SAUDI ARABIA v. ARABIAN AMERICAN OIL COMPANY (ARAMCO).

THE FACTS.-

This was an arbitration relating to the Interpretation of a concession agreement made an May 29, 1933, between the Government of the State of Saudi Arabia and the Standard Oil Company of California. The agreement was subsequently assigned to the California Arabian Standard Oil Company, which later changed its name to the Arabian American Oil Company (for convenience called "Aramco "). On January 2o, 1954 the Government of Saudi Arabia concluded an agreement with Mr. A. S. Onassis and his company, Saudi Arabian Maritime Tankers Ltd. (for convenience called " Satco "), by Articles IV and XV of which the Company was given a thirty years' " right of priority " for the transport of Saudi Arab oil. Briefly, the point at issue in the present dispute was the conflict between those provisions and the agreement with Aramco, which gave the latter the exclusive right to transport the oil which it had extracted from its concession area in Saudi Arabia.

" IV. The law.-

"C. Interpretation of the Aramco Concession Agreement.

" The central point of the dispute submitted to the Arbitration Tribunal is to determine what rights were conferred upon the Company by the Aramco Concession Agreement, since the Government contends that the exclusive right of transportation by sea was not included within the expectations of the Parties as no express Stipulation to that effect is to
be found in the Agreement. In its Final Memorial (No. 17, p. 17), the Government states that this question is of the highest importance. The question is thus, in the first place, one of Interpretation of the Concession.

"Although the Concession Agreement is connected with the Hanbali school of Moslem law, as applied in Saudi Arabia— from which it derives its validity and effectiveness—the Interpretation of this Agreement should not be based on that law alone. The Interpretation of contracts is not governed by rigid rules; it is rather an art, governed by principles of logic and common Sense, which purports to lead to an adaptation, as reasonable as possible, of the provisions of a contract to the facts of a dispute.

"The Interpretation of juridical acts is not made according to the same methods as the interpretation of Statutes and is more difficult, for it does not aim merely at specifying the meaning of general and abstract principles laid down by the legislator, but at ascertaining what was the common Intention of the Parties at the time their agreement was signed; this is done by an examination of the terms they used and also of their conduct which in Business practices equivalent to a manifestation of will, and even sometimes of their silence. It should also be kept in mind that declarations of will seldom specify completely what legal effects the agreement is supposed to have. They are left for the Judge to discover; he must determine the exact scope of the contractual Situation of the Parties. Experience shows that, in Business, the exhaustive character of the provisions of a contract is always sacrificed to the practical and immediate necessities contemplated by the Parties.

"Most modern Codes contain very succinct rules on the Interpretation of contracts. Problems of Interpretation are solved mainly by using methods, evolved by doctrinal writings, which are the Same in all the legal Systems of the world.

"The opinions submitted by both Parties are in agreement on this point. In its Final Memorial (No. 20, p. i9) the Government admits that Moslem principles of Interpretation are the Same as those which are recognized in other laws and in international law. The same view is held by Aramco (Memorial, Nos. zi3-y, pp. 58-59). It is true that the Government (Memorial, Appendix I, No. i3, p. 6 and No. 27, pp. zq-z5) points out that, in the Hanbali school of Moslem law, methods of Interpretation are more simplified. One of the fundamental principles followed by doctors of Moslem law provides that generic terms must be interpreted extensively and that they must be given the general purport implied in their generality, unless they are restricted by a special qualification limiting their scope and calling for restrictive interpretation. But this principle of interpretation is not absolute. It is dominated, just as in other legal Systems, by the principle that, while looking for the common Intention of the Parties, the declared Intention should prevail, and that the meaning of the contract is to be found in the context of the agreement, including a consideration of all the terms used by the Parties for they constitute a whole. Methods of Interpretation of juridical acts have no absolute character. Those methods which must be used vary from case to case according to the circumstances of each dispute. The Interpreter must be guided by the principle of good faith. He must remember that the Parties intended by their agreements to establish a reasonable contractual Situation, in conformity with the common aim they had in view.

"The starting point of any process of Interpretation is the text agreed upon by the Parties. Obviously, the essence of a contract is to be found in the concordant will of the Parties; without such harmony in the terms, no rights, no obligations could result. In the art of Interpretation of texts, the written word comes first. It must be consulted and accepted in the first place, and the words used by the Parties must be given their natural meaning. As was pointed out by Vattel, ‘when an act is conceived in clear and precise terms, when its meaning is manifest and does not lead to any absurd result, there is no reason to reject the natural meaning of the text. To look elsewhere for conjectures in order to restrict or to extend this meaning, is tantamount to evading it.’ (The Law of Nations, Book I, chap. XVII, Paragraph 263.) Numerous applications of this principle are to be found in the decisions of international tribunals. In its Advisory Opinion of August 12th, 1922, concerning the interpretation of Part XIII of the Treaty of Versailles (Competence of the International Labour Organization and International Regulation of Agricultural Labour Conditions), the Permanent Court of International justice stated:

"'The question in every case must resolve itself into what the terms of the Treaty actually mean.’ (P.C.I.J., Series B, Nos. 2 and 3, p. 23.) In its Advisory Opinion of September 15th, 1923, an the Interpretation of Article 4 of the Polish Minorities Treaty of 28 June, 1919 (Acquisition of Polish Nationality case), the same Court said:
"The Courts task is clearly defined. Having before it a clause which leaves little to be desired in the nature of cleanness, it is bound to apply this clause as it stands, without considering whether other provisions might with advantage have been added to or substituted for it." (P.C.I.J., Series B, No. 7, p. 20.)

The Government did not fail to question the exactitude of this maxim, pointing out that it rests upon a petitio principii since, before deciding that no Interpretation should be made, one must first demonstrate that no Interpretation is necessary. Such criticism is obviously baseless whenever one of the Parties, confronted with a clear text, alleges that it is ambiguous simply because it is embarrassing, and seeks to have it say what it does not. If, on the other hand, each Party is convinced, in good faith, that the Interpretation suggested by the other is not exact, Vattel's maxim does no longer suffice for the solution of the dispute, and recourse must be had to all the means of Interpretation of legal acts. Such is particularly the case when the contracting Parties did not contemplate, at the time of concluding the agreement, some question which arose at a later date.

In the dispute under consideration, the Tribunal has pleasure in noting that the good faith of both Parties is unquestioned; this results from the 6th ' Whereas ' clause of the Preamble of the Arbitration Agreement, where the Parties recognize the full validity of the 1933 Concession Agreement, and from the oral hearings where it was repeatedly stated an behalf of the Government that H.M. the King mainly expected this Tribunal to give such directions as were necessary for His Government to act rightly and justly. The apparent or supposed clearness of the provisions of the Concession Agreement is therefore no reason to refrain from resorting to legal interpretation in order to ascertain the exact meaning of the true scope of the terms used by the Parties.

Such interpretation becomes especially needed when as is the case here, the Tribunal is confronted with a contract written in two languages, Arabic and English, and when the Parties have not provided in a complete manner that one text only shall be authoritative.

"Article 1 of the Concession Agreement of 1933 reads as follows:

"The Government hereby grants to the Company an the terms and conditions hereinafter mentioned, and with respect to the area defined below, the exclusive right, for a period of sixty years from the effective date hereof to explore, prospect, drill for, extract, treat, manufacture, transport, deal with carry away and export Petroleum asphalt, naphtha natural greases, ozokerite and other hydrocarbons and the derivatives of all such products. It is understood, however, that such right does not include the exclusive right to sell crude or refined products within the area described below or within Saudi Arabia." (Emphasis added.)

The word 'exclusive' is rendered in the Arabic text by the term 'mutlaq', which means 'absolute', according to both Parties. These: two expressions are not entirely synonymous in legal science.

Exclusive rights are rights which belong only to their holder, so that they purport to exclude the competition of other persons. When the grantor gives an exclusive right to a concessionaire, he undertakes a (negative) Obligation not to do [something], namely an Obligation not to exercise himself, directly or indirectly, the right he had granted. In the case of a State, this Obligation consists in not allowing any other Person to exercise the Same right in the same manner and during the Same period. Aramco's exclusive right has thus the character of a limited monopoly, granted to a private Company, for a fixed period of time, which respect to specified products and a definite area.

Absolute rights are rights which the holder can oppose to all other persons, in contradistinction to relative rights, which are related to the obligations of specified persons only. The term 'mutlaq' in Moslem law means, just as in European legal systems, an absolute right in contrast with a 'relative' right, as a relation between creditor and debtor. The absolute right imposes upon all persons a (negative) Obligation to abstain; everybody has the duty not to disturb the holder of an absolute right in the legitimate exercise of his right.

When reference is made to these notions of exclusive right and of absolute right (mutlaq) granted to the Company, the two texts must be recognized as equivalent. If a Government confers exclusive rights upon a Corporation, it undertakes not to permit others to exercise these rights, a fact which turns them into absolute rights as regards third persons. The
rights granted in this way to the concessionaires correspond, in the Tribunals opinion, to the guarantees necessary to the Company so that it should not incur the risk of being partially deprived of the fruits of its labour, efforts and large capital investments by the competition of other persons, or even of the State itself. The two texts may be reconciled by this Interpretation. This controversy about the meaning of the words 'exclusive' and 'mutlaq', it may be added, is of no consequence for the solution of the dispute, since what is in issue is the content of the 'exclusive' or 'mutlaq' right granted to the Company.

"The exclusive right granted to the Company by Article 1 of the Concession is a global right, which contains several particular rights indicated by the Parties in an order following roughly the ordinary steps of oil production and sale, from its extraction in Saudi Arabia to its exportation, marketing and sale abroad. Aramco's exclusive right covers all those granted rights, which constitute a whole.

"The Government contests this point of view. While admitting that the Company has the right to engage in all the operations mentioned in Article 1, the Government excludes therefrom transportation by sea because there is no proof, in its opinion, that it ever intended to make such a grant, which would entail a sacrifice of its sovereign rights. The Government maintains that the Company has never claimed, before the present dispute arose, an exclusive right of transport by sea and that in fact it never engaged in this kind of transport, for it neither owns nor charters any tankers and has nearly always left it to its buyers to transport the oil it produces and sells. In the Government's view, the Concession Agreement purports to authorize the Company to explore areas supposed to contain oil deposits, and, in case of discovery, to extract and produce the oil, but not to transport it by sea.

"Aramco's exclusive right, when viewed as a whole, corresponds to the integral activity of a company operating an oil concession, and this activity may be divided, under Article 1, into the following four stages. The Company has the exclusive right:

- first, to search for petroleum; this is expressed by the words explore and prospect;
- second, to extract oil; this is rendered by the words: drill for and extract;
- third, to refine petroleum and produce its derivatives; this is expressed by the words: treat and manufacture;
- fourth and last, to transport petroleum, to sell it abroad and to dispose of it commercially; these activities are described by the words: transport, deal with, carry away and export.

"This exclusive right is granted to the Company in respect of a very wide area of Saudi Arabia which is defined in Article 2 of the Principal Agreement, Article 5 of the Supplemental Agreement, and paragraph 4. of the Offshore Agreement. The extent of this Concession is not at issue between the Parties. It is especially provided in Article , last sentence, of the 1933 Agreement, that the Company's right does not include the exclusive right to sell crude or refined products within the Concession area or outside this area within Saudi Arabia.

"This description of the Company's exclusive right would be incomplete without a reference to Article 22, which provides that, as a natural consequence of such right:

' It is understood, of course, that the Company has the right to use all means and facilities it may deem necessary or advisable in order to exercise the rights granted under this contract so as to carry out the purpose of this enterprise, including, among other things the right . . .

Then follows a lengthy enumeration of the actions which the Company is entitled to take, with the sole exclusion of the use of aeroplanes within the country. This list is neither exhaustive nor limitative; it mentions mere examples, as shown by the words 'among other things'. It follows that the Company has the exclusive right to carry on all activities, in all forms, which relate to the oil industry with respect to the Concession area.
"The Government does not dispute Aramco's exclusive right with regard to the first three categories of activities mentioned above. It contends, however, that the exclusive right to transport oil and its products by sea is not included therein, and that Aramco is not entitled to arrange, by agreement with its buyers, the modalities of maritime transport of oil without due regard to the legislation of Saudi Arabia, even if such legislation were enacted after the conclusion of Aramco's Concession Agreement.

"The Government relies on the fact that Article 1 of the Principal Agreement does not expressly mention the right to ship as being included in the Concessionaire's exclusive right and that, consequently, such right is not one of the rights granted in the Concession. Under the Concession, Aramco is said to have a right to transport only within the limits fixed for the exercise of its exclusive right. This viewpoint is clearly set forth in the letter of the Minister of Finance of Saudi Arabia of 10 July 1954, corresponding to 9 Zul Quada 1373, where the Government, while recognizing Aramco's right to export for its own account, states:

"'However, it was not the subject of the Agreement or the purpose of the enterprise that the Government of His Majesty the King grant the Company any concession or monopoly for the commercial transport, internal or external, of any of the products of the country.'

No such distinction is to be found in the Concession; the silence of the Parties on this point was intentional and it is significant, for sales abroad are, and always have been, of decisive importance for Aramco. No distinction was ever made between the so-called commercial and non-commercial transport. Moreover, no dispute has ever arisen between the Government and Aramco with regard to transportation by land, internal or external, of oil and its products. This is shown by the regular functioning of pipe-line transport across the territories of Saudi Arabia and of several other States to Sidon. The dispute is strictly confined to the right of transportation by sea and, during the arbitral proceedings, no other means of transport, commercial or non-commercial, was discussed.

"Relying upon the order of the verbs which, in Article 1 of the Concession, successively describe the various phases of oil development, the Government endeavours to ascribe to each operation a limited territorial domain in order to demonstrate that none of these operations can relate to the high seas and that, therefore, maritime transport cannot be included in the concessionaire's exclusive right.

"According to this argument, petroleum must, after extraction, be treated, that is to say, be submitted to a process of elimination of natural gas, sulphur, water and other foreign substances which it contains. This operation must be effected at the spot. The same is true of the process expressed by the term 'manufacture', which is said to consist in obtaining crude oil—a fact which explains, in the Government's opinion, that the two verbs 'to treat' and 'to manufacture' precede the verb 'to transport' in Article 1. The term 'to transport' thus concerns only, it is alleged, transport from the site of extraction, either to the Port of loading or to the Ras Tanura refinery, where oil products, asphalt, naphtha, ozokerite and other hydrocarbons and their derivatives are manufactured; it would follow that the word 'transport' cannot mean external transport, outside the limits of Saudi Arabia, and can only signify internal transport, from the oil wells to a point of arrival also situated in Saudi Arabia. The term 'deal with', which follows the word 'transport', is said to mean, in the technical sequence of operations, to submit manufactured products to further processing at the buyers' special request, or to other material operations, and to manipulations consisting, for instance, in putting the oil into barrels so that these products may be disposed of and carried away. All these operations must necessarily take place in Saudi Arabia. When all of them have been carried out, petroleum and its various products must be removed from the place in which they have been obtained and taken to the place of final departure, from which they will then be exported abroad. The place occupied by the verb 'to transport' in Article 1, before the verb 'to export', so the argument runs, excludes the possibility of its meaning 'to transport to foreign countries'; inasmuch as it is mentioned, as the contrary, before the reference to the operations described by the verb 'to deal with', it concerns only transportation within the Concession area, before exportation. As for the exclusive right to export, it has no other meaning, it is further contended, than that of the grant to Aramco of an export licence for its oil and its products.

"The Arbitration Tribunal feels unable to adopt such an argumentation without straining the meaning of the texts in a strange manner and overlooking the respective positions of the Parties at the time the contract was signed. It is true that the sequence of the verbs in Article I follows the general order of the operations.
of an oil company. But it is certain that the Parties cannot have intended to ascribe to each of the verbs they used a specific territorial meaning. This would have been contrary both to common sense and to the technical requirements of the proposed industrial operations. The production of crude oil is not a result of its 'manufacture', as was shown at some length in Aramco's Final Memorial (No. 466-477, pp. 225-228); it follows that the manufacturing process cannot be localized at the place where oil is extracted. The terms 'treat' and 'manufacture' relate to the refining of Petroleum in the Port of Ras Tanura. Moreover one of the modalities of oil development consists in sending crude oil abroad, to consuming countries, where it is refined outside Saudi Arabia; in such a case the term 'transport' necessarily implies sending oil abroad, either by land or by sea. The term 'deal with'—which will be the subject of further comment—does not refer to physical handling but to the conclusion of contracts which, in fact, are not concluded or performed solely within the Concession area, and, in law, cannot be limited territorially.

"The Tribunal holds that the terms used in Article 1 of the Concession Agreement to indicate the content of Aramco's exclusive right must be understood in their plain, ordinary and usual sense, which is the sense accepted in the oil industry. They are general terms which are not qualified in such a manner as to make it necessary to localize each of them in a particular manner.

"A certain redundancy is to be found, in accordance with a tradition which has been known for centuries in legal terminology, in the verbs which describe the various phases of the Operation of an oil Concession. The terms are interrelated in such a way as to make it impossible sometimes to separate them by a logical process. The verbs 'to treat' and 'to manufacture' are complementary and cover the same operations. The same is true of the verbs 'to transport', 'to deal with', 'to carry away' and 'to export'. These expressions, which are linked economically, partly cover the same ideal and are intended to be complementary to each other—they are used by jurists in order to give the greatest possible width to the wording they finally adopt.

"When the Position of the Parties at the date the contract was signed is borne in mind, it can hardly be doubted that Aramco was granted rights to a complete and integral operation. The interest of both Parties and the success of the enterprise contemplated by them depended on it.

"A Government desirous to exploit the possible resources of its subsoil as yet unexplored was in contact with an experienced Corporation, prepared to run the enormous risks of an enterprise whose result could not be foretold. Both were conscious of the fact that success depended, not only upon the discovery of oil deposits, but also and chiefly upon the sale of oil and its products to foreign countries, since demand for oil in Saudi Arabia was negligible. They were aware of the necessity, to this end, of giving the concessionaire freedom to arrange transportation abroad according to methods which had already been put to the test, without Government interference. Their expectations and their activities proved fruitful; and they led to the outstanding results described above in the Facts.

"These remarkable results are due to the company's exclusive right, namely, a right—which excluded all competition—to transport, deal with, carry away and export petroleum and its products.

"1. The exclusive right to 'transport' means, as is shown by its Latin etymology, to carry beyond, persons or things, i.e., from one place to another—whatever the distance between them. It does not imply any special means of transportation. Consequently, it can apply to land, water or sea transport. It does not necessitate, either, the use of particular methods of transportation and, in connection with the oil business, the methods adopted by the oil industry cannot be ignored.

"According to a principle generally followed in the interpretation of concessions, any restriction an the rights granted by a general clause must be expressed in a clear and unequivocal manner if it is to be invoked against the concessionaire. This was done in Article 22, in the last sentence of its first paragraph, in order to exclude transportation by air and to reserve to a separate agreement the use of aeroplanes within the country. Consequently, sea transport is not excluded by the mere absence in Article 1 of the expression 'maritime' or of some similar term. Likewise the terms 'by land' or 'across the territorial waters' are not found in the text and yet these kinds of transportation are not disputed by the Government.

"The exclusive character of the right of transportation is not limited to the Concession area defined by Article 2 of the 1933 Concession Agreement, by Article 5 of the 1939 Supplemental Agreement, and by the 1948 Offshore Agreement. Article 1 of the Aramco Concession Agreement expressly grants to the concessionaire an exclusive right 'with respect to
the area' defined in Article 2, and not only 'within' the limits of Saudi Arabia. The terms used correspond completely to the intention of the Parties, for it would have been illogical to confer upon the Company the right to transport and to export within the Concession area. It is impossible to admit that the Parties have disregarded the principle of non-contradiction to such an extent; to assume this would amount to straining the sense of terms so adequate to the situation which the Parties meant to regulate. In the opinion of the Government itself, this situation was to imply the free flow of oil to foreign markets where large amounts were in demand. It is in the nature of this exclusive right to transport that its exercise, begun in the

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exclusive area, should be carried an outside this area, for it cannot be bound by geographical limits. This is manifest in the case of the transportation of oil by pipeline. Having begun within the Concession area in Saudi Arabia, it is continued, necessarily, and by virtue of special arrangements made by the Trans-Arabian Pipeline Company, in other countries, namely, Jordan, Syria and Lebanon. This is true also of transport because, if it had been limited to the extent of the Concession area, it would have meant nothing more than the right to use coasting-vessels, which would be useless to Aramco.

" In addition to the territories situated in the Eastern part of Saudi Arabia, whose limits are indicated in Article 2 of the Concession, this area includes the islands and territorial waters along the coast of the Persian Gulf. Article 5 of the Supplemental Agreement of 31 May 1939, corresponding to 12 Rabie al Thani 1358, confirms that the maritime domain is included in the Concession area. That Article refers to 'all lands, islands, waters, territories and interests included in Article 2 of the Saudi Arab Concession' and to the territories known as the 'Saudi Arab-Kuwait Neutral Zone' and the 'Saudi Arab-Iraq Neutral Zone', territories in which the Government has, or will have, rights, titles and interests of a territorial or maritime nature. This Agreement contains the following words: "

'And the Saudi Arab Concession shall be and is hereby modified to include all the lands, islands, waters, territories and interests of the Government described and referred to in the foregoing provisions of this Article and henceforth the Saudi Arab Concession as modified by the Second Principal Agreement and by this Agreement shall be read accordingly. And, for convenience, all such lands, islands, waters, territories and interests may be referred to as the "exclusive area"

" The Offshore Agreement of 10 October 1948 extended even further the Concession area; it provided that all the waters of the Persian Gulf over which the Government of Saudi Arabia had, or claimed, or might later claim during the Concession period, dominion or ownership or an interest of any kind whatsoever, are included in the Concession. The last sentence of No. 4 of this Agreement reads as follows:

" 'Government agrees that Aramco's exclusive right described in Article I of the Convention of 29 May 1933... applies to the whole of the offshore area as herein defined and Government further agrees that the Exclusive Area of Aramco's Concession as described in Article 2 of the Convention of 29 May 1933 and in Article 5 (a) of the Supplemental Agreement of 31 May 1939 extends to the whole of the offshore area as herein defined.' "

Aramco's exclusive right to transport, therefore, is not purely terrestrial, but also maritime, and it extends not only to the territorial waters of Saudi Arabia but even to those waters which are

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legally included in the high seas and cover the sea-bed and submarine areas contiguous to the coasts of Saudi Arabia and subject to the jurisdiction and control of that State by virtue of the Royal Pronouncement of 28 May 1949, corresponding to I Shaaban 1368. Under this Pronouncement the boundaries of the offshore area have not been fixed. They can only be determined, in accordance with equitable principles, by agreements with the neighbouring States, whose sea-bed and subsoil adjoin the offshore area of Saudi Arabia. The Pronouncement ends by stating that the character as high seas of such areas and the right to the free and unimpeded navigation in such waters and the air space above those waters are in no way affected.

" The Government contends, however, that the exclusive right to transport oil is limited to the territorial waters and does not confer upon Aramco the right to cross the maritime frontiers of Saudi Arabia. In other words, Aramco is said to possess an exclusive right of transportation by sea within the exclusive area, but only up to the boundaries of Saudi Arab
terrestrial waters in the Persian Gulf where the high seas begin. The Government considers it inadmissible that 'the Company could transport the oil without competition up to the limits of the territorial sea and then slip across the boundary to the high sea'. According to its point of view, the right to transport within that part of the exclusive area which includes parts of the high seas does not relate to transportation to foreign countries, but only to transportation to Saudi Arab ports where oil is to be manufactured or from where it is to be exported. This is because the Concession was extended to offshore waters only for the purpose of drilling operations, extraction and production in the sea-bed included in the offshore area. The right of transportation across the boundary of the territorial waters is thus alleged to have been granted to the concessionaire in one direction only, i.e., in order to reach Saudi Arabia, and not in order to take its oil and products away from Saudi Arabia.

" The Arbitration Tribunal is unable to admit these objections. They are not supported at all by the various texts which constitute the Concession and they overlook the practical utility for Aramco to transport its crude oil extracted outside the territorial waters of Saudi Arabia directly from the site of extraction to foreign consuming countries. On the contrary, it follows expressly from the 7948 Offshore Agreement that Aramco enjoys an exclusive right to transport, not only within the territorial waters, but also across the boundary which separates these waters from the high seas. Several proofs of this conclusion can be found in the documents submitted to the Tribunal. For instance, Article 9 of the 1933 Agreement stipulates that Aramco may relinquish to the Government such portions of the exclusive area as it decides not to explore further,

while continuing to enjoy the right to use those portions for transportation. Article 7 of the 1939 Supplemental Agreement provides that, if the portions so relinquished are within the territorial waters, the Company will continue to have the right to use them for transportation; the same is true under Articles 2 and 6 of the Offshore Agreement of 10 October 1948 if the portions so relinquished are within the territorial waters or within the offshore area. The Company has thus the right to cross freely the maritime frontier of the State for its transportation and its export of oil.

" The Government has granted to the Company all the rights of exclusive transport by sea that it could grant with respect to its maritime domain, the high seas being free and not subject to its sovereignty.

" It may be added that the Government does not deny that the Concession Agreement may contain implied rights in the concessionaire's favour, if this is necessary to give the contract all its efficacy. This is mentioned several occasions in the Final Memorial of the Government, which admits that 'a term may properly be implied in favour of the Company to the effect that the Government would not itself unreasonably interfere with the Company's exclusive right to export i.e., sell to foreign buyers the oil and other products produced by Aramco or render that impracticable' (No. 39, p 42).

" In an enterprise of world-wide importance, whose success is entirely dependent on the flow of oil and oil products to foreign markets, it is impossible to imagine that the Parties would have wanted to give the concessionaire an exclusive right to transport restricted to the territorial waters while denying this right as regards transportation overseas, which is the only kind of transportation which is of real interest to the concessionaire. Saudi Arabia has granted Aramco an exclusive right to transport with respect to all that portion of its maritime domain which is included in the Concession. It would be illogical to infer, a contrario, from this that no authorization has been given with regard to transport which implies crossing the frontier and entering the free domain of the high seas. This argumentation would lead to the conclusion that nobody has the right to transport oil overseas. Third Parties could not do it since they would have to cross first that portion of the territorial sea within the Concession area where the Company has the exclusive right to transport its products; and the Company itself could not do it either, owing to the attempted prohibition by the Government concerning transportation across its maritime frontier.

" The legal construction resorted to by the Government appears therefore to be contrary to the nature of things, to the needs of commerce, to the real intention of the Parties, as well as to the very wording of the various Agreements pertaining to the Concession,

in which no trace can be found of a distinction between internal and external transport.

" 2. The exclusive right to 'deal with' has been the subject of much controversy between the Parties. According to Aramco, it means to treat commercially, to make arrangements, to engage in all sorts of commercial operations; this meaning would authorize the Company to conclude any kind of commercial agreements with its buyers and to determine in this
way the conditions of the sale, of the delivery and of the transport of its oil and oil products.

" According to the *New English Dictionary* (Oxford), the expression 'deal with' means 'to act in regard to, administer, handle, dispose in any way of a thing'; to handle effectively, to grapple with, to take successful action in regard to'; according to the *New International Dictionary* of Webster, this term means 'to handle or treat so as to dispose of or manage adequately; to do a distributing or retailing business, to traffic, to trade'; both works emphasize that the verb 'to deal' should be followed by the preposition 'with' when its complement is a person, and by 'in' when a thing is concerned—a distinction which is not rigorously observed, it may be noted, by the two Dictionaries just quoted.

" Assuming that there were a linguistic inaccuracy in the English text of Article 1 of the Concession Agreement, since the verb 'to deal with' is related to things like oil and its derivatives, and not to persons, the Arabic text should be consulted. It uses the words, in the said Article I, 'mu'amala al bitrul' which, it is true, are somewhat misleading since they may mean 'to treat'; but this ambiguity disappears when the context is taken into account. It is worth noting that the words 'mualagat wa son' precede the expression 'mu'amala'; and they mean undoubtedly treat and manufacture. It is obvious, therefore, that in the context of Article 1 of the Concession Agreement, the word 'mu'amala' can have no other meaning than 'transaction'. Otherwise the text of the Agreement would contain a superfluous repetition. Furthermore, the Agreement of the Parties about Aramco's exclusive right to sell oil confirms that the sense of the word 'mu'amala' is analogous to that ascribed by the Company to the English term 'deal with'. It may also be recalled that Article 22 of the same Agreement uses the word 'ta'amul', which necessarily connotes a transaction and thus corroborates the meaning of the word 'mu'amala' used in Article I of the Arabic text of Aramco's Concession Agreement.

" In the Tribunals opinion, the sense of the Arabic text corresponds to that which, in the business world and particularly in the oil industry, is ascribed to the verb 'deal with'—one of the most general terms to be found in the English language to indicate the powers of a person over his property. This interpretation is consistent with the powers which the Parties have agreed to confer upon Aramco so that the Company may take all measures it thinks fit to send and to sell its oil overseas at the terms it deems necessary or advisable.

" This interpretation is inescapable from a practical point of view; whether the Company has the exclusive right to conclude any kind of contracts for the delivery and the transportation of oil with persons, or whether it has only the right to handle its oil materially, the moment always comes, in the execution of these operations, when the Company has to deliver the oil. This requires some manipulations, for instance the pumping of oil into the tankers; and the Company will be bound legally to make these deliveries only as regards buyers with whom it will have concluded commercial arrangements and fixed the conditions of sale, which may contain the c.i.f. or the f.o.b. clauses used in maritime commerce. It is recognized by both Parties that the Company has the exclusive right to make such manipulations.

" 3. The concessionary Company has also, under Article 1, the exclusive right to carry away its petroleum and its products. The term is unambiguous and the Arbitration Tribunal can adopt the meaning given to it by both Parties, namely— as regards Aramco's oil and products—to take a thing (or a person) to a certain distance from the point of departure, it being understood that the point of arrival can be anywhere in Saudi Arabia or abroad.

" 4. The last exclusive right granted to the Company is the right to export, and its meaning is disputed by the Parties. Aramco, relying upon the Dictionary of Littré, contends that it means 'to transport to a foreign country products of the soil or of the national industry'; it implies the material and physical transportation of goods to other countries and it includes all the modes of execution of this transport; the exporter is in no way limited in the means of exportation which he intends to use; when he has an exclusive right, he is not bound to effect this transportation himself; he can employ any method of export which he deems advisable and, since the Concession Agreement does not restrict in any way the concessionaire's rights in this respect, the word 'to export' should be given its full and complete meaning, which corresponds to the definition given in the Saudi Arabian Customs Law and Regulations of 1951 as follows:

"'To "export" means to take or send an imported or domestic article destined for a foreign country beyond the territorial jurisdiction of the Kingdom of Saudi Arabia.' (Part 2, General Rules, p. 17, section 202, sub-paragraph (c).)

" The Government has vigorously contested this Interpretation of the Agreement. It relies an Webster's Dictionary,
according to which 'to export' means 'to carry 0r send abroad, especially to foreign countries, as merchandise or commodities in the way of commerce’, and an similar definitions given in several other English, French and Swiss dictionaries, and gives to this verb the more restrictive sense of sending goods from one country to another, without the exporter being necessarily the transporter. It concludes therefrom that Aramco's exclusive right to export amounts to nothing more, in fact, than to the right to obtain an export licence without unreasonable interference from the Government. The exclusive right to export is said to confer upon Aramco, and upon no one else, the right to sell and to send its oil and derivatives overseas, but no privilege whatever in the matter of exportation by sea - which is a distinct enterprise, as pointed out by the Minister of Finance in his letter of 10 July 1954. The Company cannot, it is alleged, invoke its exclusive right to export in order to determine by whom, and how, oil and its derivatives must be transported from Saudi Arabia to foreign countries, for this is a governmental prerogative; Aramco's only right in this connection is the right to export freely without interference. The Government insists an the fact that Aramco, moreover, has always exercised its right to export by having recourse to third Parties and has never owned or chartered itself a single tankship ; its exclusive right to export, it is argued, ends at the time when the oil has been pumped aboard a tanker.

" The Arbitration Tribunal is unable to accept the contention that the exclusive right to export, which has undeniably been granted to Aramco, could consist in a mere licence to export. It may be admitted that the term 'to export' refers, as indicated by the Government, to the sending of goods to foreign countries, and not to their physical transport by the exporter. But it cannot be overlooked that the right to export is intimately connected, in Article 1 of the Concession Agreement, with a more general exclusive right, guaranteed to the exporter, which includes the right to transport, to carry away and to deal with.

" The right to transport by land and by sea implies the right to export; the right to carry away within and from Saudi-Arabia implies it also; the right to deal with includes the power of arranging the exportation in the manner deemed most appropriate by the concessionaire, to the greatest advantage and profit of both Parties. The use of the term 'to export' renders unquestionable the meaning which has been ascribed to the preceding terms. The concessionaire, to whom the exclusive right to transport and to export has been guaranteed, has obviously the right to transport by exportation. These operations may be legally distinguishable; but in the present case, they are inseparable.

" In order to appreciate the full significance of the exclusive right granted by Article 1 of the Concession Agreement, it is necessary not to overlook Article 22. However this Article has only an auxiliary character in relation to Article 1. It does not purport to confer upon Aramco other rights than those already granted in Article 1, but to grant it so far as necessary all the rights needed in order to facilitate, from a technical point of view, the Operation of the Concession. These rights are couched in the -widest terms, which merely confirm the Interpretation arrived at by a grammatical and literal analysis of Article 1. Article 22 gives a detailed, though not exhaustive, commentary of the rights possessed by the concessionaire. It provides, as a natural consequence ('of course'), that 'the Company has the right to use all means and facilities it may deem necessary or advisable in order to exercise the rights granted under this contract, so as to carry out the purposes of this enterprise, including, among other things, the right . . . to use all forms of transportation . . . of petroleum and its derivatives'. Inasmuch as, prima facie, the Arbitration Tribunal finds, by interpretation of Article 1, that the concessionary Company has the exclusive right to transport its products overseas, it must conclude therefrom that the means and facilities mentioned in Article 22 necessarily include all the means of effecting such maritime transportation. It cannot be disputed that the said Article 22 mainly refers to the technical and material means which Aramco may freely use in order to exercise its exclusive right of operating the concession. It contains a reference to the right to construct and use all means of communication, to install machinery and equipment and all necessary facilities in connection with transport operations, to construct and use reservoirs, tanks and other receptacles, wharves, piers, sea-loading lines and all other terminal and port facilities, and to use all forms of transportation of petroleum and its derivatives. These precisions would be useless if they did not presuppose the right to transport by sea. Moreover, they are cited merely as examples. They would only exclude other forms of transportation of oil and its derivatives if Article 22 contained a specific reservation to that effect, as is the case for the use of aeroplanes which is to be the subject of a separate agreement. On the contrary, the same Article 22 expressly mentions the right of the Company to 'deal with', which is rendered in the Arabic text by 'bi ta-amul', a term which was interpreted by the Government during the oral hearings as referring to the right to conclude all transactions such as purchase and sale (Verbatim Transcript, 23rd day, pp. 788-789).
"Even if the Company's rights were restricted to the transactions necessary to effect the technical and material operations required by the production, manufacture and transportation of oil, the Government's contention would not be more acceptable. The Government has admitted on several occasions during the written proceedings that a commercial contract may be implicitly supplemented and that a term may properly be implied if it is necessary in order to give the contract business efficacy. Under the Concession Agreement, it has undertaken a (negative) Obligation to refrain from doing anything which would have the effect of interfering with Aramco's exportation of oil and oil products; it follows that, even if Article 22 were passed over, the exclusive right granted by Article 1 necessarily implies the right for the concessionaire to conclude all the commercial arrangements needed for export, and in particular the arrangements which are customary in the international oil business, such as f.o.b. sales. The Arbitration Tribunal cannot overlook the practices and usages of commerce, known by both Parties at the time the Agreement was signed, unless it be prepared to content itself with abstract reasoning and to lose sight of reality and of the requirements of the oil industry.

"The Arbitration Tribunal has been unable to discover in the text of the Concession Agreement any element which could justify its refusal to recognize Aramco's exclusive right to transport by sea.

"Before making a final decision on this point, the Tribunal feels it to be its duty to examine also the other means of interpretation which lead the Government to defend the opposite solution. The Government relies mainly upon interpretation by circumstantial evidence, upon the principle of effectiveness (of the full effect of the essential purpose), i.e., upon a teleological interpretation of the contract, and upon restrictive interpretation. It also bases its argument on the rule contra proferentem and an interpretation in favorem debitoris.

"If the natural sense of the terms used by the Parties and the sense which is ordinarily given to them in the oil industry, as well as their explanation by the context of the Agreements, were to lead to an impossible, or absurd, or illicit, result, the Tribunal would be bound to look for another interpretation.

"In connection with transportation by sea, the Government notes that it has negotiated with an oil company and not with a maritime transport company. It notes, further, that, as Aramco never owned a fleet of tankships, the Government cannot have intended to grant to that Company an exclusive right which the latter was unable to exercise itself. However, the Arbitration Tribunal is bound to observe that, as soon as oil in commercial quantities was discovered, the question of its transport by sea by Aramco imperatively arose. Consequently, this question had necessarily to be taken into account when the 1933 Concession Agreement was concluded. At that time Saudi Arabia did not possess any tankships and no tankers company existed in the Persian Gulf which could be entrusted by Aramco with the task of transporting petroleum, if discovered. The responsibility of maritime transport could only be Aramco's. To this end, Aramco first acquired or chartered a few vessels, barges and tugs in order to transport its productions to Bahrein across the high seas. When production increased, it chartered the tankship 'Scofield', owned by Socal, to carry its first cargo of oil to foreign markets. The departure of this tanker was the occasion of an impressive celebration in the presence of H.M. the King. This fact emphasizes the importance, in the Government's view, of establishing connections with overseas markets. Later on, in 1945, the 'Arabian-Bahrein Pipeline' was completed and made it possible to transport the oil across the high seas to Bahrein Island; still later, in 1950, the 'Trans-Arabian Pipeline' was put into operation. It made possible the transportation of more than 300,000 barrels of oil daily to the Mediterranean Sea and from thence to various destinations. Finally, since 1947, the Company organized this maritime transport by the legal means of the Offtake Agreements. All this development, which took place in order to facilitate connections with the rest of the world, obviously has its starting-point in circumstances which since the very beginning, exercised a commanding influence upon the Parties and led them to grant to the concessionaire a right of maritime transport. Since, in the Tribunal's opinion, the Parties have recognized from the start that this right to transport granted to Aramco was vital for the success of the enterprise, the fact that the Company is not a maritime transport company is irrelevant.

"Teleological interpretation is based upon a consideration of the common and reasonable purpose of the contract at the time of signing, and not of the particular purpose envisaged separately by each Party. The common aim of all the Parties to the contract must be ascertained in order to determine the true meaning of the expressions which they have used. The resulting interpretation will neither be necessarily liberal nor strict; it shall be that interpretation which results from the..."
actual purpose contemplated by the Parties ever since the beginning of their contractual relationship.

"Considered as a whole, Aramco's Concession is undoubtedly an agreement whose purpose is the production of oil in Saudi Arabia and its sale in all the markets of the world. Both Parties are in agreement on this point. The Government aimed at developing the natural resources of the country to the greatest benefit of the national community. The Company, on its side, made large advances and investments in order to be able to produce and sell enough petroleum to meet its obligations as concessionaire, to cover its costs, to pay the royalties due to the Government and to earn a profit from its efforts and activities. The common aim was thus, ever since the conclusion of the contract, to obtain the greatest reward possible from the operation of the enterprise and, to this end, to give to the concessionaire the complete direction of the enterprise so that it could engage in all the operations deemed by it advisable or necessary for this common purpose.

"Among these operations, the export, the transport and the sale in foreign countries of the oil and its derivatives are essential because the demand for oil in Saudi Arabia is far too small to enable an enterprise of Aramco's magnitude to meet its costs and earn profits, as the country is not industrialized. One of the main and common purposes of the Concession was thus to establish a permanent and more and more regular connection between producing and consuming areas. To attain this purpose, Aramco had to be given a wide discretion in organizing the sale of its oil and in adopting any means of transportation and exportation which it thought advisable and which had long been adopted in practice by the international oil industry. These means consist, at the present time, in the conclusion of contracts of sale f.o.b. with buyers who must themselves supply the tankships used to carry away the oil delivered to them, at Ras Tanura or at Sidon, by pumping aboard the tankships. Aramco alone has the right to order and to organize these operations-a fact which is recognized on both sides.

"It seems certain that no agreement between the Parties would have been reached, if the concessionary Company had not been able to obtain the guarantee of an exclusive right of transportation by sea and of exportation of its oil and products with freedom to exercise its right at its discretion. This exclusive right does not amount to a general monopoly; the Company has a monopoly only in so far as petroleum and its derivatives, produced in the Concession area, are concerned. The Company has never claimed a total monopoly of oil exportation, and its monopoly in Saudi Arabia was restricted from the day when concessions were granted to other companies outside its exclusive area. The Company is entitled to exercise its exclusive right to transport in any manner it thinks fit, for there is no imperative provision in the Concession in this respect. It can do this either physically by means of tankships owned or chartered by Aramco itself, or legally, in accordance with the international usages of the oil business, by means of contracts with buyers who take care of the transport and whose legal position will be further commented upon below.

"The teleological interpretation, i.e., by analysis of the purpose of the contract, fully corroborates, therefore, the Interpretation already arrived at of Articles I and 22 of the 1933 Concession Agreement.

"The Government has laid much stress upon the principle of restrictive interpretation when, as is the case here, a State is a party to the contract, and in particular when the contract is a concession, governed by Moslem law as applied by Saudi Arabia; under this law, a concession can only be granted by the Imam in the interest of the Islamic community, so that he is never presumed to have limited his right of sovereignty; an express and unambiguous proof is necessary, it is contended, to establish the existence of such limitation. The Government relies on a considerable number of judicial decisions of international tribunals and of international arbitral awards, as well as on decisions given by the Courts of the United States. A restrictive Interpretation would thus be called for in this case, it is alleged since the Concession Agreement does not concede expressis verbis the exclusive right of transportation by sea.

"Objecting to this argumentation, Aramco contends that the principle of restrictive interpretation is obsolete, that the judicial decisions quoted are irrelevant in the present case and, furthermore that even if the principle were to be accepted, it could only be applied when there is some insurmountable doubt about the Intention of the Parties at the time of concluding the contract. The existence of such a doubt, it is said, must be proved by the Party who invokes it. This has not been done in casu.

"The Arbitration Tribunal does not believe that the principle of restrictive interpretation should be considered as
abandoned. As soon as one of the Parties has a doubt regarding the meaning and scope of the contract, in good faith—and the Tribunal has already noted that this good faith manifestly results from the 6th ‘Whereas’ Clause of the Preamble of the Arbitration Agreement—all the rules of legal Interpretation may be resorted to. The jurist's art consists in choosing one or other of these rules, while taking into account all the particularities of a given case. The principle of restrictive Interpretation aims at discovering the true Limits of the obligations undertaken by the Parties to a contract, and at maintaining the integrity of this contract by eliminating obligations which are not necessary to the common purpose of the contracting Parties. Since it has this function, it is a necessary corrective of the principle of teleological Interpretation. However, the supreme authority of the text which was the object of the Parties' agreement must always be upheld. As was stated by the Permanent Court of International Justice in the *Wimbledon Case*: 'The Court feels obliged to stop at the point where the so-called restrictive Interpretation would be contrary to the plain terms of the article and would destroy what has clearly been granted'. *(P.C.I.J., Series A., No. 1, p. 24)*.

"The Arbitration Tribunal cannot accept the contention that, for the sole reason that a State is a Party to a contract with a private Person, the rights of the latter must be interpreted restrictively. In its opinion, the rights of the Parties must be evaluated and examined in a spirit of complete equality. This is because the rights of one Party are increased as a result of restrictive Interpretation to the extent that the rights of the other Party are restricted. This result cannot be founded only upon the quality of the subjects involved in a contractual relationship. It is only when the exact meaning of such a contract is impossible to determine that the Interpretation most favourable to the freedom of the State may be adopted. This was held, with respect to inter-State relations; by the Permanent Court of International Justice (Territorial Jurisdiction of the International Commission of the River Oder. P.C.I.J., Series A., No. 23, p. 26)*.

"In this connection, a distinction must be drawn between public service concessions and concessions for the exploitation of raw materials, of which oil and mining concessions are a particular example.

"It is understandable that many writers in administrative law, especially in France, and that judicial practice in many countries, hold the view that public service concessions must be restrictively interpreted, because they presuppose the existence of users who are deprived of the benefit of free competition by others. But as concessions for the development of natural resources, where there are no users, do not constitute an exception to the rule of free competition, a restrictive interpretation in favour of the State cannot be justified. With regard to oil concessions, particularly in Saudi Arabia—where the principle of free competition does not have to be upheld in this instance—restrictive Interpretation has no longer any foundation. The Parties, the State an the one hand and the Company an the other, have concluded a 'commutative' contract, which involves reciprocal rights and obligations, without any effect an users who are entirely lacking. When the contract was signed in 1933, there was no ship flying the Saudi Arabian flag. No general interest of the State was endangered by the grant to Aramco of the exclusive right which has been analyzed above. The same is true today, for the grant of a priority right to ships flying the national flag cannot be justified an the grounds of interests of a general nature, pertaining to the sovereignty of the State, but only by the satisfaction of the particular interests of Mr. Onassis and of his companies. Even if Articles 1 and 22 of the Concession give rise to doubt, no restrictive interpretation of Aramco's exclusive rights would be warranted.

"The majority of the many judicial precedents which have been quoted by the Government in support of the opposite view are irrelevant, for they concern the Interpretation of rules of public international law or of inter-State treaties, and not of a concession between a State and a private corporation. In the Law of Nations, the Problem assumes a different character, for any limitation of the sovereignty of one State in favour of another entails an extension of the latter's sovereignty. This cannot follow in the relations between a State and private individuals.

"Among the few examples of the latter Situation, the Parties have emphasized, and invoked in turn, the cases of *Radio Corporation of America v. China* and of *Radio Corporation of America v. Czechoslovakia*, both of which were decided by arbitral awards. Both cases gave rise to similar Problems, which bear some analogy with those which arise in the present
case, since both involved also a conceding State which had granted to a second concessionaire rights held by the first concessionaire to be incompatible with its own rights. The same triangular situation is found there as in Aramco's Case, namely, a Government, a foreign concessionaire and a competitor who was also a foreign concessionaire.

"In the case Radio Corporation of America v. China, the Chinese Government had granted to the Corporation a concession for the establishment of a direct radio-telegraphic circuit between China and the United States. Later, it granted to another Corporation a concession for the establishment of a similar circuit, which the first concessionaire considered as an infringement of its rights. The Board of Arbitration called upon to examine the dispute decided that the second concession did not constitute a violation of the first, because that first concession did not expressly confer any exclusive rights on the concessionaire. The award, rendered on 23 April 1935, is in fact not founded on a restrictive interpretation of the concession and of the obligations, undertaken by a State, which affect the public interest, but on the absence of any exclusive rights in favour of the first concessionaire. The Board of Arbitration merely raised the question whether, in spite of the absence of any contractual provision granting exclusive rights, such rights could nevertheless be implied, and it answered this question in the negative.

"But in the dispute between the same Radio Corporation of America and Czechoslovakia, where the facts were analogous, another Board of Arbitration held, in the opposite sense, that Czechoslovakia had not the right to establish a second direct radio-telegraphic service between that State and the United States by granting a second concession to a rival Corporation. The differences between the two cases lies in the fact that, in its agreement with Czechoslovakia, the first American Corporation had taken the precaution of securing an exclusive right to transmit messages between the two States. Notwithstanding the fact that a State was a Party to it, the contract was not interpreted restrictively in the State's favour, inasmuch as its text was sufficiently explicit to establish the exclusive right of the first co-contracting Corporation to transmit messages over a radio-telegraphic circuit.

"The resemblance of this latter case to that of Aramco is obvious. This Company has also been granted expressly by the text of its concession an exclusive right which the State attempts to interpret restrictively, by alleging that it does not cover sea transport and that Aramco has so little need of this right that it never exercised it itself but always through third Parties. But this means of interpretation does not appear acceptable, especially when one bears in mind Aramco's vast expenditure for the construction of docks, wharves and all the technical installations needed for the loading, pumping and export of oil. Such expenditure can only be explained by reference to the exclusive right to transport, to carry away and to export which is granted to the Company by Articles 1 and 22 of the Concession, with no other restriction than that relating to transportation by air.

"In the arbitration of Abu Dhabi (a British protectorate), which also took place between a Government and a concessionary oil company, the Arbitrator, Lord Asquith of Bishopstone, did not apply the principle of restrictive interpretation.

"The Arbitration Tribunal comes therefore to the conclusion that international tribunals, in disputes bearing a fairly close resemblance to the present one, have not applied the theory that, in case of doubt, a concession should be interpreted in favour of the State. French and American decisions, which are mainly invoked by the Government, cannot be considered as having been followed by international tribunals, for various reasons: either because restrictive interpretation was only admitted in favour of the users of a public service concession, whereas Aramco's Concession concerns the development of State resources in the absence of any users, or because the Concession under consideration was directly prejudicial to the public interest, whereas Aramco's operations have greatly contributed to the economic prosperity of the nation; or because the passages quoted were mere obiter dicta and were not part of the ratio decidendi. The principle of restrictive interpretation of the contractual obligations of a Government towards a private individual is not a cardinal rule of legal interpretation. It is only one rule among many others, which may or may not influence the judge, due consideration being given to the nature of the case and particularly to the text of the contract. To resort to restrictive interpretation, it is not enough to contend that the text of a contract is ambiguous or incomplete. One must first establish the alleged ambiguities or lacunae of the written text—which is the basis of all the process of interpretation—before one can have recourse to restrictive interpretation. The Tribunal finds that the Government has failed to prove that the meaning of Articles 1 and 22 of the 1933 Concession is doubtful.

"This opinion of the Arbitration Tribunal is clearly confirmed by the teachings of Moslem law. As has been pointed out
above, this law does not distinguish between treaties, contracts of public or administrative law and contracts between private persons. Moslem judicial practice has never admitted that a contract concluded by a Government should be interpreted in its favour. The Hanbali Jurist Ibn Taimiya writes in this connection:

"If proper fulfilment of obligations and due respect for covenants are prescribed by the Lawgiver it follows that the general rule is that contracts and stipulations are valid. It would have been meaningless to give effect to contracts and recognize the legality of their objectives unless these contracts were themselves valid. Since the Lawgiver recognizes the validity of their objective, He hereby indicates that in principle contracts are valid."

"If any permitted stipulation must be performed, and if there is no difference between the contract concluded by a sovereign and other contracts, it follows that it is incorrect to interpret the contract in the State's favour in case of ambiguity.

"It may be added that a restrictive interpretation would not be unfavourable to Aramco. It is indeed undisputed that, according to Article 1 of the Concession Agreement, the Company's exclusive right to transport covers 'the area defined below', i.e., in Article 2. This portion of the State domain comprises the territorial waters of Saudi Arabia in the Persian Gulf. The Government's contention that transport can only mean internal or Inland Transport is thus without foundation. It follows inevitably that Aramco has the exclusive right to transport its oil an all the maritime domain in the Persian Gulf over which the Government exercises its sovereignty. This solution is beyond all question, in view of Article 4 of the Offshore Agreement of 10 October 1948. Consequently, even if its right to transport were to be restrictively interpreted, the Company would not be bound to tolerate that another concessionaire be granted a priority right to transport Aramco's oil and derivatives within the territorial waters of the Eastern coast of Saudi Arabia. This conclusion, incontrovertible in view of the texts, manifestly demonstrates the error contained in the argument which denies a right of transportation an the high seas to Aramco, since the latter alone has the right to reach the high seas with its oil across the territorial waters.

"The applicability of the other modes of Interpretation which have been advocated by the Government would appear to be even more doubtful than that of the preceding ones; they cannot, in the Tribunals opinion, lead to a result which is either satisfactory from a rational point of view, or useful to the Parties from an economic point of view. The Government laid much stress to begin which and

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later on emphasized somewhat less strongly the rule *verba chartarum fortius accipiuntur contra proferentem*. It maintained that it was Aramco which had applied for the Concession and which had prepared its draft. All omissions or ambiguities in the text should therefore be interpreted against the Company, since it has not been proved that the Government ever intended to surrender its rights to regulate sea transport. Such a surrender should be clearly expressed, as the exclusive right to transport, it is alleged, only concerns the exclusive area. The Tribunal feels bound to observe that no proof has been furnished to the effect that the conclusion of the contract was due to Aramco's initiative. The Company has maintained-and its Statement has not been questioned-that, after the unsuccessful experience of the gram to the Eastern and General Syndicate, a British Corporation, the Government sent an authorized agent to the United States to approach an American company and persuaded Socal to apply for a concession, after other companies had indicated lack of interest. The rule *contra proferentem* can have its full effects only in the case of so-called 'adhesion contracts', whose terms are not discussed between the Parties, or when, in inter-State relations, one Party hands to the other, for signature, a prepared text which can be modified only in Order better to ensure its application, as was the case with the Treaty of Versailles. If it appears certain that the first drafts were prepared by the concessionary Company's experts, it must not be forgotten that the Government was acquainted with the system of oil concessions.

"Protracted discussions over a period of months took place. After the interchange of ideas and the examination of drafts prepared, sometimes by one, sometimes by the other Party, these discussions led to the 1933 Agreement, which is the product of Joint effort. The theoretical basis of the rule *contra proferentem*, it may be noted in passing, is somewhat doubtful for it starts from the unverified premise that the Party who has not drafted the text of the contract is less careful and less able than the Party who drafted it. The rule itself, in any event, cannot be applied in the case of mining or oil concessions, where the elementary duty of the authorities of the State is to scrutinize thoroughly the texts prepared and where they cannot have given their consent by surprise. It follows that the rule might well be directed against them and that they might be criticized, if the agreement contains any ambiguity or lacuna, for not having exercised their functions with the care and the diligence required from agents of the State. Moreover, as the principle of interpretation *contra proferentem* is disputed, it is applied only, in international and national decisions, when all other means of interpretation have proved ineffective. In the Tribunals opinion, such is not the case here, and the principle of effectiveness, *i.e.*, by the
full effect of the essential purpose, confirms the results of the

literal and grammatical interpretation of Articles 1 and 22 of the 1933 Concession Agreement.

" Similar observations can be made about the principle of Interpretation of obligations in favour of the debtor. In the Government's opinion, this principle has only a corroborating character, although it is a fundamental principle of Moslem law as regards the Interpretation of contracts. It is based, as in Roman Law and in French law, on the idea that the obligor must always be presumed to have intended to bind himself as little as possible, or not to bind himself at all. In dubio mitius. This principle has been strongly criticized and deprecated by modern doctrine. Legal writers have underlined its weakness in the case of synallagmatic contracts where the Parties are reciprocally creditors and debtors, obligees and obligors, so that the principle of the favor debitoris would only have effect for that Party who contests the scope of its obligation and overlooks the advantages derived, or to be derived, by it from the contract. It would appear just as logical and equitable to hold that the contract should be construed in favour of the creditor, who has already fulfilled his obligations or who fulfills them regularly.

" The question could be raised, in the present dispute, whether the Government is in the position of the obligor, since it has undertaken not to interfere with the exercise by the Company of its exclusive right, or in the Position of a creditor, who claims against the concessionaire a priority right of sea transport which, in its opinion, is not included in the Concession. In the latter hypothesis, the Government would not be in a position to claim that the contract should be construed in its favour; in the former the Tribunal would be bound to take into account the fact that the Government, ever since the conclusion of the Concession Agreement, has drawn from it important financial benefits and that the Company, while fulfilling faithfully all its obligations and incurring serious risks, has continued to par large Sums which were the origin of Saudi Arabia's prosperity. According to the principle of good faith, the Government should prove that it has undertaken a more restricted (negative) obligation than that alleged by the Company. This proof has not been furnished and evidence to the contrary may be found in the manner in which the Concession Agreement has been carried out without any protest or opposition on the part the Government, for more than seventeen years.

" E. The legal nature of the Onassis Agreement.

" The Arbitration Tribunal is of the opinion that it does not have to pronounce upon the question of the validity of the Onassis Agreement, since that question has not been submitted to it. It must examine, however, whether this Agreement is in conflict with the Aramco Concession, i.e., whether the beneficiaries under this Agreement have rights which are incompatible with those of Aramco.

" The answer to this question logically depends on the validity of the Onassis Agreement. It is beyond doubt that this Agreement can only violate Aramco's rights under the Aramco Concession Agreement if it is valid under Moslem law for, if it were invalid, it could have no legal effects, and consequently, no conflict with Aramco's rights could possibly arise.

" The Arbitration Tribunal does not wish to prejudge the answer to be given to this question. The following observations will be based on the hypothesis which is the most unfavourable to Aramco, i.e., that of the validity, until further evidence, of the Onassis Agreement.
"A careful and thorough study of these two legal instruments shows that their nature is similar. Both are based upon an agreement concluded by the Minister of Finance of Saudi Arabia and later ratified by Royal Decree. This is the manner in which concessions are granted under Saudi Arabian law. The Tribunal is thus confronted with two Concessions. One was granted to Aramco by the Agreement of 29 May 1933, corresponding to 4 Safar 1352, and ratified by Royal Decree No. 1135 of 7 July 1933, corresponding to 14 Rabie al Awal 1353. The other was granted to Mr. A. S. Onassis, on his own behalf and on behalf of the companies he represents, by an instrument, also called 'Agreement', of 20 January 1954, corresponding to 15 Jamad al Awal 1373, ratified by Royal Decree No- 5737, of 9 April 1954, corresponding to 6 Shaaban 1373.

Both texts are thus agreements which were similarly ratified, and which have the character of ordinary and regular concessions under Saudi Arabian law, in which concessions, unknown to religious law, must always be approved by a Royal Decree.

It is difficult to admit that these Agreements should be characterized as laws under the legal system of Saudi Arabia. Reference may be made here to the Fundamental Instructions of the Kingdom of the Hijaz of 31 August 1926, corresponding to 21 Safar 1345 where it is provided in Article 5 that: 'All the Administration of the Kingdom of the Hijaz belongs to H.M. the King who is bound (muqayad) by the norms of the noble Shar'i'ah'; likewise, the Order concerning the Council of Ministers contains an Article 1 which provides: 'The Council of agents, "wukala", is composed of the Minister of Foreign Affairs, the Minister of Finance and the Minister of the Consultative Council". It follows from these texts that Ministers do not have in Saudi Arabia a position analogous to that which is recognized to them in most Western legal systems. They are representatives, agents of the King. This is a consequence of the form of the State, which is a theocratic monarchy. The Ministers' administrative acts must be ratified by the King, who concentrates in his person all powers of administration. This juridical position explains why concessions such as the Aramco Concession of 29 May 1933 and the Onassis Concession of 20 January 1954 as amended by the two letters of 7 April 1954, had to be ratified by Royal Decrees. These Decrees, as is shown by their wording, are but ratification or approbation decrees, each of which relates only to one specific Agreement. They do not possess the character of a general Regulation as, for instance the 'Regulation an Saudi Arabian Nationality' issued in 'Umm Al Qura' of 16 December 1948, which is an example of a true regulation of a general scope (Nallino, op cit, pp. 233-237 and 244; the texts quoted above are translated from his book; cf. also Laoust, Essai sur les doctrines sociales et politiques de Taki-D-Dia2 Ahmad B. Taimiya, Annexes, p. 625).

If an attempt were made to consider those Concessions as laws, the Aramco Concession Agreement could only be characterized as a special Law relating to the position of a particular company. However, the Government claims that Royal Decree No. 5737, ratifying the Onassis Agreement, has the nature of a general law regulating the maritime transport of oil and its derivatives (Verbatim Transcript, 36th day, French text, p. 201; official translation p. 201; cf. also Verbatim Transcript, 21st day, p. 682). Such Law could not derogate from the previous Royal Decree No. 1135, by virtue of the principle generalia specialibus non derogant, which is followed in international judicial decisions (cf. Annual Digest and Reports of Public International Law Cases, 1929-1930, pp. 400-401 and 440) The application of this general rule of law cannot be contested as regards laws which are addressed to different categories of persons. It may be added that this was recognized by the Government itself in the Agreement of 4 July 1947 relating to the Trans Arabian Pipeline, where Article XXIV stipulates that the Agreement 'shall not prejudice or derogate from any right or privileges created by any existing convention or agreement by which Government is bound'.

Nevertheless, the Arbitration Tribunal finds that the Agreements concluded by the Government with Aramco an the one hand, and which Mr. Onassis an the other, have a purely contractual nature, since this is in accordance with the legal nature of concessions in Saudi Arabian law where the King's intervention is needed merely to make the contract perfect. Furthermore, the Onassis Agreement does not lay down norms of a general and impersonal application, but it establishes an individual situation to the advantage of Mr. Onassis and the companies he represents.

This purely contractual character of the Onassis Agreement, it should be noted, has been affirmed by the Government itself which, in a Letter of 25 January 1954 to the Chairman of Aramco's Board of Directors, informed him textually that 'His Majesty's Government has concluded an agreement with Mr. Onassis and Company'. This Letter had been sent to Aramco before the Onassis Agreement was amended by Mr. Onassis' Letter of 7 April 1954, and more than two months before the ratification, by Royal Decree, of 9 April 1954, that is, at a time when this Agreement
could not possibly have the character of a Law-as the Government claimed at a later date. In order to invoke this Agreement against Aramco, the Minister of Finance and National Economy of the State was thus bound to rely on its purely contractual nature. It is also worth noting that the Letter of 5 June 1955, corresponding to 14 Shawal 2374, from the Minister of Finance to Aramco containing an authentic interpretation, called 'clarification', of the Onassis Agreement, was never ratified by Royal Decree. This fact merely confirms the contractual nature of an Instrument which may be modified or supplemented by mutual agreement of the contracting Parties.

" As regards Aramco, the Onassis Agreement is a res inter alios acta which can neither diminish nor increase its rights.

" In its capacity as first concessionaire, Aramco enjoys indeed exclusive rights which have the character of acquired or 'vested ' rights and which cannot be taken away from it by the Government by means of a contract concluded with a second concessionaire, even if that contract were equal to its own contract from a legal point of view. The principle of respect for acquired rights is one of the fundamental principles both of public international law and of the municipal law of most civilized States. It has been affirmed by a wealth of judicial decisions: Permanent Court of International Justice, judgment of May 25th, 1926, in the case of German Interests in Polish Upper Silesia (Merits) (P.C.I.J., Series A, No-7, pp. 22 and 44) ; Advisory Opinion of September 10th, 1923, concerning German Settlers in Poland (P.C.L, j., Series B, No. 6, p. 36). It was also proclaimed in the following precedents, which are very characteristic and which relate to disputes between a State and private individuals: Arbitration Tribunal of Upper Silesia, award of 6 June 1931, in the case Niederstrasser v. Poland (Schiedsgericht für Oberschlesien, vol. II, Nos. 3-4, p. 156) ; Special Arbitration Tribunal between Germany and Rumania, award Of 27 September 1938, in the case Goldenberg and Sons v. Germany (U.N.R.L.A.A., vol. II, p. 909) ; Arbitration Tribunal established by the Council of the League of Nations and presided over by Mr. Guerrero, award of .18 June 1929 in the case of the concession of the Sopron-Kőszeg-Local Railway Company, which was once a subject of the late Austro-Hungarian Monarchy (Annual Digest and Reports of Public International Law Cases, 1929-1930, Case No. 34).

" In the Hanbali school of Islamic law, respect for previously acquired private rights, and especially for contractual rights, is a principle just as fundamental as it is in the other legal Systems of civilized States.

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" This follows from the fact that valid contracts bind both Parties and must be performed, for rights resulting from agreements concluded for due consideration are absolutely secure; when one party has granted certain rights to the other contracting party, it can no longer dispose of the same rights, totally or partially, in favour of another party.

" Having considered that Aramco's exclusive right to transport by sea was proved beyond all question, the Arbitration Tribunal has no hesitancy in finding that the company is legally protected by this principle of acquired rights. It holds that Aramco is justified in resisting any infringement of the rights granted to it.

" The Government maintains, however, that the Onassis Agreement is nothing but a manifestation of the powers belonging to it to ensure preferential treatment to vessels flying its national flag and to regulate accordingly the performance of the rights and obligations of any concessionaire in Saudi Arabia. The Tribunal must now determine whether this claim is justified or not.

[...]

1 Dr. Badawi died during the proceedings and was succeeded by H. E. Mahmoud Hassan.
2 The text of the Arbitration Agreement of February 23, 1955, is set out below, at pp. 229-233.
3 Annual Digest, 1 (1919-1922), Case No. 245.
4 Annual Digest, 2 (1923-1924) Case No. 168.
5 As to which, see below, p.199
6 Annual Digest, 2 (1923-1924), Case No. 192, at p. 330.
7 Annual Digest, 5 (1929-1930), Case No. 240, at p. 382.
Referring Principles:

IV.5.1 - Intentions of the parties
IV.5.9 - Linguistic Discrepancies
IV.6.4 - No contract to detriment of third party