63

IRAN - UNITED STATES CLAIMS TRIBUNAL

DUPLICATE ORIGINAL

دونسخه برابر اصل

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده

FILED

Date 1361/9/19
10 DEC. 1982

File 43 ۴۳

OIL FIELD OF TEXAS, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, NATIONAL IRANIAN OIL COMPANY, OIL SERVICES COMPANY OF IRAN,

Respondents.

Concurring Opinion Of Richard M. Mosk With Respect To Interlocutory Award

Case No. 43

I concur in the result of the decision of the majority of the Tribunal holding that the Tribunal has jurisdiction over the claim of Claimant Oil Field of Texas Inc. ("Claimant" or "Oil Field") and holding that Claimant has alleged facts sufficient to constitute a valid claim that Respondent National Iranian Oil Company ("NIOC") is liable to Claimant for obligations arising out of transactions involving Oil Services Company of Iran ("OSCO").[1/] I agree with the majority opinion that if OSCO was not the agent of NIOC, NIOC is liable for the debts of OSCO as its successor. In my view, NIOC, as OSCO's successor, is liable for obligations under contracts executed by OSCO, such as the one to which Oil Field is a party. Unlike the majority, I would hold that NIOC is liable under the alternative theory that OSCO executed the contract with Claimant on behalf of

---

1/ Since the majority opinion does not deal with the liability of the Government of the Islamic Republic of Iran ("Iran"), I do not discuss that issue.

and as agent of NIOC. Also, I do not agree with the majority's analysis of the issue of "control". On the record before the Tribunal, the question of "control" only bears on the issue of agency.

PROCEEDINGS AND ISSUES

On November 16, 1981, Oil Field filed its claim against Iran, NIOC and OSCO seeking compensation for amounts allegedly unpaid for equipment leased, equipment sold, destroyed leased equipment, and unreturned equipment and for interest on unpaid amounts and costs.

Claimant's claims are based upon a variety of theories. Claimant alleges that Iran and NIOC have, in effect, seized control of and expropriated Claimant's property; have prohibited the performance of OSCO's contract obligations and have therefore taken or expropriated Claimant's contractual rights; have prevented Claimant from enforcing its contractual rights; and have wrongfully and tortiously interfered with Claimant's contractual relationship with OSCO. Claimant has also asserted that NIOC and Iran are liable because OSCO acted as NIOC's agent or because NIOC is OSCO's successor or because NIOC and Iran have been unjustly enriched.

On February 23, 1982, the Agent of the Islamic Republic of Iran, in a letter to the Tribunal, stated

that these claims are not within the Tribunal's jurisdiction because of a "complete separation of the personality of OSCO" from Iran and its agencies or instrumentalities. He alleged that this "separation" existed because OSCO's stock was held by a consortium of international oil companies rather than by Iran or NIOC. The Iranian Agent requested that Iran be permitted to "submit its pleas as to the separation of personality [of OSCO] and the claimants' lack of standing to sue the Islamic Republic of Iran and/or companies affiliated to the Ministry of Petroleum on behalf of OSCO, without entering into the points of merit."

By an order dated March 15, 1982, Chamber 1 -- the chamber to which this case is assigned -- directed that Respondents in this case and those in other cases file, on or before April 30, 1982, statements of defense "on the issues of jurisdiction." Similar orders were issued in cases by Chambers 2 and 3.

On April 30, 1982, Iran and NIOC filed their Statement of Defense concerning jurisdiction in this case. Iran and NIOC filed virtually identical Statements of Defense in 19 other cases. In these Statements of Defense, Iran and NIOC denied liability on any ground for debts and obligations incurred by OSCO and sought "a declaration by the Tribunal that to the extent that the Claims seek to make NIOC and/or Iran liable for the obligations of OSCO, the Claims are outside the jurisdiction of the Tribunal."

On May 6, 1982, Chamber 1 issued an order in this case "relinquish[ing] jurisdiction to the Full Tribunal . . . for the limited purpose of hearing and deciding the jurisdictional issues raised in the Preliminary Statement of Defense...." By its order dated May 7, 1982, the Tribunal directed Oil Field "to file a brief with the Tribunal by June 8, 1982, addressing itself to the jurisdictional issue."

In its memorial, Claimant asserted that the question presented was, "[d]oes the Tribunal have jurisdiction over those claims of Oil Field related to the Lease Agreement?"

Respondent in its memorial asserted that "[t]he OSCO issue is therefore the jurisdictional question: does the Tribunal have jurisdiction over claims filed with it which are either against OSCO as Respondents or are against Iran and/or NIOC as Respondents on the basis that they are/were jointly or individually liable for the obligations of OSCO?"

During the hearing, which was held on July 26-28, 1982, Counsel for Oil Field asserted that it was not then pursuing a claim against whatever presently remained of the entity OSCO, but rather was proceeding on claims against NIOC and Iran arising out of an agreement executed by Oil Field and OSCO.

Unfortunately the Tribunal and the parties intertwined issues of jurisdiction and of liability. There

never was a serious question of jurisdiction. The Tribunal and the parties all share responsibility for the confusion caused by initially framing the issues as jurisdictional and then expanding into issues of liability.

The majority has discussed what it perceives to be three issues (none of which relates to jurisdiction): (1) whether OSCO executed the lease agreement with Oil Field as an agent of NIOC so as to impose liability thereunder upon NIOC; (2) whether NIOC is liable for OSCO's contractual obligations by virtue of NIOC's control over OSCO; and (3) whether NIOC is liable for OSCO's contractual obligations as a successor to the debts of OSCO.

Claimant has based its claim on a number of theories, some of which are not grounded on agency, control or succession. In this respect, Claimant has alleged that Iran and NIOC expropriated its property and its contract rights and tortiously interfered with its contract rights and that Iran breached the 1955 Treaty of Amity, Economic Relations, and Consular Rights between The United States of America and Iran, 8 U.S.T. 899, 284 U.N.T.S. 93, by, inter alia, not providing effective means of enforcement of contractual rights. Claimant has also asserted that to the extent it could not recover under its contract, it had an alternative claim for unjust enrichment.

The majority, however, only deals with whether NIOC and Iran are liable to Claimant under the OSCO-Oil Field lease agreement by virtue of three alternative theories -- agency, control and succession. The majority's opinion, by not dealing with Claimant's other theories, presumably leaves Claimant and other claimants free to pursue claims under such other theories.

FACTS

Prior to 1951, the Anglo-Iranian Oil Company, an English company, was the sole concessionaire of Iran's oil properties and was generally responsible for the exploration, production, refining, and transportation of Iranian oil. In 1951 Iran nationalized its oil industry, and the Government of Iran founded the National Iranian Oil Company to operate the nationalized oil industry. All of the shares of stock of NIOC have been owned by Iran.

In 1954, Iran and NIOC entered into an agreement with eight major oil companies -- a "consortium" of American and European oil companies ("Consortium"). Under the agreement Iran granted the Consortium

exploration, drilling, refining, and transportation rights with respect to oil in a specified sector of Iran. Furthermore, the agreement called for the establishment by the Consortium of two operating companies. The first, Iranian Oil Exploration and Producing Company ("IOEPC"), was to explore for and produce oil; the second, Iranian Oil Refining Company ("IORC"), was to operate a refinery.

In 1973, the parties replaced the 1954 agreement with a new agreement ("1973 Main Agreement") whereby NIOC took over control of all exploration, extraction and refining activities in Iran. Since NIOC desired the type of technical assistance previously provided by IOEPC and IORC, the 1973 Main Agreement required the Consortium members to form a "Service Company." That "Service Company" was to be formed as a non-profit Iranian 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." Under the 1973 Main Agreement, NIOC was to fund[2/] and control[3/] the "Service Company's" operations.

[2/] "NIOC shall provide as necessary to the Service Company [OSCO] 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." Art 17(B).

[3/] "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 16(D).

Pursuant to the 1973 Main Agreement, the Consortium formed the "Service Company", OSCO, as an Iranian non-profit corporation,[4/] which then entered into the service contract with NIOC ("1973 Service Contract"). All of the issued shares of OSCO, except nominal qualifying shares required by Iranian law to be held by the directors of OSCO, were owned by Iranian Oil Participants Limited ("IOPL"), a company incorporated in England. The Consortium members owned all of the issued shares of IOPL.

Also in 1973 NIOC entered into an agreement with Iranian Oil Services Limited, ("IROS"), the shares of which were owned by the Consortium but which was to act "outside Iran for NIOC's operations at Abadan Refinery." Under the 1973 Services Contract, OSCO was to contract with IROS to obtain materials and services outside Iran.

The preamble to the 1973 Service Contract referred to NIOC as the "owner and operator" of, in essence, the Iranian oil industry. Provisions of the 1973 Service Contract indicated NIOC's control over OSCO's activities and funding. In this connection it is important to set forth the following specific provisions of the 1973 Service Contract:

> Article 2: Operations
>
> * * * *
>
> The Service Company, as a contractor, shall carry out the Operations in accordance with good oil

---

[4/] The paid in capital was 1,000,000 rials or about $15,000.

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

* * * *

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 10: Costs; Funding; Accounts; 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.

Thus, as set forth in the 1973 Main Agreement, the 1973 agreements fulfilled Iran's determination "that the full and complete ownership, operation and control in respect of all hydrocarbon reserves, assets and administration of the petroleum industry shall be exercised by NIOC...."[5/] The Consortium still had rights to purchase and sell Iranian Oil.

The former Chairman of the Board and Managing Director of OSCO, George H. Link, submitted an affidavit in which he stated that NIOC's approval was required or obtained for all of OSCO's major projects and plans, OSCO's budgets, various "commitments for expenditures" by OSCO, OSCO's list of approved bidders on contracts over $1 million and the awarding of contracts to such bidders, recommendations concerning bid lists and the awarding of contracts to bidders, the awarding of contracts of over 1 million rials (approximately $15,000) and the hiring of expatriates.[6/] According to Mr. Link, OSCO owned no realty or equipment; NIOC held title to all such property; and all disbursements of funds by OSCO

[5/] "In Iran, the new agreement was seen as the zenith of Iranian triumph in the nationalisation [sic] of Iranian oil industry." 1976 Iran Almanac 223 (Echo of Iran).

[6/] Respondent submitted a telex from an unidentified person, apparently connected with NIOC, to NIOC's counsel in this case, denying that some of these approvals were required or solicited. Respondents also submitted what purported to be a memorandum concerning OSCO's contracting policy in which there is no reference to NIOC, but rather to various contracts committees.

were made through "cash calls" from OSCO to NIOC since OSCO had no money of its own other than what it received from NIOC under these procedures.

Mr. Link also declared that of the 10,000 persons working for OSCO in 1978, about 600 were expatriates. Of these 600 expatriates, 200 were provided by the Consortium members. He asserted that Iranian nationals held positions at all levels of OSCO, including on its Board of Directors, and that no director or senior manager of OSCO was replaced without consultation with NIOC.

In 1974, Claimant was contacted about the possibility of leasing four blowout preventers and related equipment for use in Iran. Mr. Alan Rauch, the Chairman of the Board of Directors of Claimant, stated in an affidavit, that at that time, he made inquiries as to the relationship between OSCO and NIOC and obtained information about the main features of the 1973 Service Contract. He further stated that Oil Field made an offer to lease equipment to OSCO "only because NIOC appeared to be responsible for OSCO's debts and obligations."

Oil Field and OSCO executed a lease agreement dated February 26, 1975 whereby Oil Field provided equipment for use in Iran ("Lease Agreement").[7/] IROS acted as agent of OSCO in connection with this Lease

---

[7/] The Lease Agreement was amended from time to time (as late as June, 1977) to add additional equipment and to extend the term. Oil Field also, pursuant to the Lease Agreement sold some materials for use in Iran.

*Corrected December 13, 1982 dm

Agreement. The Lease Agreement did say that it is between Oil Field and OSCO, but the preamble to that Lease Agreement provided that NIOC "has under an international agreement appointed [OSCO] to undertake certain operations in the production and export of crude oil from South Iran." Under the Lease Agreement, OSCO was required to maintain an insurance policy on the leased property, which insurance policy "shall name the Company [OSCO], NIOC and the Contractor [Oil Field] as named insureds thereunder." The Lease Agreement also provided that it "and any legal relationship arising therefrom shall be subject to English law."

In December of 1975, Claimant received a letter from OSCO's London representative referring to the Lease Agreement and stating as follows:

> We have to advise you that it is now an Iranian Government requirement that all foreign firms engaged in business activity with the Government of Iran or its related orgainsations [sic], companies and contractors, should complete a duly certified affidavit in accordance with the print enclosed; such affidavit to form part of the contract documents.

The form affidavit provided to Claimant stated that the contractor (i.e. Claimant) "proposes to engage in certain business activities ... with, for, or involving" the Government of Iran. The affidavit (called a "Fidelity Affidavit") dealt with a representation of no improper payments. Oil Field complied with the request by supplying a signed copy of the required affidavit to a consular officer of Iran and to OSCO.

According to Claimant, the obligations of the Lease Agreement were fulfilled until the latter part of 1978. Since that time lease payments were delayed and then ceased, amounts for goods remained unpaid, Claimant received no payment for a leased blowout preventer destroyed by fire and leased equipment was not returned.

In late 1978 and early 1979, during the civil unrest which occurred prior to and during the revolution, OSCO's expatriate personnel left Iran.

On March 10, 1979 NIOC wrote to the Consortium that in "our future operations, there will be no place for OSCO...." The letter further provided that all "Iranian personnel employed in the operations by OSCO shall be transferred to NIOC under the terms and conditions of the contracts with OSCO" and that "NIOC is willing to take over all contracts with contractors and consultants entered into by OSCO for its operations under the present arrangements."

Indeed, in its memorials NIOC asserted that in order to keep the oil industry functioning, it had "to carry out the operations which had previously been contracted to OSCO by virtue of the Service Contract." Also, a March, 1979 NIOC circular referred to a merger of certain units with "the present organizations and operations at Abadan and the fields" and

that certain activities would be under the supervision of a manager of "National Iranian Oil Company (Oil Services Company of Iran (Private Company))."

Thereafter it was announced in a Government circular that "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 ...."[8/]

During the Spring of 1979, NIOC began to communicate directly with companies that had contracts executed by OSCO. OSCO had previously carried out such contract-related communications. Initially, correspondence was sent over the signature of NIOC representatives on OSCO stationery. For a brief time thereafter, NIOC officials corresponded on paper without a letterhead. Ultimately, correspondence was either on NIOC stationery or on stationery containing the letterhead, "NIOC-Oil Fields" in Farsi.

NIOC explicitly represented itself to many companies as the party to their contracts executed by

---

8/ Many written communications were submitted to the Tribunal by the parties which were not authenticated formally. Generally there were no evidentiary objections to such communications being considered by the Tribunal. As I noted in my dissenting and concurring opinion, "On The Issues of Jurisdiction" in Case Nos. 6, 51, 68, 121, 140, 159, 254, 293 and 466 (Forum-Selection Clauses), "International tribunals apply liberal standards in accepting and considering evidence. Indeed, one authority has writen: 'In international procedure ... evidence is always admitted upon being duly presented in accordance with the time limits fixed by the tribunal; it will only be excluded upon a showing by the party challenging it of a specific ground requiring such action.' Sandifer, Evidence Before International Tribunals 179 (rev.ed. 1975)."

OSCO. NIOC caused the following telex to be sent to a number of companies in late March, 1979:

> We are requested to inform you that Mr. Esmail Fakhraie has been appointed as Manager Drilling [sic] 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.

NIOC paid to Oil Field and other companies certain monies due under various contracts executed by OSCO. The payments were made directly to the contracting companies and not through OSCO. NIOC directed various companies to perform activities under contracts executed by OSCO. For example, in a letter dated March 28, 1979, Mr. Fakhraie, signing on behalf of NIOC (but on OSCO stationery), requested Sediran Drilling Co. to mobilize its drilling rigs. NIOC sent an identical request dated March 28, 1979 to Sedco International S.A. Similarly, Compagnie Francaise de Prospection Sismique received a letter dated May 22, 1979, written under a NIOC-Oil Field letterhead, requesting a resumption of seismic operations. Halliburton Ltd. and Dowell Schlumberger received a memorandum from Mr. Fakhraie, dated June 3, 1979, requesting commencement of cementing activities on specified wells.

NIOC asserted purchase option rights under various contracts executed by OSCO. For example, in a letter

to Santa Fe International Services, Inc., dated May 14, 1979, Mr. Fakhraie stated:

> On the basis of clause 15 of the contract No. 3-75-046-339 dated 15/1/1973 signed between Santa Fe and the Company NIOC would like to exersize [sic] its option to purchase the drilling units currently stacked in Ahwaz.... (Emphasis added).

Similarly, Irano-Reading & Bates reported it received a July 31, 1979 telex providing that:

> NIOC is considering to exercise its option to purchase drilling plant under the subject contract. In order to work out accrued depreciations, you are requested to provide NIOC with documentary evidence of the date of purchase of individual units. (Emphasis added).

An Irano-Reading & Bates telex dated August 14, 1979, quoted a letter written by Mr. Fakhraie in which NIOC informed that company that NIOC had "decided to take advantage of its legitimate rights mentioned in Article 14 of the Contract to purchase the drilling rigs." (Emphasis added).

NIOC asserted certain rights of termination under various contracts executed by OSCO. For example, Mr. Fakhraie, in a letter dated March 28, 1979, stated that Irano-Reading & Bates had,

> failed to comply with the terms of the above-mentioned contract in mobilizing the rest of the rigs. Therefore, in compliance with Article 40 in general and Clause 6-1-40 and 5-140 in particular of the contract, we would like to bring to your attention that effective 6/1/1358 [March 26, 1979] we declare the contract nil [sic] and void.

In a letter dated April 13, 1979, NIOC purported to cancel Sedco International's contract but reserved the "other rights of this company contemplated in the contract mutually agreed upon, in accordance with Article 41 of the contract." (Emphasis added). NIOC sent a similar letter of termination to Sediran dated April 13, 1979. On December 9, 1979, Halliburton received a telex stating that NIOC was terminating "the subject contract and ammendments [sic] with cause without prejudice to our other right contemplated under subject contract." (Emphasis added).

In a number of other contexts, NIOC acknowledged its obligations under contracts executed by OSCO. For example, in a letter to Iranian authorities dated July 22, 1979, a NIOC official stated that Santa Fe's contracts which had been executed by OSCO, were with NIOC:

> According to the agreement between Santa Fe and NIOC regarding the equipment which has been imported without payment of customs tax to drill oil wells for NIOC and as per the agreement and future operations of this company, permission to export all rigs stated above has been given under the auspices of NIOC material department. (Emphasis added).

NIOC entered into a settlement agreement with Santa Fe, dated August 30, 1979, in which agreement NIOC expressly admitted having taken over OSCO's activities under Santa Fe's drilling contracts:

> WHEREAS, the National Iranian Oil Company has subsequently taken over all activities previously

> done by The Oil Service Company of Iran (Private Company) as the "Company" under said drilling contracts....

Further, NIOC entered into a settlement agreement with Williams Brothers International Corp., dated October 15, 1979, on NIOC-Oil Fields stationery, covering payments due under a contract executed by OSCO for construction of high pressure gas transmission lines.

All of these activities by NIOC suggest that it, rather than OSCO, had at all times been, or at least became, the real party to the contracts.

Such a suggestion also follows from NIOC's conduct towards Claimant. In June of 1979, NIOC had paid Oil Field for rents due on certain equipment through December 1978. But in July, 1979, Oil Field received a telex from IROS (which had been acting for OSCO and was NIOC's representative in London), stating that "the Islamic Court of Ahwaz has instructed NIOC to stop any payment to Oil Field rentals until further instructions...." A representative of IROS in London told Claimant to discuss the matter with "Mr. Fakhraie of NIOC."

In 1980, NIOC asked Oil Field to provide details to present a claim for the insurance on the destroyed blowout preventer and even requested that Oil Field waive its rights under the insurance policy in favor of NIOC.

In 1979, NIOC was placed under the authority of, and became affiliated with, the Iranian Oil Ministry. In 1980, Iran purported to "nullify" the 1973 Main Agreement.

In 1982, Iranian entities submitted claims to the Tribunal asserting that NIOC was OSCO's successor.

There is no indication that the entity OSCO has ceased to exist. It appears, however, that since NIOC took over its assets, OSCO has remained as a shell. It could not and did not even pay its former employees. In 1980 IOPL entered into an agreement with IROS to loan monies to IROS "for the purpose of making payments on behalf of Oil Service Company of Iran. . . to certain former OSCO expatriate staff in respect of losses incurred by them and credit balances on their personal accounts." This agreement, which was not executed by OSCO, was to take effect, inter alia, when "the delivery [was made] to IOP[L] by OSCO of an assignment. . . by OSCO to IOP[L] of its right to be reimbursed by NIOC or any other source for the sums expended by IROS out of the loans made hereunder...."

JURISDICTION

Article II, paragraph 1, 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 ("Claims Settlement Declaration") provides that this Tribunal shall decide claims of nationals of the United States against "Iran" if the claims "are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights...." Article VII, paragraph 3, of the Claims Settlement Declaration provides that "'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 the instant case, Claimant, which purports to be a United States national, has brought a claim against the Government of Iran and NIOC, which is an agency, instrumentality or entity controlled by the Government of Iran, based on debts, contracts, expropriations or other measures affecting property rights.

There can be no serious question that this Tribunal has jurisdiction over Oil Field's claim as against Iran and NIOC. Since the Claimant is not now proceeding against the entity OSCO, there is no pending issue of jurisdiction over a claim against OSCO.

SUCCESSION

The majority has gone beyond any issue of jurisdiction to consider NIOC's liability based on evidence of the NIOC-OSCO relationship. As I discuss infra, I conclude that NIOC is liable for OSCO's debts as OSCO's principal. I agree, however, with the majority that if NIOC is not liable as OSCO's principal, NIOC is liable as OSCO's successor. In my view, as such a successor, NIOC is fully liable for OSCO's obligations under traditional legal principles, for that is the consequence and meaning of succession.[9/]

If OSCO was not acting as agent of NIOC, the evidence supports the alternative theory adopted by the majority that NIOC is OSCO's successor. Prior to late 1978, OSCO had 10,000 employees and was administering numerous contracts and annually disbursing substantial monies provided by NIOC. By March of 1979, OSCO's 600 expatriates had departed, and all of the other OSCO operations had been taken over by NIOC.[10/]

While the corporate shell of OSCO may still exist, its principal assets have been taken over by NIOC. Indeed, since OSCO's Statutes (articles of incorporation) limited its

---

9/ See Black's Law Dictionary 1283 (5th ed. 1979) ("successor" - "Term with reference to corporations, generally means another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of first corporation.")

10/ NIOC's justification for such a takeover is irrelevant. Whether or not OSCO or the Consortium were at fault, as suggested by Respondents, has no bearing on NIOC's legal responsibility to Claimant Oil Field.

purpose to providing services to NIOC in connection with oil development and production in Iran -- work now done directly by NIOC -- there is no longer any reason for OSCO's continued existence.

NIOC began communicating with companies as if NIOC had supplanted OSCO as a contracting party. NIOC sent some of such communications on OSCO stationery. Moreover, NIOC represented itself to companies as the party to their contracts executed by OSCO. NIOC made payments, requested performance and claimed rights under such contracts, including exercising purchase options and termination clauses. On one occasion NIOC even referred to its "legitimate rights" under a contract executed by OSCO and another company.

In two claims filed with the Tribunal, Iranian Governmental entities alleged and relied on the fact that NIOC was OSCO's successor.[11/]

In circulars, Iran and NIOC described the assumption of OSCO's assets and activities by NIOC as a merger.

11/ Claimant requested the production of other claims filed or lodged by Iran with the Tribunal involving Osco-related transactions. Iran delivered to the Tribunal several hundred claims, of doubtful jurisdiction, by its oil agencies against United States nationals, which claims would seemingly be OSCO-related, since it was OSCO that had most of the direct dealings with contractors. Iran not only opposed the production of such claims but withdrew and removed most of them at the time of the proceedings in the instant case. Quite apart from the propriety of such actions (see Sandifer, Evidence Before International Tribunals 115, 163 (rev.ed. 1975)), they should result in the drawing of inferences against Iran and NIOC. Id. at 147-154.

In short, NIOC simply took over a going concern from OSCO, without any payment to OSCO, and then continued OSCO's business. OSCO apparently remains a shell, unable to pay even its former employees. Yet NIOC has not made provision to compensate OSCO's creditors, such as Oil Field. NIOC has asserted rights under contracts while at the same time refusing to comply with its obligations thereunder. NIOC, although taking over all of the assets and business of OSCO, seeks to avoid liability for the obligations of that business. Moreover, NIOC and Iran have in other matters, in effect, represented and admitted that NIOC is OSCO's successor.

As a result of the facts and the law, NIOC must be treated as the successor to OSCO's liabilities and must be obligated to the same extent as OSCO.

The majority holds NIOC liable with respect to OSCO's obligations to OSCO's creditors by applying international law derived from analogy to municipal law governing mergers and succession. Although Respondents suggest that Iranian law should apply, there is no clear showing that Iranian law specifically deals with the situation in issue or is inconsistent with the principles of commercial and international law found applicable by the majority. Cf. Norwegian Shipowners Claims (U.S.A. v. Norway) 1 R.Int'l. Arb. Awards 305,330-331 (1922). Without going into a discussion of how one formulates or

determines international law, a subject of a great deal of scholarship, it appears that the majority's conclusion is supported by recognized principles of law and analogies thereto.

Indeed, when, as here, a Tribunal is faced with "a new situation," Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. Rpts. 174, 182, that Tribunal is justified in grounding its decision on principles of international law. See Simpson and Fox, International Tribunals 136 (1952); see also Article V of the Claims Settlement Declaration. In the instant case the Tribunal has adopted as international law, a doctrine which can be derived from municipal law, legal authorities and principles of justice. Thus, holding that NIOC's liability can be based on a "de facto" succession is justified under Article V of the Claims Settlement Declaration, which requires that all cases be decided "on the basis of respect for law," and which directs the Tribunal to utilize applicable "principles of commercial and international law."[12/]

There is legal authority for the proposition that even in the absence of a formal merger or consolidation, which normally protects creditors, when one company takes over and continues the business of another, especially without consideration or provision for creditors,

---

12/ "The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." Art. V, Claims Settlement Declaration.

the former company is liable to creditors of the latter on the theory that there has been a de facto merger or consolidation. Such liability is based on the theory that under such circumstances it would be unjust for the company obtaining the assets of a business to avoid any liabilities connected therewith. See Annot., 49 ALR 3d 881 (1973); accord, Golden State Bottling Co. v. NLRB, 414 U.S. 168, 182 n.5 (1973).

As one authority on comparative law has written:

> On no point are courts more united than that the successor to the assets of a going concern must accept the debts with it. This point is expressed in most of the laws which contain any significant detail of the means and consequences of fusion... Where statutes are silent, courts may be expected to apply the rules developed for 'transfer of assets,' which impose liabilities on the successor to assets even without legislative guidance.

Conrad, Fundamental Changes in Marketable Share Companies, XIII Int'l Ency. of Comp. Law, Ch. 6 at 88 (undated) (footnote omitted).[13/] To allow an entity to take over the assets of another without any consideration, thereby leaving the creditors of the latter

---

13/ See Art. 231 of The Civil Code of Iran (Sabi trans. 1973) ("Undertakings or contracts are only binding on the two parties concerned or their legal substitutes...." (Emphasis added)).

without any remedy, would result in a gross injustice.[14] See id. at 60-61.

Moreover, NIOC has, in order to derive certain benefits, represented itself as the party to contracts executed by OSCO. Iranian Government entities have even represented to this Tribunal that NIOC is OSCO's successor. Such representations may amount to an implied assumption of liability for OSCO's debts. See Ladjevardian v. Laidlaw-Coggeshell Inc., 431 F. Supp. 834, 839-840 (S.D.N.Y. 1977). At the very least, such representations should be viewed as admissions, which would constitute powerful evidence of succession. See D.W. Bowett, Estoppel Before International Tribunals and Its Relation to Acquiescence, [1957] Brit. Y.B.

---

[14] Even in those situations where it has been held that a government expropriation of a company does not constitute a taking of rights of creditors against such a company, the possibility of Government liability for that debt has been recognized. See In the Matter of the Claim of Universal Oil Products (1959) (U.S. Foreign Claims Settlement Commission) quoted in 8 Whiteman, Digest of International Law 995-96 (1967). Holdings by the United States Foreign Claims Settlement Commission that expropriations of companies did not constitute takings of creditors' rights were based on statutory requirements that compensation could only be for expropriations, not for other theories of liability, such as succession. Moreover, there is other authority holding that the failure to compensate a creditor of an expropriated company does constitute a taking. See generally 8 Whiteman, Digest of International Law, supra at 997-98. Dickson Car Wheel Company (1931) United States-Mexico Claims Commission, 4 R. Int'l Arb. Awards 669, is distinguishable in that the Commission denied a claim by a creditor of a railway company against the Government which took over the assets of the railway company because the Commission found the railway company still had assets and income and would have assets returned to it so that it could respond to claims. There is no such evidence in the instant case. Moreover, the dissenting opinion by Commissioner Nielsen in that case appears persuasive. Id. at 682.

Intl. L. 176,195. In addition, there is authority for the proposition that Iran and NIOC should not now be able to disavow these representations.

As one writer, quoting in part from a leading English case, has stated:

> It is a principle of good faith that "a man shall not be allowed to blow hot and cold -- to affirm at one time and deny at another ... Such a principle has its basis in common sense and common justice, and whether it is called 'estoppel', or by any other name, it is one which courts of law have in modern times most usefully adopted."

B. Cheng, General Principles of Law As Applied by International Courts and Tribunals 141-42 (1953); see also Argentine-Chile Frontier Case, XVI R. Int'l. Arb. Awards 115, 164 (1966).

This principle has long been accepted as a rule of international law. Another writer has noted:

> The doctrine has been invoked [by international tribunals] in varying forms over a period of a century and a half; and although there have been occasions on which it has been held to be inapplicable to the particular facts, its jurisprudential basis has been unchallenged.

I.C. MacGibbon, Estoppel in International Law 7 Int'l & Comp. L.Q. 468, 479 (1958). There are suggestions that in international law, "estoppel", or its equivalent, may be utilized, even in the absence of technical municipal law requirements, such as reliance. Id. at 478. Underlying the use of estoppel or analogous doctrines in international law "is the requirement that a State ought to be consistent in its attitude to a given factual or legal situation." Id. at 468. Such a principle should apply in the instant case.

Thus, for all of the foregoing reasons, if, as the majority concludes, NIOC was not OSCO's principal, NIOC is the successor to the liability of OSCO to Oil Field and should be liable to Oil Field to the same extent as would be NIOC's predecessor, OSCO.

AGENCY

The majority has held that OSCO did not enter into the Lease Agreement with Oil Field as an agent of NIOC. Whether such an arrangement can be viewed as creating an agency relationship is not free from doubt. The arrangement between NIOC and OSCO was unusual. Nevertheless, I would hold that the relationship is such that agency principles are applicable, thus rendering NIOC fully liable under contracts executed by OSCO in the course and scope of such relationship.

The Lease Agreement between OSCO and Oil Field provided that the "contract and any legal relationship arising therefrom shall be subject to English law." This choice of law provision makes English law "the proper law of the contract." 2 Dicey and Morris, The Conflict of Laws 753 (10th ed. 1980). Moreover, since OSCO's representative in London (IROS) dealt with foreign contractors, such as Claimant, in connection with contracts executed by OSCO, the transaction in issue has sufficient contacts with England for choice of law purposes, quite apart from the choice of law clause.

Authorities suggest that there is uncertainty as to the source of choice of law doctrines and the proper law to apply. See 1 Schwarzenberger, International Law 74-78 (3d ed. 1957); see also Steiner and Vagts, Transnational Legal Problems 774-776 (1977); Riphagen, The Relationship Between Public and Private Law and the Rules of Conflict of Laws, Académie de Droit International, I [1961] Recueil des Cours 215. Although the law of the contract, English law, might seem an appropriate selection to supply the choice of law principles, 1 Dicey and Morris, The Conflict of Laws 64 (10th ed. 1980), the fact that the issue involves NIOC's relationship to OSCO and whether NIOC is a party to the contract adds some doubt to this conclusion. Because of this uncertainty in the applicable choice of law rules, the Tribunal should apply its own rules of conflict of laws. Restatement (Second) of Foreign Relations Laws of the United States, Sec. 194 Comment a. at pp. 584-85 (1965); see Sapphire International Petroleum Ltd v. National Iranian Oil Company 35 I.L.R. 136, 170-176 (1963). In the instant case, however, the applicable choice of law rule does not affect the result.[15/]

Generally questions as to the existence of an agency relationship, as well as the scope thereof, are decided by resort to the law of the country where the relationship is to have been created. 2 Dicey and Morris, The Conflict of Laws 909 (10th ed. 1980); Fridman, The Law of Agency 289 (3d ed. 1971). Also important is the fact that the 1973 Service Agreement between OSCO and NIOC incorporates the

---

[15/] Claimant asserts that by virtue of Article V of the Claims Settlement Declaration, the "applicable legal rules and principles should be those derived from general commercial law and international law, rather than from the municipal law of any single nation." I believe that my conclusion is consistent with general principles of commercial and international law.

* Corrected December 13, 1982.

choice of law provisions of the 1973 Main Agreement providing that the latter agreement is to be interpreted in accordance with the laws of Iran. Thus, in view of the circumstances of this case, Iranian law is applicable to the question of whether the agreement between OSCO and NIOC resulted in an agency relationship.

If there was an agency relationship between NIOC and OSCO, issues of the liability of NIOC as OSCO's principal to a third party, such as Oil Field, should be determined by the law of the contract, which, in the instant case, is English law. 2 Dicey and Morris, The Conflict of Laws 911-912 (10th ed. 1980); Cheshire and North's Private International Law 238 (10th ed. 1979); see generally Rigaux, Agency, III Int'l Ency. of Comp. Law, Ch. 29 (undated). As one authority has stated in pointing out that "the law of external relationship" often determines the rights of a third party against a principal in an international commercial transaction, the "protection of third parties who act in good faith must be the overriding consideration." Schmitthoff,

Agency in International Trade, Académie de Droit International, [1970] I Recueil des Cours 107, 180.[16]

Respondents correctly state in their memorial that "[w]hether or not an agency exists in a given case . . . depends upon the particular circumstances of that case. It is question [sic] of fact." Iranian law provides that "[a]n attorneyship comes into being, whether by way of proposal or acceptance, by any word or act which indicates an agency." The Civil Code of Iran, Article 658 (Sabi trans. 1973)(also translated as, "[a]n agency is effected by offer and acceptance by any word or act which

---

[16] But see Fridman, The Law of Agency 291 (3d ed. 1971) ("Indeed, it can be said that the agency relationship in the conflict of laws is still the subject of considerable doubt.") In view of the principle expressed by Prof. Schmitthoff, the law of the contract with the third person should govern on questions of apparent authority and undisclosed principal. See Rigaux, Agency, III Int'l Ency. of Comp. Law. Ch. 29 p. 16 (undated); 2 Dicey and Morris, The Conflict of Laws 912 (10th ed. 1980). Although the doctrines of or related to apparent authority and undisclosed principal might be invoked to impose liability on NIOC, I need not reach such issues because of my conclusion that there was an agency relationship, the essence of which was disclosed to Claimant.

NIOC refers to Article 968 of the Iranian Civil Code which provides: "Liabilities arising out of transactions are subject to the laws of the place of the performance of the transaction except in cases where the parties to the transaction are both foreign nationals and have explicitly or impliedly declared the transaction to be subject to the laws of another country." To the extent such a law is applicable or binding, the place of performance -- payment and delivery -- was the State of Texas in the United States. Agency principles in the United States are generally similar to the agency laws of England, since both countries utilize the common law.

*Corrected December 13, 1982.

is indicative thereof." Vafai, Commercial Laws of the Middle East - Iran. Bk.8,p. 91 (1982)). The agency relationship may therefore arise either expressly or by implication. See also Schmitthoff, Agency in International Trade, Académie de Droit International, [1970] I Recueil des Cours 107, 135-138 (civil law generally); see also Restatement (Second) of Agency §32, Comment a; id. at §33, Comments a,b. and c; id. at §34. Thus, there is no prerequisite for the parties to identify themselves expressly as "principal" and "agent." See Fridman, The Law of Agency 10-11 (3d ed. 1971).

The 1973 Main Agreement provided that NIOC was to exercise "full and complete ownership, operation and control" over its oil industry, and that the Service Company [OSCO] was to "carry out operations as assigned to it by NIOC...." The 1973 Service Contract provided that OSCO "shall carry out the Operations . . . on behalf of and under the overall direction and control of NIOC," and that "all costs and expenses incurred by [OSCO] shall be on behalf and for the account of NIOC." NIOC controlled the budget, finances and programs of OSCO and provided to OSCO all capital and other funds required by OSCO to carry out its activities. Indeed OSCO had no function other than to render services to and on behalf of NIOC.

NIOC's extensive control over the activities of OSCO suggests an agency relationship, especially since that control was to further NIOC's own, rather than OSCO's business.[17] OSCO's connection with the Consortium has no bearing on OSCO's agency relationship with NIOC, especially vis-a-vis contractors such as Oil Field.

Since OSCO was put in a position where it was dependent upon NIOC's resources and control and was given authority to act solely for NIOC,and not for itself, it would be reasonable to conclude that OSCO was in a position to affect NIOC's relations with third persons, a position which is the essence of agency. Fridman, The Law of Agency 8 (3d. ed. 1971). Thus, based on the express terms of the 1973 Service Contract and the above-mentioned facts, OSCO was acting in a representative capacity for NIOC.

Since OSCO was NIOC's agent, it remains to determine whether under English law, NIOC is liable as a principal to Oil Field.[18] An agent may contract with third parties on matters within the scope of the agency relationship, and thereby create a "direct

---

[17] "Whenever one uses control of a corporation to further his own, rather than the corporation's business, he will be liable for the corporation's acts under the doctrine of agency...." House of Koscot Dev. Corp. v. American Line Cosmetics, Inc., 468 F.2d. 64, 67 (5th Cir. 1972). Interestingly, counsel for NIOC analogized OSCO's relationship with NIOC to IROS' relationship with NIOC. IROS acted not only as agent for OSCO, but also for NIOC. Indeed IROS contracted with NIOC to act outside Iran for NIOC. In 1979 NIOC insisted that IROS could only continue its activities if its stock were transferred to NIOC.

[18] Claimant and Respondents submitted conflicting evidence on Iranian law.

contractual relationship ... between [the] principal and third part[ies]." Fridman, The Law of Agency 160 (3d ed. 1971). The Lease Agreement itself includes the following clause in the preamble:

> The National Iranian Oil Company . . . has under an international agreement appointed the [Oil Service] Company [of Iran] to undertake certain operations in the production and export of crude oil from South Iran. (Emphasis added.)

Interestingly, the word "appointed" is used in Iranian agency law. That law provides, "[a]n attorneyship is a contract whereby one of the parties appoints the other as his representative for the accomplishment of some matter." The Civil Code of Iran, Article 656 (Sabi trans. 1973) (emphasis added). The preamble clause, pursuant to which the Lease Agreement was then entered into, functioned as a disclosure by OSCO that it acted as NIOC's agent in dealing with Oil Field. Thus, even if the Lease Agreement did not specifically refer to NIOC as OSCO's principal, such a reference was unnecessary, since the circumstances indicated such agency relationship to Claimant. Schmitthoff, Agency in International Trade, Académie de Droit International [1970] I Recueil des Cours 135,138-143. In addition to the preamble language, the Lease Agreement required NIOC to be one of the beneficiaries of the insurance on the leased equipment. If NIOC was not a party to the agreement, it would have no insurable

interest. Also, Claimant asserts it was generally aware of the 1973 Service Agreement at the time the Lease Agreement was executed and believed that NIOC was responsible for agreements executed by OSCO. Moreover, the later-required Fidelity Affidavit confirmed that Oil Field's contract with OSCO constituted business "with, for, or involving" NIOC and Iran.

Certainly the Lease Agreeemt was within the scope and purpose of OSCO's agency relationship with NIOC. All of OSCO's activities were "on behalf of and under the overall direction and control of NIOC." All of OSCO's costs and expenses were incurred "on behalf of and for the account of NIOC." 1973 Service Agreement.

That NIOC undertook obligations entered into by OSCO is also consistent with such an agency relationship. In this connection NIOC made payments and exercised options under contracts executed by OSCO, thus suggesting that NIOC considered itself to be in effect the contracting party. NIOC expressly referred to rights under contracts executed by OSCO as NIOC's rights.

That the 1973 Service Contract refers to OSCO as a "contractor" does not, as the majority suggests, negate an agency relationship. A contractor, and even an independent contractor, may also be an agent. See Restatement (Second) of Agency §2(3)(1958); Rigaux, Agency, Ch. 29, III Int'l Ency. of Comp. Law 7 (undated). Indeed, in Iranian law an "agent may be an employee of the principal or an independent contractor." Sabi, The Commercial Laws of Iran 20 (1973), reprinted in IV Nelson, Digest of Commercial Laws of the World (1982). Thus, the

majority's conclusion is premised in large part on the erroneous assumption that a "contractor" and an "agent" are mutually exclusive.[19/]

Moreover, Article 19(E) of the 1973 Main Agreement stated: "[OSCO], functioning solely as contractor for NIOC on a non-profit making basis, shall not be liable to any contractor's or income tax." This exemption reflects a status inconsistent with OSCO's alleged role as an independent third party acting for its own account. Article 2 of the 1973 Service Contract by providing that OSCO as "a contractor, shall carry out the Operations... on behalf of and under the overall direction and control of NIOC," indicated that OSCO would be acting for the account of NIOC -- not its own. Article 4 of OSCO's Statutes restricts OSCO's actions as "contractor to the NIOC," to those "in accordance with the terms and provisions of the service contract," which, I submit, established OSCO as NIOC's agent.

For the above reasons, on the basis of agency principles, I would hold NIOC liable to Oil Field as a party to the Lease Agreement.

19/ The majority states that Claimant had "not submitted sufficient evidence to prove OSCO acted as an agent of NIOC." That the Oil Field Lease Agreement includes indications that OSCO was a party thereto is, I believe, outweighed by the other factors I discuss.

CONTROL

Before discussing the issue of "control," one should ask, control for what purpose? Cf. Vagts, The Corporate Alien: Definitional Questions in Federal Restraints On Foreign Enterprise, 74 Harv. L.Rev. 1489, 1547 (1961).

First, control may be relevant to jurisdiction in connection with the definition of Iran or the United States under Article VII, paragraphs 3 and 4, of the Claims Settlement Declaration. This issue is not now before the Tribunal since Claimant is presently not pursuing a claim against OSCO as an entity controlled by Iran or otherwise.[20/]

Second, the issue of control might concern whether NIOC exercised such control over OSCO that NIOC would be liable for OSCO's debts under theories of corporate identity or alter ego or of piercing the corporate veil.[21/] Such theories normally would not apply in a case such as the instant one where the Claimant is not

---

20/ Control as a jurisdictional factor under Article VII, paragraph 2, of the Claims Settlement Declaration, is not in issue in this case.

21/ There has been some confusion between agency and identity for purposes of imposing liability -- at least in the context of parent and subsidiary companies. See Weisser and Mursam Shoe Corporation, 127 F. 2d 344, 348 n.11 (2d Cir. 1942); House of Koscot Dev. Corp. v. American Line Cosmetics, Inc., 468 F. 2d 64, 67 n.2, n.3 (5th Cir. 1972).

attempting to impose liability on the shareholders.[22/]

This is not to say that alter ego or identity theories are never applicable when the question involves the liability of those who are not the record owners of the stock of a corporation. For example, such principles might, in some circumstances, apply to persons or entities, who, by their control of the corporation or its stock, may be treated as actual, assumed, beneficial or constructive owners of the controlled entity or as the real parties in interest. In the instant case, however, neither the parties nor the Tribunal focused on the legal or factual issues involved in such a determination. This may be due to the manner in which the issues were framed by the parties and the Tribunal. See supra. The Tribunal's cursory discussion of the "alter ego" or "identity" issue reflects the inadequacy of the Tribunal's record on the issue. In light of that record, the Tribunal should not have reached the question.

Third, the degree of control might be relevant to other theories of liability, such as tortious interference with contractual or advantageous relations and liability to creditors by virtue of an expropriation of a company or of its assets. Although these

---

22/ See Banco Nacional de Cuba v. Sabbatino, 27 F.R.D. 255, 258 (S.D.N.Y. 1961); Banco Nacional de Cuba v. First National City Bank, 478 F.2d 191, 193 (2d Cir. 1973); Banco para el Commercio Exterior de Cuba v. First National City Bank, 658 F.2d 913 (2d Cir. 1981), cert. granted ___ U.S. ___ (1982), 51 U.S.L.W. 3303 (Oct. 18, 1982).

theories have been raised by Claimant, they were not the subject of the preliminary proceeding heard by the Tribunal.

The level, degree and purpose of control is relevant in the present proceeding only on the question of the application of agency principles. If NIOC exercised such control over OSCO that OSCO was in reality acting on behalf of NIOC, then OSCO would, in effect, be NIOC's agent, and NIOC would be liable under agency principles. "Control" in this sense is simply one factor to be considered in connection with agency issues.

Thus, the control exercised by NIOC over OSCO supports the Claimant's position that NIOC was liable under the Lease Agreement as a principal by virtue of principles of agency.

CONCLUSION

I concur in the "Interlocutory Award" of the Tribunal holding that NIOC is the de facto successor to OSCO's rights and obligations and that the Tribunal has jurisdiction over Oil Field's claims.

Richard M. Mosk

Richard M. Mosk

The Hague

December 10, 1982

theories have been raised by Claimant, they were not the subject of the preliminary proceeding heard by the Tribunal.

The level, degree and purpose of control is relevant in the present proceeding only on the question of the application of agency principles. If NIOC exercised such control over OSCO that OSCO was in reality acting on behalf of NIOC, then OSCO would, in effect, be NIOC's agent, and NIOC would be liable under agency principles. "Control" in this sense is simply one factor to be considered in connection with agency issues.

Thus, the control exercised by NIOC over OSCO supports the Claimant's position that NIOC was liable under the Lease Agreement as a principal by virtue of principles of agency.

CONCLUSION

I concur in the "Interlocutory Award" of the Tribunal holding that NIOC is the de facto successor to OSCO's rights and obligations and that the Tribunal has jurisdiction over Oil Field's claims.

Richard M. Mosk

The Hague

December 10, 1982