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ORIGINAL DOCUMENTS IN SAFECase No. 490Date of filing: 9 June '92

** AWARD - Type of Award Final
- Date of Award 8 June '92
25 pages in English _____ pages in Farsi
(Doc 132)

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

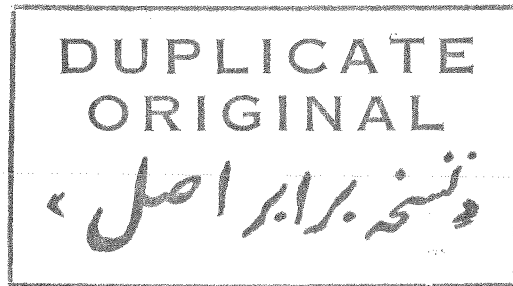
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CASE NO. 490

CHAMBER ONE

AWARD NO. 530-490-1

ITEL CORPORATION,
Claimant,
and
THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	9 JUN 1992
	تاریخ ۱۳۷۱ / ۲ / ۱۹

AWARD

Appearances:

For the Claimant : Mr. Charles S. Donovan,
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Ms. Liza D. Leach,
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Ms. Michelle Eich,
Legal Assistant

For the Respondent : Mr. Ali H. Nobari, Agent of the
Government of the Islamic
Republic of Iran,.
Dr. N.A. Mansourian,
Mr. S.H. Tabaei,
Mr. M.H. Zahedin Labbaf,
Legal Assistants to the Agent

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

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I. PROCEDURAL HISTORY

1. Claimant ITEL Corporation ("ITEL") is a transportation equipment lessor leasing, among other things, containers to shippers and shipping lines on a worldwide basis for use in international transportation. ITEL contends that it leased equipment to its wholly-owned subsidiary, ITEL Container International B.V., a company incorporated in The Netherlands, formerly known as SSI Container Corporation International B.V., which in turn subleased the equipment to various lessees. On 18 January 1982, ITEL filed a Statement of Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN. In its Statement of Claim, ITEL claimed damages in the amount of US\$1,851,902.71,¹ as compensation for the alleged expropriation and forced abandonment of containers under various lease agreements. According to ITEL, at the time of the alleged expropriation, the various containers were under lease or sublease to the following entities: Star Line Iran Co. ("SLIC"), Arghiris Navigation Company N.A., Islamic Republic of Iran Shipping Lines, ZIM Israel Navigation Ltd. ("ZIM"), and Iran-Express Lines ("IEL"). In its Reply filed on 3 October 1983, ITEL withdrew its claim concerning all containers that were sub-leased to the Islamic Republic of Iran Shipping Lines. Further, as part of an amended Statement of Claim filed on 24 December 1986, ITEL withdrew its claim relating to equipment that allegedly had been on lease to Arghiris Navigation Company N.A. Furthermore, following an agreement with Uiterwyk Corporation, with respect to the distribution of the replacement value of certain IEL containers that also had been the subject-matter of a competing claim in Case No. 381, Uiterwyk Corporation et al., and The Government of the Islamic Republic of Iran Award No. 375-381-1 (6 July 1988),

¹All references to dollars in this Award are to United States dollars

reprinted in 19 Iran-U.S. C.T.R., 106 ("Uiterwyk")², by a submission filed on 29 May 1989 ITEL withdrew its claim as to the replacement value of these containers in the amount of \$219,720.00. Thereafter the Tribunal issued an Order on 8 January 1991 that terminated the proceedings in this Case with respect to the claim for the replacement value of those containers.

2. On 17 July 1991, ITEL filed a submission entitled "Claimant's updated Statement of Damages". In this statement ITEL asserted that as of 17 September 1991 it had sustained losses of \$1,214,454.34 with respect to containers allegedly leased to IEL. In the same statement ITEL asserted losses of \$564,577.11 sustained up until 17 September 1991 with respect to containers allegedly leased to SLIC. ITEL also contends that it is entitled to interest on any amount awarded by the Tribunal. The Respondent, the Government of the Islamic Republic of Iran, contests the claims both with respect to the Tribunal's jurisdiction and on the merits.

3. In its submission filed on 24 December 1986, ITEL requested permission to file an Amended Statement of Claim, adding IEL and SLIC as Respondents in this Case. On the same date, ITEL filed an amended Statement of Claim to that effect. On 9 April 1987, the Government of the Islamic Republic of Iran filed a submission in which it objected to the introduction of an amended Statement of Claim. On 16 and 17 September 1991, the Tribunal held a hearing on both the procedural and substantive issues presented by this Case.

²In para. 98 of the Award the Tribunal withheld payment of competing claims for sums awarded to Uiterwyk for the replacement value of certain containers.

II. FACTS AND CONTENTIONS

a. The Claimant's position

i. The Amended Statement of Claim

4. In the initial stages of the proceedings ITEL presented its claim as based on alleged acts of the Government of Iran to nationalize, expropriate and force abandonment of various containers. Later in its Hearing Memorial filed on 9 October 1986 ITEL added the contention that both SLIC and IEL failed to pay their obligations under the lease agreements, and that the Government of Iran should be held liable for unsatisfied equipment rentals and related charges under the respective leases. ITEL's request to file an amended Statement of Claim, which added a breach of contract claim against SLIC and IEL, followed on 24 December 1986, see supra, para. 3. ITEL contends that such an amended Statement of Claim does not materially alter the Case. Rather, ITEL maintains that the amendment merely clarifies what had been implicit all along: namely, that ITEL's claim includes damages for breaches of the lease agreements by SLIC and IEL and that the two companies, which ITEL alleges are entities controlled by the Government of Iran are also Respondents. ITEL states that its request for amendment was made necessary by the Tribunal's decision in Flexi-Van Leasing, Inc. and The Government of the Islamic Republic of Iran, Award No. 259-36-1 (13 Oct. 1986), reprinted in 12 Iran-U.S. C.T.R., 335, 346 and 352. ITEL argues that the amendment is permissible under Article 20 of the Tribunal Rules. In support of its argument, ITEL relies on the Tribunal's awards in Kimberly Clark Corp. and Bank Markazi Iran, Award No. 46-57-2 (25 May 1983), reprinted in 1 Iran-U.S. C.T.R. 334, 338; Harza Engineering Co. and Islamic Republic of Iran, Award No. 19-98-2 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 503 - 504; William L. Pereira Associates, Iran and Islamic Republic of Iran, Award No. 116-1-3 (17 March 1984), reprinted in 5 Iran-U.S. C.T.R. 198; and American International Group, Inc. and Islamic Republic of Iran, Award No.

93-2-3 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 101.

ii. The Claim concerning the containers allegedly leased to SLIC

5. In this portion of the Claim ITEL seeks the replacement value of twenty-seven shipping containers which were allegedly under lease to SLIC. The latter company, ITEL submits, was nationalized by the Government of Iran and is therefore a controlled entity in the sense of Article VII, paragraph 3 of the Claims Settlement Declaration ("CSD"). In support, ITEL cites the Tribunal's awards in Raygo Wagner Equipment Co. and Star Line Iran Co., Award No. 20-17-3 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413; and SeaCo, Inc. and Islamic Republic of Iran et al., ITL 61-260-2 (20 June 1986), reprinted in 11 Iran-U.S. C.T.R. 210, 215.

6. ITEL alleges that its containers were expropriated through a series of acts allegedly taken by the Government of Iran between 17 April 1979 and 22 September 1979. Such alleged acts include the Decree on the Appointment of Provisional Managers for the Supervision and Management of Institutions and Companies, promulgated on or about 17 April 1979; the Bill concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Service Units whether in Public or Private Sector, allegedly promulgated on or about 14 June 1979; the Law for the Protection and Expansion of Industries in Iran, allegedly enacted on or about 5 June 1979; the Protection and Development of Iranian Industries Act, allegedly promulgated on or about 16 July 1979; and the Administrative Regulation pertaining to the Protection and Development of Iranian Industries Act, allegedly promulgated on 22 September 1979.

7. The total replacement value ITEL alleged for the twenty-seven SLIC containers in its Statement of Claim is \$113,160.00.

In support of this figure, ITEL submitted in its Statement of Claim a list of the containers that includes the replacement value for each container.

8. In its most recent submission filed on 17 July 1991 entitled "Updated Statement of Damages", ITEL asserted \$564,577.11 as its total losses through 9 September 1991 plus interest with respect to containers allegedly under lease to SLIC. The total amount now claimed consists of a part representing the replacement value, plus an amount for lost rentals and related charges. At the Hearing ITEL's counsel explained that the lost rentals are considered as a reasonable measure of the income lost as a result of the expropriation. As evidence of its claim based on expropriation and breach of the lease agreements ITEL has submitted copies of six lease agreements; in five of these agreements the lessee is stated to be Star Line Container Shipping Ltd. and in the remaining one it is stated to be Star Line Euro Container Services. As additional evidence, ITEL has presented various invoices concerning the rentals and related charges claimed, all of which were addressed to the above named companies.

iii. The Claim concerning the containers allegedly leased to IEL.

9. ITEL alleges that the containers at issue in this portion of its claim were rented to IEL or to Uiterwyk Corp. as agent for IEL. In light of ITEL's withdrawal of claim for the replacement value of the containers that had also been the subject matter in Case No. 381, Uiterwyk, supra, ITEL's Counsel stated at the Hearing that it is now seeking the replacement value in the amount of \$5,040.00 of only one container that had been allegedly under lease to IEL. ITEL identifies the container concerned as no. 202390 and states that the container was covered by lease no. 319176. ITEL alleges that the expropriation allegedly took place from April through September 1979, as a result of the same measures, as described supra, in para. 6. In support of its

claim ITEL relies on a computer printout sort list, which mentions both the unit and lease number of the container concerned and also the amount of the replacement value. The list is an exhibit to the deposition of Robert Uiterwyk, dated 3 March 1987, in the proceedings of ITEL Corp. v. The M/S Victoria U (Ex Pishtaz Iran), Civ. No.80-2328-A, in the United States District Court for the Eastern District of Louisiana.

10. In its updated Statement of Damages, see supra, para. 2, ITEL has claimed \$1,214,454.34 as its total losses through 9 September 1991 with respect to containers allegedly under lease to Uiterwyk Corp. and/or IEL. In support of the claim ITEL submitted copies of various leases which name as lessee IEL or Uiterwyk Inc. ITEL states that it has been determined in proceedings in the United States, see para. 9 supra, that Uiterwyk Corp. was acting as an undisclosed agent for its principal, IEL. It argues that it may therefore under settled principles of agency assert a claim against IEL for containers leased directly to Uiterwyk. Various invoices also form part of the documentary evidence presented by ITEL.

iv. The Claim based on expropriation of containers allegedly leased to ZIM Israel Navigation Co.

11. In this portion of its Claim ITEL contends that the Government of Iran and/or its agencies, instrumentalities or controlled entities nationalized or expropriated by the same acts, as mentioned supra in para. 6, also in the time period April through September 1979, one hundred and sixty-three containers that were on lease to ZIM. ITEL seeks the replacement value of these containers in the amount of \$462,580.00.³ In support of its contentions that the containers were the subject matter of lease agreements with ZIM and that they were left in Iran, ITEL has submitted lease agreements allegedly concluded

³ A claim for \$71,142.20 representing receivables for rents and other charges allegedly under contracts with ZIM has not been pursued by ITEL during the proceedings.

with ZIM. ITEL further has submitted a list of containers that were leased to ZIM and that were allegedly stranded in Iran on 14 January 1979. The list was sent to ITEL by a representative of ZIM on 30 April 1979, and the covering letter states that the information was provided by ZIM's Agent in Iran. In addition, Mr. David Rip, Manager of the Equipment Division of ZIM, states in an affidavit dated 11 November 1986 that this list identifies the containers "stranded in Iran as a result of the Iranian Revolution". As further proof of the fact that its containers were still in Iran after the Revolution, ITEL presents a Settlement Agreement concluded with ZIM. For the loss of the one hundred and sixty-three containers that are also the subject-matter of the proceedings before the Tribunal, ZIM consented under the agreement to pay ITEL the amount of \$120,776.

12. As noted, in its pleadings ITEL requested the Tribunal to grant interest over the amount to be awarded; at the Hearing ITEL specified the rate of interest at twelve per cent. ITEL also claims reimbursement of its costs incurred with respect to the proceedings before the Tribunal, including attorney's fees.

b. The Respondent's position

i. Jurisdiction

13. As stated above, the Respondent, the Government of the Islamic Republic of Iran, disputes the claim both with respect to the Tribunal's jurisdiction and the merits. With respect to jurisdiction, the Government argues that ITEL has not met its burden of proof that it is a United States national as required by Article VII, paragraph 1, of the CSD. More specifically, the Government argues that ITEL's claim in fact is a claim on behalf of ITEL Container International, B.V., which is a corporation incorporated in The Netherlands, and that ITEL is not permitted to bring the claims of ITEL Container International, B.V., before the Tribunal.

14. The Government denies any nationalization or expropriation of SLIC or IEL or of the containers that ITEL alleges to have leased to them. It asserts that both SLIC and IEL are privately-owned companies and therefore do not fall within the definition of Iran as stated in paragraph 3 of Article VII of the CSD. Concerning SLIC, the Government submits in support of its argument, inter alia, a certificate issued by the Iranian Corporate Registration Bureau. To establish that ITEL is a privately owned entity, the Government presents various affidavits of former employees of the company and a certificate of the head of the Corporate Registration Bureau. The Government further asserts that ITEL has presented no proof of any nationalization or expropriation of the companies. The Government contends that the statutes and regulations relied upon by ITEL in support of its claim, see supra, para. 6, were not enacted for the purpose of the nationalization or expropriation of the companies concerned. At any rate, the Government submits, ITEL has failed to explain how these companies through the enactment of the statutes and regulations were nationalized and brought under the Government's control.

ii. The Amended Statement of Claim

15. Also as noted the Government objects to ITEL's introduction in its submission filed on 24 December 1986 of two new Respondents to the proceedings. According to the Government, the proposed amendment is not, contrary to ITEL's contention, merely a clarification of a theory implicit in ITEL's case from the outset. Rather, the proposed amendment advances a breach of contract theory first hinted by ITEL in its Hearing Memorial of 9 October 1986 and effectively adds two new Respondents to the Case, which is tantamount to the filing of new claims. In both respects, the Government maintains that the proposed amendment is raised late and prejudicial and therefore not permissible under Article 20 of the Tribunal Rules. In support of its argument that the amendments are not permissible, the Government relies particularly on the Tribunal's decisions in Refusal to

accept the Claim of Raymond International (U.K.) Ltd., Decision No. DEC.18-Ref.21-FT, p.3 (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 394; and in St. Regis Paper Company and The Islamic Republic of Iran, Award No. 291-10706-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 91-93.

iii. The Claim concerning the containers allegedly leased to SLIC

16. With respect to this portion of ITEL's claim, the Government points out that it has never been a party to any lease agreement with ITEL or ITEL Container International B.V. Nor, the Government adds, has SLIC been a party to such contracts. It states that the record shows that the parties to the contracts with ITEL Container International B.V., a company incorporated in the Netherlands, were Star Line Container Shipping Ltd., a Liberian company, and Star Lines Euro Container Services, a company incorporated in the United Kingdom. Following the Iranian Revolution, Star Lines Shipping, which company had an office in Iran, closed its operations in Iran and did not send any of its vessels to Iranian ports. Therefore, the Government contends, the empty containers were left at the terminal of the company in Iran, independent of any action taken by SLIC.

17. The Government adds that it has not taken the containers and has not prevented their export from Iran. In this respect, it draws attention to the fact that in May 1980 SLIC had received a telex from ITEL Container International GmbH, ITEL's branch in Hamburg, to the effect that a representative, Mr. Peter Woestenberg, would arrive to Iran to take delivery of the containers that were previously leased to Star Lines Shipping and Star Line Euro Container Services and were left at SLIC's terminals at the southern part of Iran. After having arrived in Iran, Mr. Woestenberg in fact took delivery of ten containers left at the company terminal and re-exported them from Iran. The Government presents documentary evidence in support of this assertion. According to the Government, Mr. Woesterberg's

success in recovering the ten above-mentioned containers indicates that neither it nor SLIC would have impeded similar efforts with respect to the twenty-seven SLIC containers at issue in this Case.

18. The Government adds that SLIC is prepared to deliver to ITEL the containers concerned provided that ITEL will produce documentation establishing its ownership of the containers, will hold SLIC harmless against prospective claims of third parties, and will pay the costs for the maintenance of the containers.

19. Regarding ITEL's claim based on breach of lease agreements, the Government submits that SLIC has not incurred any contractual responsibility towards ITEL with respect to the six lease agreements. The Government notes that in five of the contracts the lessee is Star Line Container Shipping Ltd., and that in the sixth the lessee is Star Lines Euro Container Services. The Government submits that SLIC acted solely as an agent for the group of Star Line companies and its affiliated companies, a relationship the Government maintains is confirmed by an agreement presented as evidence by ITEL under which SLIC was designated as an agent for the principals Star Lines International Shipping, Inc., and Star-Euro Container Services (London). The Government asserts that SLIC was a service company, merely providing various types of service to vessels in Iranian ports, and that SLIC never assumed the obligations of a lessee. Additionally, the Government adds, the six contracts at issue in this claim are unenforceable because they are unsigned. Moreover, the Government contests the evidentiary value of the invoices presented as evidence by ITEL, noting in particular that most pertain to the period after 19 January 1981, the date of the conclusion of the CSD.

iv. The Claim concerning the containers allegedly leased to IEL or Uiterwyk, Inc.

20. The Government denies the expropriation of any of the containers allegedly rented to IEL or Uiterwyk Corp., including the one for which ITEL is presently claiming its replacement value. In support of its contention the Government relies on two affidavits. The Government maintains that ITEL has not submitted sufficient evidence either that the containers, including the one for which ITEL presently maintains its claim, were in Iran at the time of the alleged taking or that there was even an expropriatory act.

21. In connection with the claim for rental charges and other invoices, the Government contends in particular that ITEL is not entitled to unpaid rentals and related charges based on the lease agreements concluded with IEL or Uiterwyk, Inc., since the Claimants in Uiterwyk, supra, have already been awarded the payment of such rentals; according to the Government, an award in favor of ITEL in the present case would constitute double recovery.

v. The Claim concerning the containers allegedly leased to ZIM Israel Navigation Co. Ltd.

22. The Government raises a variety of objections to this portion of ITEL's claim. The Government asserts that under this portion of the claim ITEL in fact is suing on behalf of ZIM, a company established in a country other than the United States, and that ITEL lacks standing to assert such a claim. The Government also contests ITEL's evidence that the one hundred and sixty-three ZIM containers at issue here were in Iran at the time of the alleged expropriation. With respect to the container list and letter dated 30 April 1979, see supra para. 11, the Government argues that these documents fail to indicate the location of the containers as of that date. The Government likewise disputes the evidentiary value of the 11 November 1986 affidavit

of Mr. David Rip. See supra, para. 11. According to the Government, the document falls short of stating whether any containers were left in Iran after the Islamic Revolution. In addition, the Government argues that since Mr. Rip is an interested party as Manager of ZIM his statements should not be given much weight. The Government notes that the settlement agreement concluded between ITEL and ZIM similarly fails to identify the location of the containers at issue here. The Government continues that ITEL's claimed damages are unreasonable, noting that the settlement between ZIM and ITEL fixed the replacement value of the one hundred and sixty-three containers at \$120,766, as compared to \$462,580 now asserted by ITEL. Finally, the Government argues that ITEL has submitted no evidence to show that containers existed in Iran after the Islamic Revolution or that the Government expropriated or took the containers.

III. REASONS FOR THE AWARD

a. Jurisdiction

23. ITEL has submitted evidence that satisfies the requirements for proof of corporate nationality established by the Order of 20 December 1982 in Case No. 36 Flexi-Van Leasing Inc. and Islamic Republic of Iran, reprinted in 1 Iran-U.S. C.T.R. 455, and the Order of 21 January 1983 in Case No. 94, General Motors Corp. et al., and Government of the Islamic Republic of Iran et al., reprinted in 3 Iran-U.S. C.T.R. 1. Consequently, the Tribunal is satisfied that the Claimant is a national of the United States within the meaning of Article VII, paragraph 1 of the CSD.

b. Amendment to the Claim

24. In its submission filed on 24 December 1986, ITEL sought permission to amend its claim to add SLIC and IEL as Respondents

to the proceedings. See supra, para. 4. The Respondent, the Government, objects to such an amendment. See supra, para. 15. The Government also argues that ITEL's reliance on the theory of breach of contracts constitutes an amendment that is not admissible under Article 20 of the Tribunal Rules. See supra, para. 15. For the reasons set forth below, it is quite clear that ITEL has not borne its burden of proving its breach of lease agreement claims. Accordingly, the Tribunal need not reach the question whether the amendment is admissible.

c. Merits

i. Expropriation claim regarding the containers allegedly leased to SLIC

25. In order to prevail on this claim, ITEL has to establish the following constituent elements: first, that containers allegedly owned by it were located in Iran on the date of the expropriation, and secondly, that the containers were expropriated by the Government of Iran. See, e.g., Morrison-Knudson Pacific Ltd. and The Ministry of Road and Transportation, Award No. 143-127-3 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R., 54, p. 79-80; Agrostruct International, Inc. and Iran State Cereals Organization, et al., Award No. 358-195-1 (15 April 1988), reprinted in 18 Iran-U.S. C.T.R. 180, pp. 194-195; TME International Inc., and The Government of the Islamic Republic of Iran, et al., Award 473-357-1 (12 March 1992), reprinted in 24 Iran-U.S. C.T.R. 121, p. 151; and Robert R. Schott and Islamic Republic of Iran, et al., Award No. 474-268-1, (14 March 1990), para. 54, reprinted in 24 Iran-U.S. C.T.R. 203, p. 222.

26. This claim must be dismissed for lack of evidence of expropriation by the Government of Iran. The Tribunal notes that the Government has stated on behalf of SLIC that the twenty-seven containers are at SLIC's terminals and that they can be turned over to the owner. Further, the Government has presented

evidence by way of three telexes - uncontroverted by ITEL - that SLIC returned ten of ITEL's containers in August 1980. A telex by ITEL dated 7 May 1980 shows that Mr. Peter Woestenberg was employed by ITEL and was authorized to enter into agreements with SLIC in order to release containers from Iran that were leased to Star Line Container Shipping Ltd. and Star Line Euro Container Services. Another telex by SLIC addressed to ITEL and dated 14 August 1980 stated, inter alia, that ten containers belonging to ITEL have been delivered to Mr. Woestenberg. A third telex by Mr. Woestenberg addressed to SLIC, dated 20 August 1980, shows that ITEL has paid service charges for the release of the containers. Although the Claimant's representative stated at the Hearing that efforts to re-export the remaining containers from Iran continued, ITEL has not presented any evidence corroborating such statements, nor any evidence showing why it was not able to obtain the release of its remaining twenty-seven containers from Iran. In this respect, the Tribunal also notes that there is no evidence whatsoever in the record that SLIC refused to release the containers concerned or that the Government of Iran has prevented ITEL from taking possession of them, nor is there any evidence in the record showing that ITEL complained about SLIC's refusal to release the containers or about the Government's acts preventing ITEL from taking possession of them. For these reasons, this portion of the Claim is therefore dismissed.

ii. The Claim based on breach of lease-agreements concerning SLIC

27. To maintain a claim for losses based on breach of contract, the claimant first must be able to establish the existence of a valid contract. Because ITEL has not presented sufficient proof of a valid contract between ITEL and SLIC, ITEL's claim for losses based on breach of these leases therefore must be dismissed.

28. ITEL has presented as evidence of its contractual claim copies of six lease agreements, of which five name Star Line Container Shipping Ltd. as lessee, and one Star Lines Euro Container Services. The Tribunal notes that SLIC was not a party to these contracts and that no proof has been presented showing that SLIC should be considered liable for any obligations arising out of them. The Tribunal further notes that the copies of the contracts presented by ITEL are not signed. Further, ITEL has presented no evidence of performance of these contracts. There is therefore no proof that these contracts ever were entered into. Additionally, the copies of the contracts submitted by ITEL are incomplete. In particular, the copies indicate that the relevant terms and conditions are contained on both sides of the lease. Yet ITEL has not submitted the reverse sides of the relevant leases. Nor do the various invoices submitted by ITEL, which are addressed to Star Line Euro Container in London or Star Line Shipping (Iran) in New York, and are presented as part of ITEL's evidence, provide any guidance in this respect. The Tribunal further notes that ITEL has presented neither proof of payment of any of the invoices by these companies or by SLIC, nor is there any proof that the invoices were actually sent. Moreover, four of the lease agreements make reference to the fact that they have been amended and copies of such amended lease agreements have not been submitted as evidence.

iii. Expropriation claim regarding the container allegedly leased to IEL

29. As noted above, see supra, para. 25, to prove a claim for expropriation a claimant must first prove that the item concerned was located in Iran on the date of the alleged expropriation. As to the alleged expropriation of container no. 202390, the Tribunal finds that no sufficient evidence has been presented that it was in Iran. The only proof presented by ITEL in this respect is a computer printout sort list attached as an exhibit to the deposition of Robert Uiterwyk dated 3 March 1987 in proceedings before the United States District Court for the

Eastern District of Louisiana, see supra, para. 9. In the deposition Robert Uiterwyk states that the list appears to have been prepared on 20 July 1983 and is a list of container numbers and corresponding lease numbers, indicating which containers were still on lease to IEL. The Tribunal finds that although the container concerned is mentioned on the list, such a showing does not constitute proof that the container concerned was in Iran at the time of the alleged expropriation. The Claimant has also stated at the Hearing that it did not have any knowledge of the whereabouts of the container. This portion of the claim is therefore dismissed for lack of evidence, without needing to reach any of the other issues raised by the claim for expropriation.

iv. Claim based on breach of lease-agreements concerning IEL

30. As noted, ITEL is claiming \$1,214,454.34 as its total losses incurred through 9 September 1991 as a result of breach of the lease agreements concluded with IEL and/or Uiterwyk Inc. ITEL stated that IEL has failed to pay its obligations under the leases and that it is therefore entitled to the rental per diem for the containers and related charges. ITEL has submitted copies of lease agreements in support of the portion of the claim. In most of the contracts Uiterwyk Corp. is named as lessee. The Tribunal notes that the copies of these agreements can be divided into those that are unsigned and others that do bear a signature by a lessee. Consonant with the reasoning in para. 26, supra, the Tribunal concludes that the unsigned agreements do not constitute proof of valid agreements and therefore that ITEL may not assert a claim based on breach of contract based upon these agreements.

31. In so far as the claim is based on the signed copies of the leases, the Tribunal notes the following. The Tribunal awarded the Claimants in Case No. 381, Uiterwyk, see Award No. 375-381-1, reprinted in 19 Iran-U.S. C.T.R. 106, per diem rentals on con-

tainers made available to IEL. See id. para. 99, reprinted in 19 Iran-U.S. C.T.R., at 135. The Tribunal notes that it is undisputed that the claim in the present case does overlap with the claim that has been decided and awarded in Case No. 381. Further, in response to a question by the Tribunal, ITEL's counsel stated at the Hearing that ITEL had filed a claim as an unsecured creditor in Uiterwyk Corp.'s bankruptcy proceedings in the United States. However, the claim against Uiterwyk Corp. had been withdrawn, allegedly as a result of a settlement agreement reached between the two parties, which included a provision that ITEL would waive its claim against Uiterwyk Corp. The Tribunal notes that ITEL has not submitted a copy of that settlement agreement. In view of these considerations, the Tribunal finds that to award ITEL damages on this portion of the claim would impose double damages against Respondent and that such a result would be inequitable. Accordingly, this portion of the claim is dismissed.

32. To the extent that ITEL is claiming per diem rentals which have allegedly become due after the date of the alleged expropriation, the Tribunal draws attention to the relevant provisions of the terms and conditions allegedly relating to the leases relied on and presented as evidence by ITEL. (As noted, Respondent disputes the validity and relevance of the terms and conditions in these leases).

Paragraph 2 a. reads, in relevant part, as follows :

Lessee agrees to pay the rental charges until the day such equipment is returned to Lessor ... Lessee agrees to pay for the cost of any repairs and rental charges pursuant to Paragraph 3.

Paragraph 3 b. reads, in relevant part, as follows :

LOSS OR TOTAL DAMAGE. In the event of loss, theft or destruction of the equipment ... rental charges shall terminate upon receipt by Lessor of written notice from Lessee provided payment of the replacement value, for like equipment as shown on the face hereof is made

to Lessor within 30 days of such notice. If payment is not made within 30 days, rental charges shall continue unabated until such payment is received by Lessor.

Read in tandem, these clauses indicate to the Tribunal the parties' understanding that once the lessee becomes liable for the replacement cost of a piece of equipment, the lessee's obligation to pay rental cost should terminate as of that date. Because the replacement value for the containers concerned has been paid as a result of the final award in Case No. 381, Uiterwyk, supra, the Tribunal finds that there is no legal basis for a claim for any additional per diem rentals.

33. Regarding the claim for related charges, including - according to ITEL - repairs, handling, drop-off charges and the like, the Tribunal finds that the documentary evidence in this Case shows that the Claimant has not established its entitlement to such charges. The copies of the leases that are part of the record refer to the applicable terms and conditions which are apparently stated on both sides of the leases. However, ITEL has not provided copies of the backs of the leases. With respect to the Exhibit supplied by ITEL of a typed set of terms and conditions, the Tribunal finds that ITEL has not established that these provisions relate to the copies of the leases presented in evidence. Another difficulty in accepting this Exhibit as evidence is that it includes by reference a so-called Master Lease Agreement, yet ITEL has not submitted any such document. Moreover, the Tribunal notes that this portion of the claim also does overlap with the claim that has been decided and awarded in Case No. 381, Uiterwyk, supra.

v. The Claim regarding the 163 containers allegedly leased to ZIM

34. ITEL contends that the Government of Iran expropriated one hundred and sixty-three containers that it owned and that were

leased to ZIM. It alleges that these containers were expropriated through a series of acts allegedly taken by the Government of Iran between 17 April 1979 and 22 September 1979. To prove its claim for expropriation, then, the Claimant must first prove that the containers were located in Iran on the dates of the alleged expropriation. The Tribunal finds the evidence insufficient to prove this fact and therefore dismisses the claim on this ground. Accordingly, the Tribunal does not need to reach any of the other issues raised by the claim for expropriation.

35. In an effort to prove that the containers were located in Iran at the time of the alleged expropriation, ITEL produces a list of "containers leased to Zim . . . stranded in Iran" on 14 January 1979. The list was sent to ITEL by a representative of ZIM on 30 April 1979 and was based on information provided by ZIM's agent in Iran. At the Hearing, the Claimant stated it did not have any information about the identity of ZIM's agent. In addition, David Rip, Manager of the Equipment Division of ZIM Israel, states in an affidavit dated 11 November 1986 that this list identifies the containers "stranded in Iran as a result of the Iranian revolution."

36. This evidence sheds no light on the issue of the location of the containers during the period relevant in this Case, namely, the time period between April and September 1979. To address this issue, the Claimant produces a copy of a Settlement Agreement dated 20 March 1980 settling all claims between ITEL Corporation and ZIM related to the one hundred and sixty-three containers. Although the Agreement discusses the location of the containers, such discussion is limited to the observation that the containers "were located in various places in Iran at the beginning of 1979" (emphasis added). Thus, the Settlement Agreement sheds no additional light on the precise location of the containers during the crucial time period, April through September 1979.

37. That the containers entered Iran in early 1979 does not necessarily prove that they remained there during the period of the alleged expropriation. As noted, the Respondent has advanced evidence - uncontroverted by ITEL - that SLIC returned ten of Claimant's containers in August 1980. This evidence provides at least some proof that containers were continuing to move out of Iranian ports through the middle of 1980. Nor can the Tribunal presume that the movement of these ten containers was an isolated occurrence, for the Tribunal's award in Flexi-Van Leasing, Inc. and The Government of the Islamic Republic of Iran, Award No. 259-36-1 (11 October 1986), reprinted in 12 Iran-U.S. C.T.R. 335, took note of indications that numerous containers and other pieces of shipping equipment were successfully removed from Iranian ports following the outbreak of unrest there. See 12 Iran-U.S. C.T.R., at 339.

38. Because the record does not support a finding that the one hundred and sixty-three containers leased to ZIM were located in Iran at the time of the alleged expropriation, this portion of the Claim is dismissed.

IV. COSTS

39. Both Parties requested the Tribunal in their pleadings to make an award compensating them for the costs incurred in respect of the proceedings in this Case. The Respondent requested to be awarded \$15,000. In view of the outcome of the proceedings in this Case, the Tribunal finds it reasonable to award the Respondent costs of arbitration in the amount of \$ 5,000.

V. AWARD

40. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) All Claims of ITEL CORPORATION are dismissed;
- b) The Claimant ITEL CORPORATION is obligated to pay the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN costs of arbitration in the amount of \$ 5,000.

Dated, The Hague

8 June 1992

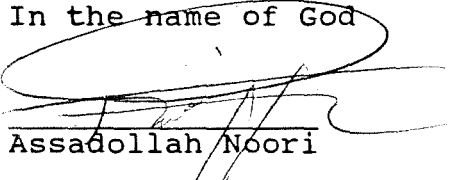


Bengt Broms


Chairman

Chamber One

In the name of God



Assadollah Noori



Howard M. Holtzmann