC's agent.

Lastly, Claimant argues that OSCO's status as an agent of NIOC was confirmed by the so-called "Fidelity Affidavit" that Oil Field and other companies entering into contracts with OSCO were required to complete. This affidavit form required Oil Field to acknowledge that it was engaging in business activities "with, for, or involving the Imperial Government of Iran."

Respondents deny that the relationship between NIOC and OSCO is governed by general principles of commercial law and argue that the question as to whether NIOC is liable to Claimant as OSCO's principal is to be determined by reference to Iranian

law. Further, Respondents argue that under Iranian law the relationship between NIOC and OSCO is one of employer and contractor and cannot be categorized as one of principal and agent.

OSCO was established to serve the needs of both NIOC and the oil companies. Its direction was shared, and the benefits of its activities accrued to both groups. It was a unique organization made possible because it served the separate, and certainly not always common, interests of NIOC and the companies. This unique duality, in turn, adds to the difficulty of determining the question of agency.

It is correct that some provisions in the 1973 Main Agreement and the 1973 Service Contract, as pointed out by Claimant, state that certain of OSCO's operations were carried out on behalf of NIOC. Article 17(A) of the 1973 Main Agreement required the creation of OSCO "to carry out operations as assigned to it by NIOC". Article 2 of the 1973 Service Contract provides that the operations assigned to OSCO were expressly required to be carried out "on behalf of and under the overall direction and control of NIOC". Article 10 of the same contract contemplates that all of OSCO's costs and expenses were incurred "on behalf and for the account of NIOC".

The fact that OSCO was required to act on behalf of NIOC is not inconsistent with the role of independent contractor. Indeed, it is in the very nature of contractors to perform services at another's behest and to obtain a benefit for another. While the phrase "on behalf of" is often used as a short-hand indication of agency, especially in the signing of instruments, it can also connote that an action is being taken in the interest or for the benefit of another. In the text of a contract, this second meaning is as likely, if not more likely, than the first. Therefore, the use of this and similar language cannot be deemed inconsistent with independent contractorship.

Furthermore, it has to be noted that Article 2 of the 1973 Service Contract at the same time refers to OSCO as NIOC's contractor and that Article 3 of the same agreement provides that NIOC in preparing for programmes, plans and budgets may require OSCO to carry out through consultants or sub-contractors such studies and investigations as may be required by NIOC to assist in developing forward planning. Similarly, Article 4 provides that OSCO may award contracts to sub-contractors and consultants. Thus, the 1973 Service Contract refers to OSCO as NIOC's contractor and to OSCO's contract partners for the provision of services and goods for the operations relating to exploration, development and production of crude oil and natural gas as OSCO's sub-contractors. These formulations do not support Claimant's contention that OSCO concluded the contracts on NIOC's behalf as NIOC's agent.

The Lease Agreement does not contain any clear indication that it was entered into by OSCO as agent on NIOC's behalf. On the contrary, the agreement was signed by a representative of IROS, who expressly indicated in the agreement that he signed the contract for and on behalf of OSCO.

Lastly, the fact that Oil Field was required to complete and submit the Fidelity Affidavit does not suggest an agency relationship. By its terms, the Fidelity Affidavit merely recites the fact that Oil Field's services related to activities "with, for or involving" the Government. That the Government, through NIOC, was involved in and benefited by the business of oil extraction was obvious. However, no inference can be drawn from this fact which would shed any light on OSCO's specific role.

Thus, the Tribunal holds that Claimant has not submitted sufficient evidence to prove that OSCO acted as an agent of NIOC. On balance, the provisions of the 1973 Service Contract and the Lease Agreement rather indicate that OSCO acted as a

contractor when entering into the Lease Agreement.

Claimant also asserts that NIOC is liable for OSCO's contractual obligations because OSCO was controlled by the Government of Iran.

The Tribunal therefore has to decide whether the extent of control exercised by NIOC, if any, is sufficient to make NIOC directly liable for OSCO's contractual obligations on an alter ego or identity theory. Claimant refers to Article 16(D) and Articles 17(A) and (B) of the 1973 Main Agreement and Articles 2, 3, 6, 7 and 10 of the 1973 Service Contract to demonstrate that OSCO from its creation was controlled by NIOC.

It is indisputable that NIOC as a result of the above-mentioned provisions in the 1973 Main Agreement and the 1973 Service Contract exercised a considerable influence over OSCO's finances and operations. However, the question of NIOC's control over OSCO must be viewed in a wider perspective.

It has to be borne in mind that the Consortium members owned, and have always owned, all shares in OSCO. OSCO's Statutes do not in any way restrict the rights that normally flow from the holding of capital stock in a company. Thus, the Consortium members had inter alia the right to elect the Board of Directors and to nominate the Chairman and Managing Director and the Vice Chairman and Deputy Managing Director from amongst the Directors. Consequently, there can be little doubt that it was the Consortium members who ultimately conducted the operations of the company. The influence exercised by NIOC was primarily based on the terms of the 1973 Service Contract and was therefore of a contractual nature. The influence over OSCO which NIOC exercised on the basis of the terms of this contract was - although of a far-reaching nature - not in principle different from the influence exercised over any independent contractor by its customer, if the contractor has been set up to serve, and

in practice serves, the needs of one single or dominating customer. Respondents have also referred to a Memorandum dated 8 May 1974 by Mr. R. Milne, then Managing Director of OSCO, to the Consortium members. This Memorandum shows that the Consortium members regarded OSCO as an instrument by means of which they could assert a certain influence over NIOC's operations. The Tribunal therefore concludes that the influence that NIOC exercised over OSCO on the basis of the 1973 Main Agreement and the 1973 Service Contract falls far short of such a total control by one company over another which might have as a consequence that the controlling company is liable for the obligations of the controlled company.

Further, Claimant contends that NIOC is liable for OSCO's contractual obligations because NIOC is the successor to debts and obligations incurred by OSCO.

Respondents have denied that NIOC is OSCO's legal successor. They argue that the relationship between NIOC and OSCO falls to be determined in accordance with Iranian law and that under Iranian law NIOC is not OSCO's legal successor, nor has OSCO merged with NIOC. Respondents also deny the existence of any general principle that a legal successor must assume the liabilities as well as the assets of its predecessor.

Respondents add that by early 1979 the expatriate employees of OSCO had left Iran. Although NIOC did not take over the day to day management of OSCO, inevitably, in the absence of its contractor (OSCO), NIOC took steps to discharge its duties and obligations conferred on it under Iranian law and its own Statutes and began to operate the oil fields. These were operations for which NIOC was responsible under its Statutes and which were contracted to OSCO under the 1973 Main Agreement. The withdrawal of OSCO's expatriate personnel in Iran as of December 1978 rendered OSCO incapable of performing its obligations under the 1973 Service Contract. In the absence

of the contractor, NIOC had no alternative but to take steps itself.

Claimant does not contend that NIOC succeeded OSCO as a result of a formal corporate merger or succession in accordance with Iranian law.

There is, however, quite apart from Respondents' own contention that NIOC had to operate the oil fields, overwhelming evidence submitted in this case proving that NIOC as from March 1979 gradually assumed control over OSCO's personnel and oil field operations and took over the contracts entered into by OSCO with sub-contractors and consultants for these operations:

1. Of particular interest in this respect is a letter dated 10 March 1979 from Mr. Hassan Nazih, then Chairman of NIOC, to the Consortium members. In this letter NIOC announced the termination of the 1973 Main Agreement and of NIOC's own relationship with OSCO. The letter then goes on to say:

   2. In our future operations, there will be no place for OSCO, nor for the large number of expatriate personnel who used to work for it. Expatriate personnel for secondment or direct employment by us, has [sic] already been advised as per our telex JR28 dated 22nd. January 1979 and subsequent telexes.

      . . . . .

   4. All Iranian personnel employed in the operations by OSCO shall be transferred to NIOC under the terms and conditions of the contracts with OSCO.

   5. NIOC is willing to take over all contracts which contractors and consultants entered into by OSCO for its operations under the present arrangements.

2. In a circular dated 3 March 1979 NIOC announced that it was necessary gradually to "merge" the present organizations and

operations of NIOC and OSCO at Abadan and in the fields.

3. In another circular dated 22 July 1980 the Ministry of Oil states:

> From the First of Mordad 1359 [23 July 1980] the Tehran office - NIOC-Fields (the former Iran Oil Services Company) shall be closed down and its subject units merged with the relevant units of the National Iranian Oil Company.

4. In a telex sent in late March 1979 to sixteen companies, NIOC represented itself as a party to all contracts entered into by OSCO. This telex states:

> We are requested to inform you that Mr. Esmail Fakhraie has been appointed as Manager Drilling and that he will be the Company representative in all OSCO contracts related to drilling effective immediately.
>
> We request you to advise your interested associated companies, subsidiaries and sub-contractors of this appointment.

5. Letters sent by NIOC to a number of companies that had entered into contracts with OSCO show that NIOC made payments under these contracts to the companies concerned.

6. NIOC also sent a number of letters to various companies directing these companies to perform activities under contracts entered into by OSCO.

7. NIOC sent letters to companies that had entered into contracts with OSCO in which NIOC asserted purchase option rights under these contracts.

8. Similarly, in other letters NIOC asserted certain rights of termination under various contracts entered into by OSCO.

9. In a settlement agreement regarding certain disputes with an American company dated 30 August 1979 NIOC expressly admitted in the preamble of the agreement that it had taken over OSCO's role under the contract concerned.

10. Finally, the Government of Iran has explicitly represented to the Tribunal in two cases filed against Chase Manhattan Bank of New York, and Reading & Bates Offshore Drilling Company (Claims Nos. 576 and 580) that NIOC is the legal successor to OSCO.

From the inception of OSCO in 1973, its relations with NIOC were, as stated above, of a complex nature and the circumstances in this case are unique. Not surprisingly, these circumstances do not fall clearly within well developed and discussed doctrines of law. The controlling rules have therefore to be derived from principles of international law applicable in analogous circumstances or from general principles of law. The development of international law has always been a process of applying such established legal principles to circumstances not previously encountered.

The evidence in this case shows that performance of the tasks assigned by NIOC to OSCO was not abandoned after 1979, but was instead undertaken directly by NIOC itself, with OSCO personnel and within an organisational framework previously created in many instances by OSCO. The factual circumstances of NIOC's assumption of control over OSCO's personnel and operations and its taking over of the contracts with sub-contractors and consultants resulted in NIOC's de facto succession to OSCO's rights and obligations with respect to these sub-contractors and consultants.

As to the legal consequences of this de facto succession it should be pointed out that NIOC since the creation of OSCO in 1973 through the cash call procedure provided for in Article 10

of the 1973 Service Contract invariably had provided OSCO with the funds necessary in order to meet OSCO's contractual obligations. It can be assumed that those doing business with OSCO relied on the fact that NIOC would continue to provide those funds to OSCO through the cash call procedure. From the point of view of general principles of law it would be difficult to accept that the de facto succession which took place would have as a consequence that NIOC could totally escape its previous obligation to provide the funds necessary to meet the contractual liabilities arising out of contracts entered into by OSCO for the provision of services and goods regarding operations relating to exploration, development and production of crude oil and natural gas. The fact that no formal corporate merger or succession in accordance with Iranian law took place between the companies does not alter this conclusion. Rules in national law on merger and succession normally contain provisions in order to safeguard the interests of the creditors of the company which ceases to exist. If a de facto succession of rights and obligations in a certain field has taken place without the observance of such rules under the applicable national law, it is even more important to establish a rule under international law that such succession must have as a consequence that the surviving company is under an obligation to pay appropriate compensation taking into account all the circumstances of the case.

The Tribunal holds that in this and all similar cases before the Tribunal the task of determining the extent and the amounts of NIOC's liability should be left to the respective Chamber since such issues will best be resolved at the Hearing of the merits of the case.

For the reasons given above

THE TRIBUNAL concludes as to the issues raised in the

Preliminary Statement of Defence of 30 April 1982

that NIOC is the de facto successor to OSCO's rights and obligations and that the Tribunal has jurisdiction over Oil Field's claims.

The case is referred back to Chamber One for further proceedings.

The Hague,
7-8 December 1982

Gunnar Lagergren
(President)

In the name of God,

Pierre Bellet

Nils Mangård

Mahmoud M. Kashani
Dissenting opinion

In the name of God,

Howard M. Holtzmann
Concurring opinion

Shafie Shafeiei
Dissenting opinion

George H. Aldrich

In the name of God,

Richard M. Mosk
Concurring opinion

Mostafa Jahangir Sani
Dissenting opinion