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دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

93

CASE NO. 154
CHAMBER THREE
AWARD NO. 322-154-3

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

FILED - ثبت شد

Date 28 OCT 1987 تاریخ
۱۳۶۶ /۸/ ۶

No. 154 شماره

EXXON CORPORATION,
Claimant,

and

NATIONAL IRANIAN OIL COMPANY,
BANK MARKAZI IRAN, and
THE GOVERNMENT OF IRAN,
Respondents.

AWARD

Appearances

For the Claimant:

Mr. Albert P. Lindeman, Jr.,
Mrs. Carla K. Ryhal,
Counsel;
Mr. George Th. Foundethakis,
Legal Consultant.

For the Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of Iran;
Dr. Taghi Naderi,
Legal Adviser to the
Agent;
Mr. Hossein Piran,
Assistant to the Agent;
Mr. Hamid Faroudian,
Representative of NIOC;
Mr. Ali Akbar Mahrokhzad,
Adviser of NIOC;
Mr. Hoseingholi Farzad,
Representative of Bank
Markazi.

Also present:

Mr. John R. Crook,
Agent of the United
States.

I. PROCEDURAL HISTORY

1. On 14 December 1981 EXXON CORPORATION ("Exxon" or "the Claimant") filed a Statement of Claim against NATIONAL IRANIAN OIL COMPANY ("NIOC"), BANK MARKAZI IRAN ("Bank Markazi") and the GOVERNMENT OF IRAN ("Iran") seeking U.S.$380,373 for goods sold and services provided for which no payment had been made. The Claimant also seeks interest, attorneys' fees and costs of arbitration.

2. NIOC and Iran filed a "Preliminary Defense" on 30 April 1982 raising objections to the extent the claims were based on contracts with Oil Services Company of Iran ("OSCO"). NIOC and Bank Markazi filed Statements of Defense on the remaining issues on 8 March 1983, and Iran did so on 31 March 1983. The Claimant filed a Hearing Brief and evidence on 31 May 1985. NIOC submitted a "Response" on 28 February 1986, to which the Claimant filed a Rebuttal on 14 May 1986.

3. A Hearing was held on 30 October 1986.

II. JURISDICTION

A. The Claimant

4. The Claimant states that it is a corporation organized under the laws of the State of New Jersey and that more than 50% of its capital stock is owned, directly or indirectly, by citizens of the United States. It thus alleges that it is a United States national within the meaning of the Claims Settlement Declaration. By way of evidence the Claimant submitted a Certificate of the Secretary of State of New Jersey showing that Exxon Corporation was duly incorporated in New Jersey in 1882 and was still in existence as of 1 February 1983. The Claimant further submitted an affidavit of its Assistant Secretary, Mr. Roger E. Chandler, who testified that the percentage of voting stock held by

stockholders reporting a United States address was at all material times more than 95%. The Claimant also submitted copies of proxy statements filed with the United States Securities and Exchange Commission for the company's 1975 and 1981 annual shareholders' meetings. These proxy statements show no shareholder holding more than 5% of the shares of Exxon Corporation and Mr. Chandler confirmed that there were no such shareholders during the relevant years.

5. The Claimant alleges that the two entities directly involved in the transactions here at issue, Exxon Company, U.S.A. ("Exxon USA") and Exxon International Company ("Exxon International"), are unincorporated divisions which form "an integrated part of Exxon" and have "no separate corporate identity or existence." According to the Claimant, these divisions "are part of the same juridical entity which comprises Exxon." The Respondents challenge Exxon Corporation's entitlement to bring claims of its two unincorporated divisions, but have not otherwise disputed the Claimant's nationality.

6. The Tribunal finds sufficient evidence in the record that Exxon Corporation is a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration. This is consistent with the Tribunal's earlier findings. See Mobil Oil Iran Inc. and Islamic Republic of Iran, Award No. 311-74/76/81/150-3 at para. 43 (14 July 1987), and Exxon Research and Engineering Company and National Iranian Oil Company, Award No. 308-155-3 at paras. 6, 9 (9 June 1987).

7. In the absence of any evidence that Exxon USA and Exxon International have separate legal existence, the Tribunal finds that Exxon Corporation is the proper party to bring this claim.

B. The Respondents

8. The Claimant asserts that because NIOC and Bank Markazi are wholly owned and controlled by Iran they, together with Iran, clearly fall within the definition of "Iran" as set forth at Article VII, paragraph 3, of the Claims Settlement Declaration. The Claimant clarifies that it named Bank Markazi as a Respondent in connection with its obligations as the Central Bank of Iran with respect to the maintenance of the Security Account created to secure payment of awards against Iran, while Iran allegedly is ultimately liable on the two contracts underlying the claim since it controls NIOC.

9. The Respondents have not argued that they do not come within the definition of "Iran" in the Claims Settlement Declaration. Bank Markazi, however, denies that it is a proper Respondent in this Case since it was not a party to any contract or transaction with the Claimant.

10. NIOC is clearly a controlled entity within the terms of the Claims Settlement Declaration and the Tribunal has previously held that claims against it are within the Tribunal's jurisdiction. Although the other Respondents fall within the definition of Iran as well, however, neither is alleged to be directly liable for any obligation towards the Claimant that was outstanding as of 19 January 1981. The Tribunal decides therefore that Bank Markazi and Iran are not necessary Respondents in this Case.

C. The Claim

11. The claim clearly arose out of "debts, contracts . . . or other measures affecting property rights" as required by the Claims Settlement Declaration. Accordingly, the Tribunal has jurisdiction over the claim.

12. The question as to whether the Tribunal has jurisdiction over NIOC's counterclaim shall be dealt with in the part of this Award discussing the merits of the counterclaims.

III. THE MERITS

13. The Claimant's claim is divided into three components. The first component is a claim for U.S.$138,600 due for turbo oil sold to NIOC in 1979. The second component is a claim for U.S.$180,020.58 in unpaid invoices for reimbursement of expenses paid by the Claimant for services provided to NIOC. The third component is a claim for U.S.$61,752.42, being the unpaid balance of certain payroll accounts and payments allegedly made by the Claimant for NIOC's benefit.

A. The Turbo Oil Sale

1. Factual Background

14. On 15 September 1979 NIOC sent Exxon International a purchase order, No. PPM-80320-TN-CO101, ordering 50,160 liters (13,252 gallons) of "aircraft engine oil internal combustion turbine type synthetic spec. US Mil-23699-Esso turbo oil 2380 in 209 lit. brand new 18 gauge steel drum" at the price U.S.$10.50 per gallon, for a total price of U.S.$139,146, f.o.b. New York.

15. NIOC's purchase order provided that the shipment should be arranged through LEP Transport Inc. ("LEP"), NIOC's freight forwarder, and that payment would be made by NIOC against presentation to NIOC's representative in New York of a packing list, supplier's invoice, certification of origin, inspection certificate and forwarding agent's certificate of receipt.

16. By letter dated 10 October 1979 Exxon International acknowledged receipt of the purchase order, the terms and conditions of which it accepted, with a minor modification as to the marking of the drums. This letter was addressed to NIOC in Tehran with copies to NIOC's representative in New York and to LEP. The oil was delivered on 24 October 1979 to LEP. The cargo of 49,968 liters (13,200 U.S. gallons) of oil was loaded on board the vessel "Arva Shad".

17. On 14 November 1979 Exxon International forwarded to NIOC's representative in New York and to LEP the documents listed in the purchase order as necessary to allow payment, including an invoice No. 101061 dated 24 October 1979 for the total amount of U.S.$138,600, payable within 30 days. NIOC did not make the required payment, however.

18. On 5 February 1982 Exxon International received a telex from NIOC's representative, Kala Ltd. ("Kala"), in reference to the purchase order for the turbo oil sale. The telex quotes an earlier telex Kala had sent on 26 November 1981 as follows:

> Quote
> Further to previous telex communications and our latest 16/9/81 our principals [NIOC] advise the following.
>
> Quote
> "Please instruct supplier to draw on us a clean draft through one of the European bank to collect amount involved. . . . We will honor that at first presentation" Unquote
>
> Will you therefore now arrange for this transaction to be carried out in order to have situation resolved promptly.
> Unquote

19. The Claimant asserts that despite these instructions its "efforts to obtain payment in accordance with NIOC's instructions in the 5 February telex have been to no avail." On 29 September 1982 the Claimant received another telex

from Kala, which makes reference to the turbo oil purchase order and reads as follows:

> Ref your tlx 005 Aug 16 we have been informed that as Exxon has filed suit against NIOC in The Hague, settlement of any claim will be dependent on the Tribunals decision.

20. No further communication between the Parties appears in the record.

2. Contentions of the Parties

21. The Claimant alleges that it fulfilled all its obligations pursuant to the contract embodied in NIOC's purchase order and Exxon International's letter of acceptance and met all the conditions necessary for payment of the shipment. It further states that since NIOC never protested the invoice or disputed the amount involved it is entitled to the full payment of the invoice.

22. NIOC concedes that a sales contract was entered into with Exxon International and that the cargo of oil was delivered. It does not deny that it failed to make payment. NIOC's defense rests on the fact that Exxon International's invoice was delivered to it on 14 November 1979, the day that all Iranian assets in the United States were frozen by decision of the President of the United States, thus making payment impossible. NIOC states that it showed its good faith by offering to make payment outside the United States in 1982 but argues that the Claimant "by filing Case No. 154 with the Arbitral Tribunal, blocked the possibility of settling the account with it." Finally NIOC requests that this claim be "set-off against Exxon debts which have been set forth in other two cases (Case Nos. 150 and 155) by NIOC with the Arbitral Tribunal."

23. In reply to NIOC's defense Exxon Corporation alleges that the freeze of the Iranian assets did not prevent NIOC from making payment, since NIOC's liability could have been satisfied with assets located outside the United States.

3. The Tribunal's Decision

24. The evidence demonstrates that pursuant to the sales contract Exxon International delivered 13,200 gallons of turbo oil to NIOC and that the agreed price remains outstanding. NIOC has in effect admitted that this amount is due. NIOC's expressed willingness to pay through a European bank defeats its arguments that the freeze of the Iranian assets made it impossible for it to settle its debt.

25. Therefore the Tribunal finds that NIOC owes the Claimant the amount of U.S.$138,600.

26. The Tribunal dismisses NIOC's request that this component of the Claimant's claim be set off against counterclaims NIOC has asserted in Cases Nos. 150 and 155 against Exxon on the ground that these counterclaims are unrelated to this Case. Furthermore Case No. 155 has already been adjudicated.

B. The Porta-Kamp Services

1. Factual Background

27. On 5 and 25 June 1974 Exxon USA and Iranian Oil Services Ltd. ("IROS") entered into a letter agreement ("Supply Agreement") which reads in relevant part as follows:

> This shall constitute the agreement between your company [IROS] and Exxon Company, U.S.A. (a division of Exxon Corporation) under which Exxon Company, U.S.A., as agent acting on your behalf and for your account, will arrange, from time to time, at your request, to purchase materials and

> supplies for you, and also if requested, to provide you with related services. . . .
>
> All necessary or desirable arrangements, including execution of documents on your behalf, payment of monies, and settling claims, shall be made in your name by Exxon Company, U.S.A. with delivery of materials and supplies being made to ports or locations as specified by you. Exxon Company, U.S.A. will pay invoices for such materials, supplies and services and will debit you through inter-company channels.

28. In furtherance of the Supply Agreement, in 1979 Exxon USA issued three purchase orders to a vendor of oil field equipment, Porta-Kamp Manufacturing Company ("Porta-Kamp"), for technical assistance in connection with the erection of portable camp facilities at various sites in Iran operated by OSCO.

29. The purchase orders are Purchase Order No. D80360/KWA 71307 dated 20 March 1978, Purchase Order No. D80359/KWA 71664 of the same date modified in May 1978 into KWZ 71664 and Purchase Order No. D81541/KWZ 73560 dated 19 September 1978. Each of the purchase orders provides that "[w]ork shall be performed in accordance with OSCO agreement" and that "[i]nvoices covering work and expenses under this order shall be submitted monthly for payment to Exxon Company U.S.A. and shall be paid after approval by OSCO representative."

30. Porta-Kamp thereafter performed the work and submitted to Exxon USA a series of invoices dated between 17 February 1978 and 20 December 1978, in the total amount of U.S.$194,730.42.

31. Exxon USA forwarded the Porta-Kamp invoices to IROS as they were received and IROS periodically informed Exxon USA of OSCO's approval of the invoices. Upon receipt of OSCO's approval of the invoices Exxon USA paid the invoiced amounts to Porta-Kamp and billed IROS for reimbursement of these payments. Between 14 April 1978 and 9 March 1979 Exxon USA

issued six invoices to IROS for reimbursement of its payments to Porta-Kamp.

2. Positions of the Parties

a. The Claimant's Position

32. The Claimant states that while other invoices for reimbursement of expenses incurred by Exxon USA were paid by IROS, no payments were received relating to the Porta-Kamp invoices up to 16 October 1979. On 16 October 1979 Mr. John W. McKenna, Export Purchasing Manager for Exxon USA, wrote to Mr. R.W. Cooper, Financial Manager of IROS, listing the amounts due, annexing supporting documentation and asking him to investigate why the invoices had not been paid. Mr. Cooper replied by telex dated 29 October 1979 stating that "before IROS is able to make settlement of these invoices, we require financial authority from NIOC. . . ." IROS subsequently sent Exxon USA a check in the amount of U.S.$14,389.06 with a notation dated 14 January 1980 stating "in payment of Inv[oice] Nos. 7650 and 7667 (Porta-Kamp Houston)." No other payments for the Porta-Kamp invoices were received, however, and on 8 December 1980 Exxon USA submitted a summary invoice for the remaining balance of U.S.$180,020.58. This is the amount which allegedly remains outstanding.

33. The Claimant states that NIOC is liable for the outstanding balance because IROS dealt with Exxon USA as OSCO's agent and because NIOC has assumed all of OSCO's obligations under the Supply Agreement.

34. In support of its allegation that IROS was OSCO's agent, the Claimant relies on a "1973 Service Contract" between NIOC and OSCO which allegedly "contemplated establishment of an agency/principal relationship between IROS and OSCO." The Claimant also relies on a 1973 contract

between OSCO and IROS, which, according to the Claimant, makes clear that IROS was to act "solely at OSCO's direction and on its behalf." That agreement provided as follows:

> 1. At the written request of [OSCO] and with funds supplied by NIOC for [OSCO] IROS will outside Iran:
>
> (a) Purchase all supplies of plant equipment goods and materials which [OSCO] on behalf of NIOC may from time to time require for its operations in Iran and arrange the shipment and delivery thereof;
>
> . . .
>
> (c) Negotiate and enter into contracts with any person or persons firm or company for the employment of consultants surveyors engineering contractors and any other specialists whose services on behalf of NIOC may be required by [OSCO] in Iran;
>
> (d) Generally perform any other services outside Iran which [OSCO] on behalf of NIOC may from time to time require in respect of its operations in Iran;
>
> . . .
>
> 2. [OSCO] will pay IROS the actual cost to it of all services performed hereunder including administrative overhead and all other expenses . . . .
>
> 3. NIOC will for [OSCO] advance to IROS in London the funds required to meet its commitments in providing the above services to [OSCO]. . . .

35. The Claimant argues that such a relationship between IROS and OSCO can only be understood as agency. The Claimant emphasizes that IROS had no function other than to procure materials needed for NIOC's operations in Iran. It was authorized to enter into contracts only "[a]t the written request of [OSCO] and with funds supplied by NIOC for [OSCO]." The Claimant thus states that IROS was clearly a procurement agent and not an independent warehouser or distributor of goods and inventory, as is evident from the fact that IROS earned no profit for any of its services and

it bore no risk, since it was paid only the exact cost to it of all the services it rendered and was paid in advance. The Claimant alleges that IROS was not in the business of providing goods and services but only of processing OSCO's contract needs as an administrative matter.

36. The Claimant alleges that IROS' agency relationship was understood by the Parties, and that the Claimant never depended ultimately on IROS for payment since it considered the debt to be OSCO's. The Claimant argues that this understanding is substantiated by the Porta-Kamp purchase orders, which stated that they were governed by "OSCO agreement and general conditions," and provided that Exxon USA would pay Porta-Kamp only upon OSCO's approval.

37. The Claimant further argues that IROS' agent status is borne out by IROS' own statements. In a letter sent on 18 July 1983 by IROS' company secretary, Mr. R. W. Cooper, IROS stated that amounts due for services provided to OSCO through IROS, including specifically the Porta-Kamp invoices, "are not strictly an IROS liability" and suggested instead that the liability "should be cleared from the IROS accounts and . . . re-charged direct to NIOC." The Claimant contends that this statement confirms what it argues is obvious from the above proofs, that OSCO, and later NIOC, were IROS' principals. As Mr. Cooper put it, "we have always in the past acted purely as a 'post office' between yourselves and Iran."

38. The Claimant argues in addition that NIOC in its pleadings here has agreed in effect that IROS was OSCO's agent in stating in its Response that "the reason and philosophy behind conclusion of the OSCO-IROS contract was that OSCO did not want to confront [it]self with and become a party to numberless sellers of the materials and equipment needed by it, and due to this reason, OSCO concluded a contract with IROS...." According to the Claimant, this

description sets forth the purpose for and duties of an agent.

39. The Claimant argues finally that under generally applicable principles of law, an agency relationship need not be designated explicitly in each transaction, but the circumstances surrounding the transaction and the actual relationship between the parties must be examined to determine whether a party is acting in a representative capacity on behalf of another. See Restatement (Second) of Agency § 12; Schmitthoff, Agency in International Trade, Académie de Droit International, I Recueil des Cours 170, 180 (1970); Fridman, The Law of Agency 10-11 (3d ed. 1971). The Claimant refers as well to Articles 656-683 of the Civil Code of Iran, which provide that a party may appoint an agent to be his representative for accomplishment of general or specific goals, and may do so "by any word or act which indicates an agency." The Claimant alleges that because of its long dealings with IROS and because the Claimant was a member of the Oil Consortium which owned both OSCO and IROS it was fully aware of the agency relationship, thus making it unnecessary to reiterate in each transaction between the Claimant and IROS that IROS was acting for its principal OSCO.

40. The Claimant therefore concludes that IROS was OSCO's agent for the procurement of the Porta-Kamp services and that this liability was among those assumed by NIOC when it succeeded to OSCO in 1979.

41. In support of its claim that NIOC is responsible for OSCO's debts, the Claimant relies on the Tribunal's ruling in Oil Field of Texas, Inc. and Islamic Republic of Iran, Award No. ITL 10-43-FT (9 Dec. 1982), in which the Tribunal concluded that "there is no doubt that NIOC is liable for the contractual obligations of OSCO, including contractual obligations made binding upon OSCO by the acts of agents on

OSCO's behalf." The Claimant therefore contends that IROS was OSCO's agent and that NIOC is liable for obligations IROS concluded on OSCO's behalf, including the Porta-Kamp invoices.

b. NIOC's Position

42. NIOC denies that it is liable for reimbursement of the Porta-Kamp invoices. It does not deny that the services were provided under a contract requiring reimbursement by IROS, or that Exxon remains unreimbursed. It denies that IROS was OSCO's agent, however, arguing that IROS was instead an independent contractor and that any contract debt owed Exxon for goods and services provided is owed solely by IROS, not by OSCO or NIOC. According to NIOC:

> [The] relationship of Exxon with IROS was completely separate from the one between IROS and OSCO and it always concluded in the level of contact, letters and communications of Exxon with IROS. . . . This sequence attests to the fact that initially OSCO-IROS relationship was separate from Exxon-IROS, and secondly apart from the legal aspect of the subject, there was, in practice, no direct link ever between OSCO and Exxon.

43. NIOC argues that because Exxon submitted the invoices to IROS and IROS paid, although in part, the invoices, it is clear the Parties did not consider Exxon and OSCO to have any contractual relationship. NIOC argues, therefore, that "if [the Claimant] has any claims, these must be brought by it against IROS, and there is no justification in its direct referral to OSCO and NIOC." NIOC also stresses that:

> In all the contracts at issue in the instant case, intention of the parties has been vividly stated, and since the words "agent" and "representative" have never been used in the IROS-OSCO contract, to call IROS as a representative of OSCO and NIOC would be contrary to the intention of the parties.

NIOC further relies on two letters dated 15 December 1983 and 26 September 1984, respectively, from Mr. McWhirter Legal Adviser to IROS addressed to NIOC. In the latter one Mr. McWhirter states that:

> IROS is neither a "national" of Iran or the U.S.A. nor for that matter a political sub-division, agency, instrumentality, or entity controlled by either the Government of Iran or Government of the United States.

NIOC argues that this letter, as well as Mr. McWhirter's assertion that IROS provided its services to the Iranian Oil Industry which "were so provided in terms of principal to principal Service Contracts," supports its contentions.

44. NIOC also denies that Oil Field of Texas demonstrates that it is liable for the asserted debts, arguing that the scope of that award cannot "be extended to such a degree where NIOC could be made liable, on behalf of OSCO, to such individuals who have also been a party to the contract with the contractors of OSCO."

45. As a final matter, NIOC argues that even if it can be assumed that IROS was an agent of OSCO, NIOC has no liability in respect of such part of the claim as arose prior to 1979, since NIOC did not take over OSCO's obligations until March 1979.

3. The Tribunal's Decision

46. There appears to be no dispute between the Parties that the services provided by Porta-Kamp to OSCO were paid for by Exxon USA and that neither OSCO nor NIOC reimbursed Exxon USA for that expense. The issue before the Tribunal is thus whether NIOC became liable to reimburse Exxon USA for those services when it succeeded to OSCO's obligations.

47. Although the 1974 Supply Agreement between Exxon USA and IROS provides that Exxon USA would be paid by IROS, the record shows that IROS' payment was dependent upon OSCO's control and authorization and that the funds themselves were provided by NIOC. The agreement dated 20 November 1973 between OSCO and IROS shows that IROS has no function other than to render services "on behalf of NIOC." While the expression "on behalf of" does not necessarily imply the existence of an agency relationship, the evidence leads to a conclusion that IROS acted as OSCO's agent.

48. IROS bears none of the characteristics one would expect of an independent contractor. It did not present bids or proposals to OSCO but acted only upon OSCO's specific request. It bore no risk and earned no profit, its expenses being entirely reimbursed by NIOC through OSCO. It did not seek to make its services available to other persons but was created for and employed exclusively by OSCO. It did not warehouse goods or maintain a staff of employees capable of providing services to OSCO but merely procured the goods and services requested by OSCO. As stated by its company secretary, IROS did not consider itself liable for any debts it incurred on OSCO's behalf, but considered itself merely a conduit between contractors, such as the Claimant and OSCO.

49. A reading of the agreement of 20 November 1973 between IROS and OSCO and of the 1973 Service Agreement between NIOC and OSCO confirms that IROS was set up for the sole purpose of providing "administrative and technical services" to OSCO. Moreover, even in the absence of a clear characterization of the contract, it would be unreasonable to conclude that IROS acted as an independent contractor in light of the express provision of the purchase orders that "work shall be performed in accordance with OSCO agreement" and "shall be paid after approval by OSCO."

50. Finally, as a member of the Oil Consortium which owned both IROS and OSCO, the Claimant must have been fully aware of the legal relationship between IROS and OSCO.

51. The foregoing circumstances evidence that, in this Case, IROS acted as OSCO's agent, thereby binding OSCO to the contractual relationship entered into with Claimant. As NIOC undoubtedly accepted the benefit of the services provided pursuant to the contract when it succeeded to OSCO, the Tribunal finds no justification to hold that NIOC did not also succeed to these obligations. Accordingly, the Tribunal finds NIOC liable for reimbursement of the invoices paid by the Claimant and awards $180,020.58.

C. Open Accounts for MCA Services

52. Pursuant to the 1973 agreement between a Consortium of oil companies, Iran and NIOC, the Claimant, as a member of the Consortium which owned IROS and OSCO, made available the technical services of various personnel. These services were referred to as "Member Company Assistance" or "MCA" services.

1. The Claimant's Position

53. The Claimant alleges that NIOC owes U.S.$61,752.45 in outstanding accounts receivable for services provided at the request of IROS or OSCO for the benefit of NIOC and which were billed through IROS or OSCO. The Claimant states the services were not "performed pursuant to formal written contracts, but rather were arranged informally by IROS as they were required" by NIOC. It asserts that a course of dealing arose between the Parties under which, because of the varied nature of the services provided, Exxon did not submit invoices related to specific activities but rather maintained open accounts for the different categories of services provided. The Claimant periodically invoiced IROS

for the total value of work done in the various categories, as reflected in the accounts.

54. The Claimant alleges that as of 19 January 1981 four open accounts showed debit balances; (1) account 188-007, with a debit balance of U.S.$19,042.76, represents amounts billed to IROS for reimbursement of the cost of salaries and benefits incurred by the Claimant for services rendered through IROS to NIOC; (2) account 188-9910 also represents payroll costs billed to IROS for services rendered and is alleged to have a balance of U.S.$15,536.04; (3) account 188-3700 reflects invoices submitted to IROS for services provided to NIOC in connection with specific NIOC projects and allegedly shows a debit balance of U.S.$11,593.82; (4) account 188-3940 includes amounts billed to OSCO in nine separate invoices totalling U.S.$15,579.83 relating to expenses incurred by Exxon employees providing services to OSCO.

55. On 12 August 1980 the Claimant wrote to Mr. M.R. Cooper of IROS regarding certain of these unpaid invoices. In response to this letter and a follow-up telex of 6 February 1981 IROS replied by telex dated 10 February 1981 that it had "relayed details of your invoices to Iran on the 6.12.80 and still await their approval for payment." Subsequently, on 18 July 1983, Mr. R.W. Cooper wrote to the Claimant stating that the invoices "will not be cleared through Iranian Oil Services Limited" and should be "recharged direct to NIOC."

56. As evidence of its claim the Claimant submitted the various account receivable ledgers showing the outstanding charges. In addition it submitted a copy of the invoices sent to OSCO, except for Invoice No. CDM059 in the amount of U.S.$4,063.30, which it acknowledged could not be found in Exxon's files.

57. The Claimant alleges that the arrangements under which Exxon provided services gave rise to a contractual relationship, with IROS acting as agent for OSCO and both IROS and OSCO acting on behalf of NIOC. The Claimant, citing various decisions of the Tribunal including Chas. T. Main International Inc. and Khuzestan Water and Power Authority, Award No. ITL 23-120-2 (22 July 1983), reprinted in 3 Iran-U.S. C.T.R. 270 and Economy Forms Corp. and Islamic Republic of Iran, Award No. 55-165-1 (14 June 1983), reprinted in 3 Iran-U.S. C.T.R. 42, argues that "the conduct of the parties reflects they intended a contractual obligation and the submission of the invoices and ledger sheets should constitute sufficient showing that a contract has been created." It further states that the payment of a part of the billed amount for MCA services during January 1978 through September 1979 "constitutes a clear acknowledgement of NIOC's obligation to reimburse Exxon for such services."

2. NIOC's Response

58. NIOC does not deny that services were rendered. It argues rather that it bears no liability for the payment of these services because they were incurred by IROS acting as an independent contractor.

59. In addition, during oral proceedings NIOC pointed out that two invoices in the total amount of U.S.$6,393.34 were dated subsequent to the Claims Settlement Declaration and are therefore outside the Tribunal's jurisdiction.

3. The Tribunal's Decision

60. It is not disputed that services were rendered for which payment was not made. Applying the same reasoning as in the context of the Porta-Kamp invoice claim, the Tribunal determines that the liabilities incurred by IROS or OSCO are chargeable to NIOC.

61. The Tribunal agrees with NIOC that the two invoices submitted by the Claimant dated subsequent to the Claims Settlement Declaration are outside the Tribunal's jurisdiction. These two items, reflected in Account No. 188-3700, are for a total amount of U.S.$6,393.34. Therefore U.S.$ 6,393.34 is deducted from the amount owed to the Claimant, and U.S.$55,359.11 is awarded.

D. NIOC's Counterclaim

62. NIOC asserted a counterclaim seeking an award "obligating the Claimant to compensate for the losses incurred by the Respondent."

63. While the counterclaim appears on its face to be within the Tribunal's jurisdiction, NIOC has submitted nothing in support of the counterclaim.

64. In view of the lack of evidence in support of the allegation that NIOC sustained losses, the Tribunal dismisses NIOC's counterclaim.

IV. INTEREST AND COSTS

A. Interest

65. The Claimant seeks interest on the amounts awarded at the rate of 12%, running from the date of breach of contract.

66. In the absence of any contractual provisions for the payment of interest, the Tribunal finds it reasonable to fix the interest rate at 10% per annum pursuant to the principles established by the Tribunal in McCullough and Company Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 (22 April 1986).

67. Interest will be calculated based on the generally admitted usage that an invoice is payable within 30 days of presentation. Therefore, interest on amounts awarded for the turbo oil sale shall be calculated from 23 November 1979. Interest on the amounts awarded under the Porta-Kamp invoice claim shall run as follows:

- Invoice No. 04-80-07: interest shall run from 13 May 1978 on U.S.$30,808.40;
- Invoice No. 04-80-08: interest shall run from 20 May 1978 on U.S.$5,026.76;
- Invoice No. 05-80-10: interest shall run from 10 June 1978 on U.S.$107,521.30;
- Invoice No. 08-80-10: interest shall run from 29 September 1978 on U.S.$14,069.25;
- Invoice No. 10-80-07: interest shall run from 11 November 1978 on U.S.$2,878.15;
- Invoice No. 03-80-06: interest shall run from 7 April 1979 on U.S.$19,716.72.

68. With respect to the MCA services the interest shall run from 19 January 1981 as requested by the Claimant.

69. In accordance with the Claimant's request, interest is awarded up to and including the date of the present Award.

B. Costs

70. The Claimant has submitted its costs of arbitration including legal fees and expenses, in the amount of

U.S.$103,890. The Tribunal awards U.S.$15,000 by way of costs of arbitration.

V. AWARD

71. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a) The NATIONAL IRANIAN OIL COMPANY is obligated to pay EXXON CORPORATION:

1. the amount of One hundred thirty-eight thousand six hundred United States Dollars (U.S.$138,600) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 23 November 1979;

2. the amount of One hundred eighty thousand twenty United States Dollars and fifty-eight Cents (U.S.$180,020.58) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) as follows: interest to run from 13 May 1978 on the amount of U.S.$30,808.40; interest to run from 20 May 1978 on the amount of U.S.$5,026.76; interest to run from 10 June 1978 on the amount of U.S.$107,521.30; interest to run from 29 September 1978 on the amount of U.S.$14,069.25; interest to run from 11 November 1978 on the amount of U.S.$2,878.15; interest to run from 7 April 1979 on the amount of U.S.$19,716.72;

3. the amount of Fifty-five thousand three hundred fifty-nine United States Dollars and eleven Cents (U.S.$55,359.11) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 19 January 1981.

4. In all cases, the interest shall run up to and including the date of this Award.

b) The Respondent NATIONAL IRANIAN OIL COMPANY is obligated to pay EXXON CORPORATION the amount of Fifteen thousand United States Dollars (U.S.$15,000) as costs of arbitration.

c) All of the above obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

d) NIOC's counterclaim is dismissed for lack of evidence.

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

Dated, The Hague
28 October 1987

Michel Virally
Chairman
Chamber Three

In the name of God

Charles N. Brower
Concurring Opinion

Parviz Ansari Moin
Dissenting in part
Concurring in part