The Tribunal took as its starting-point "the most general formulation of the rules applicable for a lawful nationalisation", viz. the United Nations General Assembly Resolution 1803 (XVII) of 1962, according to which in the event of nationalization "the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law" (paragraph 143). This means "that in the case of the present dispute there is no room for rules of compensation that would make nonsense of foreign investment" (paragraph 146). Accordingly compensation "must be calculated on a Basis such as to warrant the upkeep of a flow of Investment in the future" (paragraph 147). The legitimate expectations of the parties refer to the contractual equilibrium and "cannot be neglected, neither when it is a question of proceeding to necessary adaptations during the course of the contract nor when it is a question of awarding compensation" (paragraphs 148 to 149). There are several methods of valuation, but the conception which "must guide the Tribunal" is that adopted by the parties "in the course of their relations and negotiations, namely that of the reasonable rate of return" (paragraph 154).

[Set out in detail with a comprehensive analysis of the tribunal's findings in the Aminoil case.]

The reference to the rules applicable in the expropriating State is of course the most unfortunate feature of this Resolution. In the present case the point was not material because the Tribunal held that the law of Kuwait had adopted and included the rules of international law: para. 6.

Referring Principles:

Xl.1 - Compensation for expropriation