AWARD

I. FACTS AND CONTENTIONS

i) The legal basis of the claim

The following is the text as issued by the Tribunal:

APPEARANCES

[...]

AWARD

I. FACTS AND CONTENTIONS

i) The legal basis of the claim
The Claimant in this case, Sea-Land Service Inc. ("Sea-Land") is a corporation registered under the laws of Delaware in the United States engaged in the international transportation by water of containerised cargo. The Respondent Ports and Shipping Organization ("PSO") is the governmental instrumentality in Iran charged with the administration and control of Iranian port facilities, and was throughout the period material to this claim under the direction of the Ministry of Roads and Transportation. The essence of Sea-Land's claim, filed on 16 November 1981, is that it was deprived by PSO of the right to continued use of a containerised cargo facility constructed and operated by it at the port of Bandar Abbas, and that it suffered losses as a result.

The case presents no serious issues of jurisdiction. An objection was raised by PSO to the lack of evidence of Sea-Land's United States nationality at the Pre-hearing conference, some six months after the filing of PSO's Statement of Defence. In its Order filed on 19 November 1982 the Tribunal found that PSO's objection to the Tribunal's jurisdiction on this ground had not been timely raised and did not give rise to substantial doubt as to the Claimant's nationality.

Sea-Land bases its claim on two principal alternative legal theories. The first is that PSO breached a contract (the "Facility Agreement" dated 28 November 1976) entered into by PSO with ILB, an Iranian transportation company, for the provision of a parcel of land at Bandar Abbas for the construction of a container terminal and the right to operate it. Sea-Land claims to be able to enforce the contract on the grounds either that ILB was acting as its agent with PSO's knowledge, or, alternatively, that it was a third-party beneficiary of the contract by the common intention of both parties. Sea-Land further argues that ILB was acting as agent for PSO when it entered into a second contract with Sea-Land, the "Preferential Use Agreement", on 18 April 1977.

The second alternative ground is that, having allowed Sea-Land to proceed with the construction and operation of the container facility at considerable expense, PSO acted to deprive Sea-Land of the use of its enterprise in such a way as to constitute an expropriation giving rise to a right to compensation in accordance with the standards prescribed by the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran and under international law.

Sea-Land argues as a further alternative that at all events PSO should not be unjustly enriched at Sea-Land's expense, and that it is liable to compensate Sea-Land for the value of the enterprise of which it assumed control.

Sea-Land quantifies its losses in its Memorial filed prior to the Hearing as amounting to at least $42 million. This applies to all of the principal alternative grounds pleaded.

PSO filed a Statement of Defence denying liability on the basis that Sea-Land was not entitled to enforce any contract against it; it further contends that there was no expropriation or taking such as to give rise to a right to compensation; and that it did not make use of the facility. PSO has in addition filed a counterclaim for various revenues and charges allegedly arising out of Sea-Land's use and subsequent abandonment of the facility, totalling 1,640,108,835 Rials.

ii) The factual background

Common to the principal alternative legal grounds advanced by Sea-Land is the underlying assertion that an oral agreement had already been reached with PSO by February 1976 the cardinal elements of which were that Sea-Land would construct and operate a container terminal on land made available by PSO, and that PSO would guarantee it priority in the provision of tugboats, pilots, customs, health and immigration clearance, in order to minimize the delay between the arrival of Sea-Land's container vessel and its unloading. It has been emphasised throughout Sea-Land's oral and written pleadings that "priority berthing" in this sense was an essential term of the agreement as such assistance was fundamental to the viability of a container system.

Sea-Land contends that its relationship with PSO commenced in about August 1975 when its representatives held discussions with senior officials of PSO, the Ministry of Roads and Transportation, and the Plan and Budget Organization of Iran with a view to instituting a system of containerised cargo handling at the port of Bandar Abbas. Negotiations continued into early
1976, and a formal written proposal to the Ministry of Roads and Transportation and PSO was made in a document presented on 8 February 1976.

The existence of an agreement embodying the substance of that proposal was confirmed, Sea-Land alleges, at a meeting held on 23 February 1976 between Mr. M. Scott Palen, at that time its General Manager Middle East, Mr. Quartel, its Country Manager for Iran, Mr. Setayesh of the Iranian company, ILB, and Mr. Khataei of PSO on which occasion it was reported that Sea-Land’s proposal had been accepted by all necessary government authorities.

While PSO does not dispute that such discussions were held, it denies that they resulted in any contractual relationship between itself and Sea-Land which might render it liable for damages.

PSO insists that its only contractual relations were those vis-a-vis ILB which arose out of the Facility Agreement dated 28 November 1976 between PSO and ILB, which reads as follows:

The following Agreement has been agreed upon between Port and Shipping Organization (hereinafter called Organization) represented by Mr. Mohammad Khataei on one part and I.L.B. Container Company registered under No. 13751 in the Registration Office of Companies represented by Mr. Ali Akbar Bagherzadeh (hereinafter called the Company) on the other part.

1. The organization agreed to allocate to the Company the parcel of land identified by “x” in the attached map located in Bandar-Abbas, and owned by the organization, to be used for loading, off-loading and storage of the goods imported by the ships represented by the Company for a maximum period of six years (subject to the provisions of paragraph 5 of this Agreement). Of course, the loading, off-loading, storage and upkeep of the goods will be the responsibility of the port contractor.

2. The Company undertook, at its own cost, to make all necessary preparations for the use of the said land within a maximum period of six months. If there is a need to build or establish facilities such as jetty, covered storage area, office space, pouring of concrete, asphalt, etc. The Company shall first obtain the approval of the organization on the proposed work program, drawings and duration of execution and then proceed with the execution of the work, the Company, further, undertook to take necessary action in accordance with the determination of the organization, to build a suitable road adjacent to the above-mentioned land in order to give access to the land situated behind it.

3. In the event the Company fails to perform its obligations within the stipulated period, this Agreement shall be considered as no longer valid and the organization shall not be obligated thereunder and the Company shall not have any rights or claims therefor.

4. The Company shall not have the right to receive from the owners of the goods loaded, off-loaded or stored on the premises any sums of money on any account.

5. The Company agreed that in the event that the organization hands over to the Imperial Navy the existing port facilities prior to the expiration of the term of this Agreement, this Agreement can be terminated by a two-month prior written notice.

6. After the expiration of this Agreement, the Company shall be obligated to remove from the allocated land all of its movable property within two months and to hand over to the organization all immovable facilities and improvements made by the Company without any right or claim and the organization shall not pay any sums therefor to the Company.

ILB was an Iranian transportation company operating as local agent for various cargo handling enterprises. Sea-Land
contends that ILB had been involved in the discussions as Sea-Lands agent, and had entered into the Facility Agreement in that capacity with PSO as an "administrative formality" only, Sea-Land having been advised that a grant of land such as that envisaged for the construction and operation of a container facility would not be made in the name of a foreign corporation. Evidence was submitted by Sea-Land to show that ILS was retained in November 1975 and was present at the meeting of 23 February 1976. However, no formal agency agreement was signed until 18 April 1977, though it was stated to have retroactive effect to 28 November 1976.

On the same date, 18 April 1977, ILS formally sub-licensed to Sea-Land the rights to use and improve the parcel of land allocated in the Facility Agreement, by means of a contract referred to as the Preferential Use Agreement. This latter recites that "the aforesaid licence was procured by I.L.B. Container for the uses and purposes of Sea-Land Service, Inc." and that the improvements to the site had been carried out by Sea-Land at its own expense. It provides, essentially, that "Sea-Land Service should have the sole, exclusive and preferential right to use, occupy and enjoy said land and improvements.

PSO contends that ILB represented itself as principal to PSO in the negotiations and in the conclusion of the Facility Agreement. Mr.

Bagherzadeh, the Managing Director of ILB, submitted an Affidavit stating that in the negotiation and conclusion of the Facility Agreement with PSO, ILB acted as principal, as it is stated on the face of the Agreement, that PSO granted the licence to ILB, that PSO did not see nor did it know the terms of the Preferential Use Agreement, and that it was up to ILB to operate the terminal either by itself or through its sub-licensee. PSO further contends that the provision in the Preferential Use Agreement between Sea-Land and ILB that the Agreement may be renewed if Sea-Land notifies ILB 90 days prior to the expiration date and only if PSO "renews the licence in favour of I.L.B. Container" indicates that both parties to the Agreement knew that ILB had acted as principal in obtaining the licence (Facility Agreement). In the Preferential Use Agreement Sea-Land seeks assurance ("security") from ILB for its investment in the improvements on the land and ILB gives such "security" with the condition that Sea-Land at all times abides by the provisions of such licence and that the licence is not revoked, limited, or restricted in any way by PSO or any other Iranian governmental authority.

iii) Contentions of the Parties

The Parties place two completely different interpretations on the form and content of these agreements. Sea-Land asserts that it was the true - and fully disclosed - principal party to the Facility Agreement which was signed by ILB as agent for Sea-Land with the full knowledge of PSO. Its purpose was formally to implement an oral agreement which had already been reached between PSO and Sea-Land but in such a way as not to involve PSO in allocation of land directly to a foreign enterprise. Sea-Land claims to be able to enforce the Facility Agreement against PSO either as principal or at the least as a third-party beneficiary for whose benefit it was entered into.

PSO does not acknowledge any such rights on the part of Sea-Land. It contends that its only contractual relations are with ILB. PSO's representative argued at the Hearing that allocation of the land to a foreign corporation would have been illegal under Iranian law; further, that ILB could only undertake as agent activities which would have been legal if done by Sea-Land itself. In any event, Sea-Land had recourse to its remedies against ILB through an ad hoc arbitration under the Preferential Use Agreement - the very existence of which PSO claims was unknown to it until the Statement of Claim was filed. PSO has submitted evidence annexed to a Supplementary Statement of Defence filed after the Hearing, on 8 July 1983, that ILB applied in its own name using PSO's prescribed form for the allocation of land in the Bandar Abbas port area and thereby undertook to carry out all construction and improvement works at its own expense. It denies that ILB was granted the land as agent for Sea-Land, and maintains that any works carried out by Sea-Land at the site were unauthorised and undertaken without PSO's knowledge. Mr. Khataei, Deputy Port Operations and Deputy Administration and Financial Director of PSO's Head Office until 1980, stated in an Affidavit submitted by PSO that:

Through correspondence with the other concerned agencies in connection with these companies both generally and individually, it was decided that in the national interest, and in order to promote shipping and handling of cargo, the land would be turned over only to private Iranian companies, and under such conditions as would not
give rise to any subsequent right or claim against the Ports and Shipping Organization on the part of the applicant companies. It is to be noted that Article 5 of the Agreement, which would have been the only instrument providing for creation of such a right or claim at that time, was included in the Agreement solely in consideration of the above intention. (Translation supplied by the Tribunal's Language Services).

PSO states in a letter to ILB dated 9 November 1976 that it allocated the land to ILB for construction of a container terminal under the condition that:

1. All modification expenses regarding platform located northside of the port area as well as expenses incurred for improvement of landscape behind the said platform, asphaltating and fencing should be borne by the company and the relative work should be carried out by the company.

2. The said platform should not be used as a special private platform. Other companies too may use the platform provided that they operate similar vessels. But vessels of the company shall have priority in using this platform.

3. All expenses incurred for digging and filling, levelling, foundation work, asphaltating and fencing and other necessary work in the proposed terminal area shall be borne by this company and should be carried out by this company.

Sea-Land contends that the plans for the improvements it carried out through its construction engineers Adibi Harris and Navtec were approved by PSO, with whom contact was maintained throughout. Its original proposal was to build a floating jetty, but this had to be abandoned in favour of a fixed concrete "roll-an roll-off" ramp when the Iranian Navy, which had been consulted by PSO on this point, expressed concern that the presence of a floating jetty would interfere with access to its nearby naval base. Sea-Land made the further argument that it was inconceivable that it should have carried out such extensive and costly works - involving the expenditure of approximately $3 million - without the consent, let alone the knowledge, of the port authority.

Sea-Land states that the construction of the new facility was complete by about February 1977, and that from then until August 1978 its vessel, the Sea Bridge, made regular calls from Dubai and unloaded its cargo with the full co-operation of PSO in organising clearances and docking on an expedited basis. PSO does not dispute that this was the case. Among the evidence submitted by Sea-Land is a detailed account of the functioning of the container facility and the procedures involved in each disembarkation.

It is Sea-Lands contention that commencing in September 1978 PSO and other Iranian authorities engaged in conduct the effect of which was to deprive Sea-Land of the effective use of the Bandar Abbas facility and the garage it had constructed in Tehran to service its containers and vehicles. This allegedly came about as a result of PSO's failure to provide pilots and tugboats, at least without long delays; its refusal to organise visits by customs, health and immigration officials to the incoming vessel (without any one of which clearances the ship was not permitted to dock) and eventually in February 1979 by limiting the types of cargo allowed into the port. The local Labour Office is alleged to have interfered in the management of Sea-Lands enterprise by ordering the dismissal of all of the non Iranian workforce. The Labour Office is also alleged to have dictated to Sea-Land the wages, terms and conditions of employment of its work-force and to have prohibited Sea-Land from disciplining or discharging its Iranian employees. The movement of containers on which the business depended was severely disrupted, and Sea-Land suspended the service in November 1978, but continued to operate at a reduced level from February 1979 until it was terminated completely on 1 August 1979, by which time Sea-Land had made a judgment that there was no prospect of resumption in the foreseeable future. By the end of December 1978, the facility is said to have been rendered effectively unworkable, and Sea-Land chooses this as the date from which damages are to be assessed, whether for breach of contract, for expropriation of its enterprises, or on the basis of unjust enrichment.
iv) The relief sought

In its Memorial filed on 7 March 1983, Sea-Land presented a detailed damages claim in reliance on the principle of *restitutio in integrum* which it claims is applicable to all of the alternative bases for its claims. The claim based on contract seems to be directed against PSO, the claim based an expropriation against the Government of Iran and the claim based an unjust enrichment against the Government of Iran or PSO. It claims $25,202,186.93 comprising immediate damages of $3,770,667.00 (including *inter alia* the book value of certain items of rolling stock, inventories and equipment; the balance of an Iranian bank account; demurrage, salvage and removal costs; and receivables which it was prevented from collecting) and lost net revenue, discounted to present value as of 31 December 1981, of $21,431,519.93 (which figure is alleged to reflect the value of the enterprise as of 31 December 1978). Interest is claimed at rates available on commercial deposits throughout the periods in question, amounting to $16,863,215.63. Continuing interest is also claimed up to the date of the Tribunal’s Award. Legal costs are claimed of at least $126,667.13. A detailed exposition of the accounting principles utilised in the damage calculations is contained in the Affidavit of Mr. E. Toben who also gave evidence at the Hearing.

PSO has not commented specifically on the method used in the calculation of damages claimed, except to observe that account should have been taken of the possible effects of “the people's movements, U. S. economic sanctions and the imposed war”. Mr. Khataei in his Affidavit estimates the value of the installations at about 10 million Rials, approximately $133,000. In another Affidavit, Mr. M. M. Ansari, the then Director General of the PSO Bandar Abbas Department estimates the value of the installations as being between 10 and 12 million Rials, approximately $133,000 to $175,000.

PSO has asserted four counterclaims, three of them raised in the Statement of Defence filed on 30 March 1982 and the fourth contained in an amended Statement of Counterclaim filed on 30 August 1982. They can be summarised as follows:

1. 1,600,230,000 Rials for estimated lost revenues for unloading, porterage and storage charges that PSO would have earned had Sea-Land continued to operate at Bandar Abbas and not left the facility unused after 20 February 1979;

2. 27,931,000 Rials for porterage and storage charges in respect of 19 empty containers left behind by Sea-Land at Bandar Abbas;

3. 5,105,263 Rials in port charges incurred by a transportation company called “Sealand” at the port of Khorramshahr, evidenced by twelve invoices;

4. 6,842,572 Rials in insurance premiums owed to the Tehran and Bandar Abbas branches of the Iranian Social Security Organization in respect of Sea-Land's employees.

Sea-Land argues for the dismissal of all four counterclaims on the grounds that none of them arises out of the “same contract, transaction or occurrence that constitutes the subject matter” of Sea-Land’s claim, as required by Article II paragraph 1 of the Claims Settlement Declaration. Sea-Land further contends that counterclaims 1 and 2 arise out of PSO’s own actions in forcing Sea-Land to abandon its facility. As to counterclaim 1, nowhere did Sea-Land guarantee PSO any volume of traffic or any revenue from port charges. Moreover, Sea-Land contends that the nature of its use of the facility meant that it performed its own stevedoring, porterage and storage services, and that PSO never received payment from Sea-Land for any such services. In relation to counterclaim 3, Sea-Land claims never to have received the invoices, which in any event refer to an unrelated company using a different port which Sea-Land vessels never visited. As to the social security premiums, Sea-Land contends that all due payments were made to the Iranian Ministry of Finance on a monthly basis and that nothing further is owned.

The Hearing took place before the Tribunal on 18 and 19 April 1983 at which argument and evidence were presented by both Parties to supplement the written pleadings and evidence already before the Tribunal. Both Parties subsequently filed further material.

II. REASONS FOR AWARD

A. The Legal Theories

[...]
v) The prohibition of unjust enrichment

A further alternative argument advanced by Sea-Land is that PSO or the Government was unjustly enriched at the expense of Sea-Land, and that Sea-Land should be compensated accordingly.

The concept of unjust enrichment had its origins in Roman Law, where it emerged as an equitable device "to cover those cases in which a general action for damages was not available". It is codified or judicially recognised in the great majority of the municipal legal systems of the world, and is widely accepted as having been assimilated into the catalogue of general principles of law available to be applied by international tribunals.

The rule against unjust enrichment is inherently flexible as its underlying rationale is "to re-establish a balance between two individuals, one of whom has enriched himself, with no cause, at the other's expense". Its equitable foundation "makes it necessary to take into account all the circumstances of each specific situation". It involves a duty to compensate, which is entirely reconcilable with the absence of any inherent unlawfulness of the acts in question. Thus the principle finds an obvious field of application in cases where a foreign investor has sustained a loss whereby another party has been enriched, but which does not arise out of an internationally unlawful act which would found a claim for damages.

There are several instances of recourse to the principle of unjust enrichment before international tribunals. There must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched.

In the Landreau claim, the Arbitral Commission set up between the U.S.A. and Peru held that the Peruvian Government was bound to account to the Claimant an a quantum meruit basis for guano deposits worked by the Government as the result of discoveries he had communicated to it, even though the pre-existing contract was held to have been repudiated.

B. The enrichment

Opinions differ as to the basis of computation of damages. The predominant view seems to be that damages should be assessed to reflect the extent by which the state has been enriched. Judge Jiménez de Aréchaga considers that where the "enriched" state has obtained no benefit, no compensation should be payable at all.

Equity clearly requires that cognisance be taken of the de facto situation, and this explains why there is no discernible uniformity in the practice of international tribunals in this respect. Important factual circumstances to be taken into account are the level of Investment; the period during which the foreign investor has been able to make a profit; and the benefit actually derived by the host country from its acquisition.

It must not be overlooked that PSO had a long-term interest in the project: at the end of the six-year term of the Facility Agreement, on 28 November 1982, the facility, developed and improved by Sea-Land at its own expense, was to revert to PSO. Sea-Land stated at the Hearing that it was only on the understanding that a satisfactory level of profitability could be achieved, with PSO's co-operation, in those six years that Sea-Land was prepared to invest some three million dollars in setting up the container terminal. The efficiency and success with which Sea-Land and PSO operated it for some eighteen months is evident from the figures laid before the Tribunal in the Affidavit of Mr. Bos. Sea-Land was thereafter able to continue its operations at a reduced level until August 1979. Thus from the beginning of August 1979 the container terminal was, in effect, at PSO's disposal - three years and four months before Sea-Land anticipated that the facility would revert to PSO.

i) The use of the facility

Sea-Land expresses its claim for damages in terms of restitutio in integrum. Sea-Land calculates that it would have
achieved an average $6.4 million annual net revenue for the period until 31 December 1982. It seeks to recover, *inter alia*, future net revenues, representing the profit it could reasonably have been expected to make from its operation of the container facility had it continued in possession for the intended duration of the Facility Agreement.

Compensation for unjust enrichment cannot encompass damages for loss of future profits. The Tribunal must aim instead to place a monetary value on the extent to which PSO was enriched by its premature acquisition of the facility.

Sea-Land has adduced extensive evidence in the form of Facility Improvement Records supported by the Affidavit of Mr. A. Scotti, who testified at the Hearing, that the sum of $2,878,807.00 was spent on preparing and improving the Bandar Abbas facility (this figure takes no account of the additional $159,679.00 attributable to the Tehran terminal and maintenance garage).

The Respondents dispute the amounts asserted by the Claimant for future net revenues and for the construction of the facility. Mr. Khataei and Mr. Ansari in their Affidavits have estimated the value of the installations to 10 million Rials and 10-12 million Rials, respectively.

The Tribunal must establish whether PSO did in fact avail itself of the facility after Sea-Land's departure. PSO in its Statement of Defence denies having used the installations and facilities at the terminal but there is some evidence that it did make use of them.

There is a statement by PSO that it terminated the Facility Agreement with ILB on 21 November 1981 "due to nonfulfillment of obligations on the part of ILB Co."

In this connection it is perhaps also instructive to refer to PSO's own estimation of the revenue it could have expected to achieve from February 1979 to November 1980, when the facility allegedly was lying idle except for Sea-Land's greatly reduced throughput. On 16 November 1981, reporting to its Legal Department, PSO states:

But the said land remained unused from Feb. 1979 (1.12.57) through Nov. 1981 (Aban 59) for a period of 611 days, while it could handle about 123 thousand tons of loading and unloading, had it been used in this period. The potential revenue of the said loading and unloading operations plus storage charges (only for 50% of goods and 203 days i.e. of 611 unused days) is estimated to Rials 1,610,230,00 (Rials 3,690,000 for port services, Rials 9,840,000 for unloading, Rials 88,560,000 for porterage and Rials 1,498,140,000 for storage). As the land has not been used this revenue has not been earned.$1

It appears that the quoted reference to "Nov. 1981 " should be to November 1980. This corresponds with "a period of 611 days" running from 20 February 1979; moreover "Aban 59" corresponds with October-November 1980.

Using an exchange rate of 75 Rials to the dollar, this gives a figure of approximately $20 million for 611 days.$2 The figure of Rials 1,600,230,000 appears to be an assessment of revenues that would have been earned for this period based on the tariff of port charges appended to the Statement of Defence as Exhibit 3.

It is of course not possible for the Tribunal to ascertain how much of this figure would represent net profits. Nor is it clear on what basis these figures were compiled. They are, however, used by PSO as the basis of its own counterclaim for lost revenues.

However, the Tribunal takes these statements as suggesting that the facility was brought back into active use at least after November, 1980 - with two years left of the original period of the Facility Agreement. Thus the Tribunal considers it a reasonable conclusion on the evidence before it that after Sea-Land's departure PSO made active use of the facility, either itself or through others.

On this basis it is left to the Tribunal to assess a level of damages corresponding in equity with the extent to which PSO was enriched.

An appropriate level of compensation for PSO's actual use and benefit of the facility during the relevant period will, of
necessity, be an approximation. In view of the scanty evidence submitted in respect of such use and benefit, a fair assessment of compensation for Sea-Land would seem to be $750,000.00.

ii) Damages claimed by Sea-Land in respect of moveable property

An application of the theory of unjust enrichment requires that Sea-Land be compensated for those items and assets left in Iran of which PSO or the Government obtained the use and benefit. It does not permit the Tribunal to compensate Sea-Land for the loss of unpaid debts, freight charges, and termination expenses, none of which resulted in the enrichment of PSO or the Government.

The emergency payments claimed by Sea-Land for permission to export 401 chassis are not shown to have been improperly levied, and the claim in respect of them must be dismissed.

The items which could potentially found a claim for unjust enrichment in the Tribunals view, can be dealt with as follows:

a) The 36 chassis, 38 containers and one Ottowa tractor

Sea-Land claims $242,300 in respect of this item as representing the net book value of the rolling stock at 30 December 1979, calculated by Mr. Toben. Though there is no evidence as to the precise whereabouts of the other items, it seems clear that 19 of the containers have been stored at the site of the container facility. One of PSO's counterclaims relates to storage charges in respect of them. In view of the assertion in the counterclaim concerning the non-use of these containers, the Tribunal finds a fair solution to be to allow nothing to either the Claimant or Respondent in respect of them. The Tribunal

finds no reason to doubt the assertion that the remaining items of rolling stock were left in Iran; it is however, difficult in the absence of any evidence, to infer from this that PSO or the Government has had access to them and benefited from their use.

b) The other equipment

There is no evidence as to the whereabouts of the automobiles allegedly left behind. Given the climate of disruption that prevailed, it cannot be assumed that they remained in Bandar Abbas and came into the hands of PSO. Neither is there evidence that Sea-Land has left in Bandar Abbas the power equipment, tools and office equipment, and that PSO has taken possession of them and enriched itself. If this equipment was of value to the Claimant, it appears, the Claimant would have taken them out of the country as it did so with respect to 401 chassis and other items. Therefore, this claim is dismissed.

c) The garage inventories

Sea-Land claims $88,203.00 in respect of garage inventory items that it was allegedly forced to leave behind in Iran. But it has provided no evidence as to the whereabouts of the items when it left the country or that PSO took possession of them and enriched itself. When comparing the items the Claimant brought to Bandar Abbas on commencement of its operation with the list of those it took out of Iran on termination, it may well indicate that the items the Claimant allegedly left in Bandar Abbas were to be considered as res derelicta. Therefore this claim is also dismissed.

[...]
2 Jiménez de Aréchaga, loc. cit.
3 U.N.R.I.A.A. Vol. 1, 1922, p. 347. Here, it should be noted, the *compromis d'arbitrage* required that the arbitrators determine, "what sum if any is equitably due . . . ". An example of a rather different kind is the case of *The Edna*, (Cited by Schreuer, *op cit.* at p. 290) in which the arbitrator awarded compensation to the U.S. owners of a vessel requisitioned and used by the British government in a situation where no legal basis of reparation existed.
4 Loc. cit.

1 The figure of Rials 1,610,230,00 appears to be a typographical error. The figure should read "1,600,230,000".
2 Rial amounts have been converted to dollars for illustrative purposes. A conversion rate of 75 Rials to the Dollar has been used as being within the range of rates prevailing during the relevant period.

**Referring Principles:**

- IX.1 - Basic rule