

## Annex II. Analytical Table of Selected Iran-US Claims Tribunal Cases

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>American International Group, Inc and American Life Insurance Company, v Islamic Republic of Iran and Central Insurance of Iran (Bimeh Markazi Iran)</i> (Case No 2) Award, 19 December 1983 Chamber Three – Mangard (Chairman), Mosk (separate concurring opinion), Moin (did not sign the award) (Award No ITL 93-2-3) (4 Iran-US CTR 96)</p>	<p>General principles of public international law. Mosk, concurring, said that the Treaty of Amity was applicable.</p>	<p>Nationalization of the insurance industry in Iran</p>	<p>Expropriation not found to be unlawful</p>	<p>Claimants' equity interests in an insurance company incorporated in Iran</p>	<p>25 June 1979, the date of proclamation of the Law of Nationalization of Insurance Corporations</p>	<p>Compensation</p>

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
Fair market value at the at the date of the nationalization	'All the elements which contribute to the company's worth, including prospective income.' Goodwill was also included.	No active market existed for the shares of the company. The Tribunal therefore assessed the value of the entity as a going concern.	Analysis of company accounts and evaluation of Iranian insurance market to determine 'the value of a company as a going concern, taking into account not only the net book value of its assets but also such elements as good will and the likely future profitability'	Compensation awarded fell between estimates of claimants' and respondent's experts. Tribunal noted that estimation of value of a company in these circumstances would, of necessity, be an approximation.	Mosk, concurring, discussed and rejected equitable considerations as a factor that might reduce compensation in this case	US\$10 million (US\$7.142 million for American International Group, Inc and US\$2.857 million for American Life Insurance Company) plus simple interest at 8.5% pa from the date of taking to the date of payment of the award. Mosk, concurring, stated that the amount of interest should have been higher.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Amoco International Finance Corporation v The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited</i> (Case No 56) <b>Partial Award</b> 14 July 1987 Chamber Three – Virally, Brower (Concurring Opinion), Ansari ('Concurring Opinion in part Dissenting Opinion in part') (Award No 310-56-3) (15 Iran-US CTR 189) <b>Award on Agreed Terms</b> 15 June 1990 (Award No 481-56-3) (25 Iran-US CTR 314)	Lawfulness of the expropriation to be decided by reference to international law. The Treaty of Amity was held to be 'applicable to the rights invoked by the claimant'. Rules of customary international law 'may be useful in order to fill in possible lacunae of the Treaty, to ascertain the meaning of undefined terms in its text or, more generally, to aid interpretation and implementation of its provisions'. In respect of a nationalization in breach of the Treaty, the 'rules relating to State responsibility, which are to be found not in the Treaty but in customary law', would be applicable (although the expropriation in this case was held to be lawful).	<i>De facto</i> nationalization of the petrochemicals industry in Iran, including claimant's contractual rights.	'Amoco's rights and interests...were lawfully expropriated by Iran'.	Claimant's contractual rights under an agreement with Iran in respect of a venture for the extraction, processing and sale of natural gas products.	'Process which led to the expropriation...was complete only on 24 December 1980', the date on which claimant was notified by a 'Special Commission' that the Khemco Agreement was declared 'null and void'. Nevertheless, the date of valuation was 31 July 1979, the date by which Amoco was 'practically depriv[ed]...of its rights in the management of Khemco'.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
In cases of unlawful expropriation, <i>restitutio in integrum</i> . In cases of lawful expropriation, 'the just price of what was expropriated'. Just compensation under the Treaty means the full value of the expropriated assets.	In cases of unlawful expropriation, <i>restitutio in integrum</i> . In cases of lawful expropriation, 'the just price of what was expropriated'. Just compensation under the Treaty means the full value of the expropriated assets.	"Market value" is of no help in the absence of regular transactions in a free market and can too easily be misleading'. The Tribunal's 'first duty is to avoid any unjust enrichment or deprivation of either party'. Rejected unjust enrichment as a basis for the obligation to compensate, but noted that in the case of nationalization of a going concern the practical difference between enrichment and deprivation is limited.	'The choice between all the available methods must...be made in view of the purpose of the purpose to be attained, in order to avoid arbitrary results and to arrive at an equitable compensation'. 'The use of several methods, when possible, is also commendable'. DCF 'leaves aside the net value of the expropriated assets' and therefore does not accord with a determination of <i>damnum emergens</i> . Applying DCF over a long investment period 'opens a large field of speculation due to ...uncertainty' and DCF therefore 'cannot easily be accepted'. Applied to 'a rather distant future a projection is almost purely speculative' and 'cannot be used by a tribunal as a measure of fair compensation'. NBV is also not	Encouraged the use of several methods to determine compensation. Emphasised that uncertain assumptions underlie the forecast of future revenues.	Not discussed	50% of going concern value of Khemco, to be valued as a going concern by the tribunal in accordance with further information to be supplied to the tribunal by the parties. Compensation of US\$60,000,000 awarded in Award on Agreed Terms, pursuant to Settlement Agreement between the Claimant and Respondents.

---

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationaliza- tion/expro- piation/ other measure	Lawful/ unlawful taking	Description of assets	Date of taking and date for calculation of compen- sation	Choice of remedy (restitu- tion/compen- sation)
--	-------------------	---	-------------------------------	--------------------------	--	---

---

Amoco  
International  
Finance  
(cont.)

---

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
--------------------------	--------------------------	-------------------------	---------------------	-------------------------------	--------------------------	------------------------------

---

appropriate in all cases of lawful expropriation, as nationalised assets include intangible items (eg patents, know-how, goodwill and commercial prospects), which are not included in NBV.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Harold Birnbaum v The Islamic Republic of Iran</i> (Case No 967) Award 6 July 1993 Chamber Two – Ruda (Chairman), Aldrich, Ameli (Judge Ameli's signature of award accompanied by the words 'dissenting'; dissenting opinion not available) (Award No 549-967-2) (29 Iran-US CTR 260) <i>Correction to Award</i> (29 Iran-US CTR 260 n.3)	Treaty of Amity	Taking of AFFA, an engineering consultancy partnership.	Expropriation not held to be unlawful.	Claimant's 8.6% ownership interest in AFFA, an engineering consultancy partnership.	24 July 1979, the date on which a provisional manager was appointed to take control of AFFA.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
The full equivalent of the property taken, in accordance with the Treaty of Amity.	Claimants share of the difference between the value of AFFA's assets and liabilities at the date of the taking.	Dissolution value of claimant's proprietary interest in the expropriated partnership	Estimation of the value of AFFA's assets, including (i) an office building; (ii) investment in another partnership, TAMS-AFFA; (iii) accounts receivable; (iv) partners' loans (which the Tribunal said should be written off as uncollectible as most AFFA partners had left Iran at the date of the taking); and liabilities, primarily its outstanding tax liability. For a dissolution or liquidation valuation, only liabilities outstanding at the date of the taking should be taken into account. Significant reliance was placed on a financial report prepared by a government-appointed supervisor as contemporaneous evidence prepared independently of the proceedings.	The Tribunal described its task as making its 'best approximation' of the value of claimant's proprietary interest. The Tribunal only discussed in its award the key assets and liabilities the valuation of which was in dispute.	The Tribunal took into account the claimant's lack of access to detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place and rejected assertions by Iran not supported by evidence reasonably likely to have been in Iran's possession.	US\$1,008,381 plus simple interest at 9.75% pa from the date of taking to the date of payment of award

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>CMI International, Inc v Ministry of Roads and Transportation and The Islamic Republic Of Iran</i> (Case No 245) Award, 27 December 1983 Chamber Two – Riphagen (Chairman), Shafeiei (concurring in part, dissenting in part), Aldrich (Award No 99-245-2) (4 Iran-US CTR 263)	Although the purchase order specified the law of the US state of Idaho as the governing law, the Tribunal decided ‘to analyse the damage questions in accordance with general principles of law’, citing the very broad choice of law provision in Article V of the Claims Settlement Agreement in support of this decision.	Breach by the Iranian Ministry of Roads and Transportation (‘MORT’) of contractual obligation to establish letters of credit in favour of Claimant	MORT was found to have breached its obligations under the purchase order.	Two (unfulfilled) purchase orders arising out of a highway construction project in Iran	1 April 1979 was estimated to be the due date for delivery by Claimants and thus the date by which MORT was required to have established letters of credit. Claimant was permitted to claim all expenses incurred prior to this date.	Compensation for damages that Claimant suffered as a result of MORT’s breach of contract.

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
The actual losses suffered by the Claimant	The Tribunal appeared to accept that lost profits could be claimed if supported by evidence. (The Tribunal held, however, that Claimant had adduced insufficient evidence.) Compensation was reduced to reflect Claimant's profits on resale of the equipment.	Actual damages proved.	The Tribunal examined the documents submitted by the Claimant in order to determine its actual loss, including its cost accounts reflecting the cost of manufacturing the equipment.	Tribunal estimated the date until which it felt claimant could reasonably have been incurring costs in reliance on the contract and awarded claimant's costs to this date.	The Tribunal stated that its mandate in awarding compensation under the Claims Settlement Declaration was to 'search...for justice and equity'.	US\$675,000, inclusive of interest to the date of the award. The Tribunal included interest in the amount of the award, without specifying the rate of interest it had applied, or explaining whether compound or simple interest was awarded.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Eastman Kodak Company v The Government of Iran</i> (Case No 227) Partial Award 11 November 1987 Chamber Three – Virally (Chairman), Brower (Concurring and Dissenting Opinion), Moin (Concurring in part, Dissenting in part) (Award No 329-227/12384-3) (17 Iran-US CTR 153) Award 1 July 1991, Arangio-Ruiz (Chairman), Brower (Concurring and Dissenting Opinion), Ansari (Dissenting Opinion) (Award No 514-227-3) (27 Iran-US CTR 3)	The Claims Settlement Declaration, which gave the Tribunal jurisdiction in respect of 'other measures affecting property rights'.	Interference did not amount to an expropriation but did constitute 'other measures affecting property rights'.	Not applicable	Promissory notes in favour of the claimant, in respect of loans to its Iranian subsidiary.	'The date to be used for valuation of an asset subject to expropriation is a date immediately prior to such interference' and there was 'no reason to depart from this principle in the case of a lesser degree of interference'. The Tribunal used the date of a balance sheet prepared a month before the interference.	Compensation in respect of damages.

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>Compensation for damages to claimant's property rights caused by Iran's interference with such rights.</p>	<p>Only damages to its property rights in its capacity as a majority shareholder of its Iranian subsidiary were held recoverable. Losses incurred in its capacity as a trade creditor of its Iranian subsidiary were not recoverable. Redemption of shareholders capital was not recoverable because it was only repayable in the event that there is a surplus available on liquidation (an additional reason was that Eastman Kodak retained the right to liquidate; the tribunal held that Iran had not interfered with this right).</p>	<p>Only long-term advances (promissory notes) were held to be recoverable, on the basis that these advances (i) constituted a high rate of debts compared to the subsidiary's assets and (ii) were unsecured. They were therefore investments, rather than loans at arm's length. The Tribunal had to assess the probability that the loans would be repaid, given that the subsidiary was a fledgling business. By contrast, current liabilities owed by the subsidiary to the claimant were held to constitute trade debts incurred in the normal course of business. Brower, dissenting in part, noted that reasons under (i) and (ii) above also applied to the trade debts and that these debts should thus have been awarded to the claimant.</p>	<p>Tribunal assessed the value of long-term advances (promissory notes) indicated on a balance sheet of the subsidiary. It then made 'a reasonable forecast' as to whether the advances would have been repaid in part or in full. It made 'a reasonable and equitable adjustment', reducing the value of the promissory notes by 50%, to reflect the uncertainty of repayment. Brower, dissenting in part, said that, in the light of the evidence, no adjustment should have been made.</p>	<p>Matters such as forecasting the likelihood of repayment of long term advances are not always capable of precise quantification because they depend on the exercise of judgmental factors that are better expressed in approximations or ranges (quoting <i>Starrett</i>).</p>	<p>A 50% adjustment of the value long-term advances by claimant to its subsidiary was considered 'equitable in all the circumstances'.</p>	<p>US\$1,805,080 plus simple interest at 8% pa, which was the rate specified in the promissory notes, from the date of interference to the date of payment of the award.</p>

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Shahin Shaine Ebrabimi, Cecilia Radene Ebrabimi, Christina Tandis Ebrabimi v The Government of the Islamic Republic of Iran</i> (Case No's 44,46 and 47) Award 12 October 1994 Chamber Three – Arangio-Ruiz (Chairman), Aghahosseini (Separate Opinion), Allison (Separate Opinion) (Award No 560-44/46/47-3) (30 Iran-US CTR 170)	Customary international law. Allison, in his separate opinion, said that the Treaty of Amity was applicable.	Discrete <i>de facto</i> expropriation of a construction company.	Not necessary to decide whether the expropriation was lawful or not as claimants did not seek compensation for <i>lucrum cessans</i> .	Claimants' 19% proprietary interest in Gostaresh Maskan, an Iranian construction company.	13 November 1979, the date on which 'Government-appointed directors took firm control' of the company.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>'Appropriate compensation', which was 'favour[ed] by customary international law'. Allison, in his separate opinion, disagreed and stated that customary international law required the payment of full compensation representing the fair market value of the expropriated property, while Agahoseini, in his separate opinion, supported a 'flexible standard' with 'inherent elasticity'.</p>	<p>The value of claimants interest in the expropriated property, held to be a going concern.</p>	<p>Valuation of the expropriated company as a going concern equal 'to the price on which a hypothetical willing buyer would agree, and that price is calculated as the sum of the replacement cost of the Company's tangible assets plus an amount reflecting its intangible values, including its goodwill, if any'. The Tribunal concluded that when discussing the expectations of a hypothetical buyer in an expropriation context, one has reached the outer limits of the hypothetical sale fiction.</p>	<p>The bulk of the company's value comprised amounts due under contracts. Rejected the application of a discount for risk of default, but reduced face value of amounts due under contract by 10–40% to account for the 'unease factor' a hypothetical buyer would have felt about enforceability of those claims. Refused to include the NPV of the profit on the company's contract backlog, as this would amount to double counting unless it was likely that abnormal profits would be earned – the Tribunal agreed with the Tribunal-appointed expert that 'it is inappropriate both to take the value of the asset and to add to that the value of the income that this asset is expected to produce, since</p>	<p>Awarded half of the severance pay provision argued for by Iran, in light of uncertainty over whether this amount was due. Used probabilities to make certain findings eg to decide the most likely purchase date of assets when actual purchase date was unknown.</p>	<p>The Tribunal stated that once the full value of the property has been properly evaluated, the compensation to be awarded must be appropriate to reflect the pertinent facts and circumstances of each case.</p>	<p>US\$5,265,697 plus simple interest at 8.6% pa from the date of taking to the date of payment to the date of payment of the award</p>

---

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
--	----------------	---	------------------------	-----------------------	---	---

---

Ebrahimi  
(cont.)

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
--------------------------	--------------------------	-------------------------	---------------------	-------------------------------	--------------------------	------------------------------

that income is needed to justify the value'. Rejected the argument for a minority discount (claimants owned only a 19% stake) and a non-marketability discount (the company was not publicly traded), concluding that these were inappropriate for a deprivation valuation, although they might apply to transactions on the open market. Valuation reduced for 'negative goodwill' owing to impact of Iranian Revolution.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>INA Corporation v The Government of the Islamic Republic of Iran</i> (Case No 161) Award, 12 August 1985 Chamber One – Lagergren (Chairman) (separate opinion), Holtzmann (separate opinion), Ameli (dissenting opinion) (Award No 184-161-1) (8 Iran-US CTR 373)	The Treaty of Amity, which was <i>lex specialis</i> that prevailed over ‘general rules’; Ameli, dissenting, found the Treaty to be ‘inoperative’. All three judges filed Separate Opinions discussing the standard of compensation for nationalizations under international law.	Nationalization of the insurance industry.	The Tribunal appeared to regard the taking as lawful.	Claimant’s 20% equity interest in an Iranian-registered insurance company.	25 June 1979, the date of proclamation of the Law of Nationalization of Insurance Corporations.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>The full equivalent of the property taken, in accordance with the Treaty of Amity. Lagergren and Ameli considered that 'an application of current principles of international law...would in a case of large-scale nationalizations in a state undergoing a process of radical economic restructuring normally require the 'fair market value' standard to be discounted in taking account of 'all circumstances'. Holtzmann, in a separate opinion, argued that international precedent underlined, rather than undermined, 'the continuing doctrinal value of the full compensation standard'.</p>	<p>The Claimant sought only the amount it had paid for the shares approximately one year before the expropriation.</p>	<p>The amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares.</p>	<p>As the Tribunal considered the financial position of the nationalised enterprise to be the same as, or better than, it was on the date the Claimant purchased its shares, the Tribunal granted the Claimant's request for compensation equal to the amount it had paid for the shares.</p>	<p>Although the initial investment was made in Rials, the Tribunal awarded dollar-based compensation without hearing evidence as to the appropriate rate of conversion. Ameli, dissenting, held that compensation (if payable), should be payable in Rials, the currency in which the investment was made.</p>	<p>Equitable considerations were employed in the judges' Separate Opinions in relation to the standard of compensation payable, under international law, in respect of certain large-scale nationalizations.</p>	<p>US\$285,000 plus simple interest at 8.5% pa from the date of nationalization to the date of payment of the award</p>

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>Faith Lita Khosrowshahi, Susanne P Khosrowshahi, Marcene P Khosrowshahi, Kayvan Khosrowshahi, and Kamran Khosrowshahi v The Government of the Islamic Republic of Iran, The Ministry of Industries and Mines, The Alborz Investment Corporation, the KBC Company and the Development and Investment Bank of Iran</i> (Case No 178)</p> <p><b>Interlocutory Award 22</b> January 1990 Chamber Two – Briner, Aldrich, Khalilian (Dissenting Opinion)</p> <p>Award No (ITL 76-178-2) (24 Iran-US CTR 40) <b>Final Award 30</b> June 1994 – Ruda (Chairman), Aldrich, Ameli (Concurring in respect of claims dismissed; Dissenting in respect of claims awarded) (Award No 558-178-2) (30 Iran-US CTR 76)</p>	The Treaty of Amity	Expropriation: (i) The government appointed managers for a company (Alborz) in which claimants held shares under the Law for Protection and Development of Industries of Iran of 7 July 1979; and (ii) The Banks Nationalization Law effected a compensable taking of the claimants shares in the Development and Investment Bank of Iran (DIBI)	Not discussed	Shares held by the claimants in (i) an Iranian trading and manufacturing company (Alborz); and (ii) the Development and Investment Bank of Iran (DIBI), both of which were expropriated.	(i) 7 July 1979, the date on which a supervisor was appointed to supervise Alborz; and (ii) 7 June 1979, the date on which a law nationalizing all banks in Iran, including DIBI, was passed	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
Compensation equal to the full equivalent of the value of the interests in the property taken (applying <i>Phelps Dodge</i> ).	As the taken enterprises were going concerns, the full equivalent was equal to its fair market value (applying <i>AIG, INA</i> and <i>Starrett</i> ).	The Tribunal applied the definition of FMV used in <i>INA</i> .	A contemporaneous market price for the shares (of Alborz and DIBI) was treated as the best available evidence of value. The last date on which a price for the shares was published was approximately 8 months prior to the taking. This price was accordingly discounted by 25% (Alboraz) and 30% (DIBI) to take account of the disruptions caused by the Iranian Revolution.	The Tribunal made an approximation of the impact the Iranian Revolution on the value of shares in expropriated companies from the date on which shares in the companies were last publicly traded to the date of the taking.	Not discussed	(i) In respect of Alborz, US\$1,964,400.73, divided among the claimants in proportion to their shareholding. (ii) In respect of DIBI, US\$520,345.58 divided among the claimants in proportion to their shareholding. In respect of both, simple interest was awarded at 8.6% pa from the date of taking to the date of payment of the award.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>Oil Field of Texas, Inc v The Government of the Islamic Republic of Iran, National Iranian Oil Company</i> (Case No 43)  <b>Interlocutory Award 9</b>            December 1982            Lagergren (President), Bellet, Mangard, Kashani (Dissenting Opinion), Holtzmann (Concurring Opinion), Shafeiei (Dissenting Opinion), Aldrich, Mosk (Concurring Opinion), Sani (Dissenting Opinion) (Award No ITL 10-43-FT) (1 Iran-US CTR 347)  <b>Award 8</b>            October 1986            Chamber One – Bockstiegel, Mosk, Mostafavi (Concurring and Dissenting Opinion) (Award No 258-43-1) (12 Iran-US CTR 308)</p>	<p>In finding that claimant's property had been expropriated, the Tribunal referred to international law. The Tribunal also awarded certain rental amounts it held were due to the claimant prior to taking under the contract which claimant had concluded with OSCO (to whose obligations NIOC succeeded). The contract was governed by English law.</p>	<p>Expropriation by retaining claimant's equipment (Respondent claimed it was complying with a court order by an Iranian court preventing it from returning the equipment).</p>	<p>Not discussed</p>	<p>Blowout protection equipment used in the oil industry.</p>	<p>July 1979, the date of a telex from OSCO to claimant informing it that in terms of the court order it could <i>inter alia</i> not return the equipment.</p>	<p>Compensation in respect of expropriated property; award of rental amounts contractually due.</p>

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
Compensation in respect of the full value of the equipment, as well as the full amount of unpaid rental amounts from the date on which payment was last made until the date of the taking.	Valuation of property taken; payment of unpaid rental amounts.	Replacement value of the equipment	Whether the equipment was used or new 'is not as such determinative as to its value'. The Tribunal awarded the amount claimed by claimant, noting that (i) at the time of taking the equipment was in high demand – such that there was an 18 month waiting period for it; and (ii) it commanded significant rental income.	Not discussed	The Tribunal dismissed claims that the contract was secured by bribery, for lack of evidence. Even if certain features of the agreement did indicate the discovery of bribery, later adjustments to the agreement (eg Claimant granted discounts to OSCO (an entity controlled by NIOC) and amendments were made to the agreement between claimant and OSCO), allowed the Tribunal to infer 'the affirmation [sic] of the existence of a lease agreement, despite any possible improper means of its procurement'.	US\$1,485,692 plus simple interest at 11.25% pa (in respect of expropriated blowout protectors); US\$430,522.38 plus simple interest at a rate of between 11% and 11.25% pa (in respect of unpaid rental amounts). The rate of interest was linked to the rate of interest on six month certificates of deposit in the US; Arbitration costs of US\$25,000.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Thomas Earl Payne v The Government Of The Islamic Republic Of Iran</i> (Case No 335) Award, 8 August 1986 Chamber Two – Briner (Chairman); Aldrich; Bahrami-Ahmadi (concurring in part, dissenting in part) (Award No 245-335-2) (12 Iran-US CTR 3)	The Treaty of Amity and ‘recognized principles of international law’; Iranian Legal Act No 6738 of 16 June 1979 (‘Law of 16 June 1979’), regarding the provisional appointment of managers to abandoned businesses, was also held to apply.	<i>De facto</i> (‘no reasonable prospect of return’ of control of the concern) discrete expropriation of a distributor of cinematographic products and of a full-service cinematographic electronics business.	There is no clear suggestion from the Tribunal that the taking was unlawful under international law.	The Claimant’s 35% equity stake in the full-service cinematographic electronics business (‘Irantronics’) and 33% stake in the distributor of cinematographic products (‘Berkeh’).	The date of taking of Irantronics was held to be 5 July 1980, the date of appointment of a ‘temporary manager’ by the Minister of Commerce. The date of taking of Berkeh in a similar fashion was 18 August 1980. The date for the purposes of valuation and calculating interest was held to be 5 July 1980.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
'Just compensation', which must represent the 'full equivalent' of the property taken, in accordance with the Treaty of Amity.	The Tribunal awarded the 'fair market value' of the Claimant's ownership interests in Irantronics and Berkeh as 'going concerns', taking into account debts. The Tribunal did not specify clear elements of compensation, but considered those used in AIG and INA.	The Tribunal valued the companies as 'going concerns'. A substantial discount factor was applied owing to the effects of the Revolution prior to the taking. Bahrami-Ahmadi (dissenting) felt the term 'going concern' was not a clearly defined legal term. The Claimant contended that the net book value of the tangible assets included intangible elements such as 'performance history'; the majority did not reject this view.	The Tribunal did not specify a clear method of valuation, acknowledging prior methodologies used to find the 'full equivalent' value and taking into account 'the debts of the companies including tax liabilities'. Bahrami-Ahmadi (dissenting) criticised the majority for the lack of exposition. Further, he felt no fair market value could be said to exist at the time owing to the uncertain and weak nature of the market in that industry, and that NBV was the most appropriate valuation method.	The award appears to be an approximation of the 'full equivalent' of the property taken, with a discount factor applied for the impact of the Revolution. No specific methodology is given for the value of the discount factor. Bahrami-Ahmadi (dissenting) criticised the Majority for stating an amount of damages awarded 'without explanation of the means by which it was arrived at'.	Not discussed	US\$900,000 plus simple interest at 11.25% pa payable from the date of taking to the date of payment of the award. Bahrami-Ahmadi (dissenting) criticised this as awarding damages on top of damages, in breach of Art. 713 of the Iranian Civil Procedure Code.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Petrolane, Inc, Eastman Whipstock Manufacturing Inc, and Seahorse Fleet, Inc, v The Government of the Islamic Republic of Iran, Iranian Pan American Oil Company, National Iranian Oil Company, and Oil Services Company of Iran</i> (Case No 131) Award 14 August 1991 Chamber Two – Briner (Chairman), Aldrich, Khalilian (Dissenting and Concurring Opinion) (Award No 518-131-2) (27 Iran-US CTR 64)	Under principles of international law as well as in application of the Treaty of Amity ...the Claimant must be compensated for the deprivation it suffered in an amount equivalent to the full value, or 'full equivalent', of the expropriated equipment'	Expropriation by refusing to permit claimant to export equipment. Award of payment to claimant of unpaid invoices.	Not discussed	Drilling equipment (expropriation). Amounts contractually due (contractual claims).	10 February 1980, after which Tribunal held there could be no justification for blocking the export of equipment.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
[T]he Claimant must be compensated for the deprivation it suffered in an amount equivalent to the full value, or 'full equivalent', of the expropriated property (following <i>Tippetts</i> and <i>Phelps Dodge</i> ).	The Tribunal did not allow claimant to recover in respect of equipment held on behalf of third parties, as compensation was owed to the owner of the property (or his state) rather than to claimant as bailee. (Claimant had failed to show that it had personally suffered loss by reason of the taking of the third parties' equipment.)	Not discussed	Despite expressing doubts, the Tribunal accepted that due to <i>inter alia</i> the condition of the equipment, high demand and a high inflation rate, the FMV of the drilling equipment was equal to its replacement value. Claimant had failed to substantiate its claim for lost profits.	Not discussed	Not discussed	(A) US\$2,453,638 plus interest to Eastman Whipstock Manufacturing, Inc. (B) US\$224, 930 plus interest to Seahorse Fleet, Inc plus simple interest at 9.5% pa from various dates (in respect of different successful contractual claims), to the date of payment of the award.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Phelps Dodge Corp and Overseas Private Investment Corp v The Islamic Republic of Iran</i> (Case No 99) Award, 19 March 1986 Chamber Two – Briner (Chairman); Aldrich; Bahrami-Ahmadi (dissenting) (Award No 217-99-2) (10 Iran-US CTR 121)	The Tribunal held that even if the Treaty of Amity had been terminated by implication, as argued by the Respondents, the Treaty was applicable to the investment when the claim arose and was thus a relevant source of law on which the Tribunal was justified in drawing its conclusion.	Expropriation	There was no suggestion that the taking was unlawful.	The Claimant's 19.36% shareholding in SICAB, an Iranian company	The date of the taking and for valuation purposes was 15 November 1980.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>The Tribunal applied the standard in Article IV of the Treaty of Amity requiring the prompt payment of 'just compensation', representing the 'full equivalent' of the property taken. Bahrami, dissenting, claimed that the Majority had valued Phelps Dodge's shares without applying any standard whatsoever.</p>	<p>The Tribunal disagreed with Claimant's contention that SICAB had become a going concern prior to the taking. Accordingly, elements of value such as future profits and goodwill could not confidently be valued.</p>	<p>The Tribunal held that SICAB could reasonably have been expected to become profitable in the long term. Its short-term prospects at the date of the taking were, however, 'sufficiently uncertain to require a considerable discounting of long-term profits'. The Tribunal said that it could not ignore the significant negative effects of the Iranian Revolution, at least in the short to medium term. The Tribunal emphasised the negative impact that a lack of continued access to technical expertise would have on SICAB's business.</p>	<p>The Tribunal concluded that the value of Claimant's investment was equal to its investment (made in 1974), without specifying how this finding related to its analysis of the principles and elements of valuation. Bahrami, dissenting, stated that, applying relevant international legal precedent for takings of companies that are not going concerns at the time of the taking, compensation should have amounted to the book value of the shares.</p>	<p>The award of the value of Claimant's initial investment appears to be an approximation of what the Tribunal believed to be the 'full equivalent' of the property taken. Bahrami, dissenting, criticised the Majority for 'simply assigning a value... without stating a basis for its computation.'</p>	<p>Not discussed.</p>	<p>US\$2,437,860 (the value of Phelps Dodge's initial investment in SICAB) plus simple interest at 11.25% pa from the date of taking to the date of payment of the award</p>

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>Phillips Petroleum Company, Iran v The Islamic Republic of Iran and The National Iranian Oil Company</i> (Case No 39) Award 29 June 1989 Chamber Two – Briner (Chairman), Aldrich, Khalilian (submitted separate statement indicating that it would be premature to sign the Award – a number of further statements were filed by the arbitrators in response) (Award No 425-39-2) (21 Iran-US CTR 79) <i>Agreed Terms</i> 10 January 1990 Briner (Chairman), Aldrich (Separate Statement) Khalilian (Separate Opinion) (Award No 461-39-2)(21 Iran-US CTR 285)</p>	The Treaty of Amity	Expropriation of claimant's rights under the Joint Structure Agreement (JSA). In relation to contractual counterclaims, the Tribunal said that it was not 'self-evident that the JSA is 'governed' by Iranian law' and applied the doctrine of preclusion as a general principle of law.	Not necessary to decide whether the expropriation was lawful or not as the Treaty of Amity provided for a single standard of compensation. Lawfulness of taking under CIL only relevant to 'whether restitution of the property can be awarded and whether compensation can be awarded for any increase in the value of the property between the date of taking and the date of the judicial or arbitral decision awarding compensation'.	Claimant's contractual rights as one of a group of foreign oil companies that had entered into the JSA with Iran for the exploration and production of oil in certain areas of the Persian Gulf.	29 September 1979, the date on which the claimant was informed that it should regard the JSA as terminated	The Award issued by the tribunal was for compensation for expropriation. The Award on Agreed Terms was in 'final settlement and satisfaction of all claims...now existing or capable of arising' in relation to the case. The Settlement Agreement reproduced in the Award on Agreed terms stated that the Award of 29 June 1989 'shall be deemed by the Parties as null and void and of no effect whatsoever'.

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>'Just compensation', representing the 'full equivalent of the property taken' (in accordance with the Treaty of Amity)</p>	<p>The value of contractual rights to participate in a going concern, the object of which was to find and extract oil.</p>	<p>Determination of the FMV of a going concern requires an assessment of revenue-producing potential and costs of operation. This includes an evaluation of the risks likely to be perceived by a reasonable buyer, excluding only threats of expropriation or related actions by Iran. The Tribunal made 'no finding with respect to the valuation of other types of contracts and other types of property', limiting its method to the case before it. Actual prices between taking and award irrelevant to determining the FMV at the date of the taking, even though expected prices at the time of the taking were shown to be grossly inflated.</p>	<p>DCF valuation. DCF appropriate in respect of contract rights to continue to exploit natural resources previously discovered pursuant to the contract. DCF findings verified by also applying an underlying asset valuation approach: tangible assets at depreciated replacement value plus intangible assets, which include profitability of the property interests taken. To quantify intangible assets, income is estimated based on historic earnings, to which a multiple is applied which takes into account legitimate expectations. Tribunal first considered the amount of oil a buyer would have reasonably expected to be recoverable and then the extent to which he or she should reasonably have expected that future</p>	<p>The Tribunal justified its use of DCF by stating it would not change the claimant's discount rate (which it regarded as being too low to reflect the risk of the project) but rather would 'determine reasonable ranges of accuracy for the various components of Claimant's DCF analysis' and adjust compensation awarded accordingly.</p>	<p>The Tribunal said that the risks had already been incurred but the bulk of the financial rewards lay in the future. In addition, Iran had protected its interests by compelling the claimant to renegotiate financial terms of its contract prior to the expropriation. The Tribunal could thus discern 'no equitable considerations that would affect...compensation'.</p>	<p>US\$55,000,000 plus simple interest at 10% pa from the date of taking to the date of payment of the award</p>

---

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
--	----------------	---	------------------------	-----------------------	---	---

---

Phillips  
Petroleum  
(cont.)

---

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
--------------------------	--------------------------	-------------------------	---------------------	-------------------------------	--------------------------	------------------------------

---

investment and production might fall short of that maximum. Three risks affected valuation: (i) not all recoverable oil might actually be produced; (ii) world oil prices might be lower than anticipated; and (iii) the risk that Iran would coerce further contractual revisions.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>James M Saghi, Michael R Saghi, and Allan J Saghi v The Government of the Islamic Republic of Iran</i> (Case No 298)</p> <p><b>Interlocutory Award</b>, 12 January 1987 Chamber Two – Briner (Chairman), Aldrich, Bahrahmi (separate declaration) (Award No ITL 66-298-2)(14 Iran US CTR 3) <b>Final Award</b>, 22 January 1993 – Ruda (Chairman), Aldrich (Concurring Opinion), Ameli (signature accompanied by the words ‘Dissenting Opinion’) (Award No 544-298-2) (29 Iran US CTR 20)</p>	<p>Relying on previous Tribunal practice, the Treaty of Amity was held to be in force and applicable to the claim.</p>	<p>Discrete, <i>de facto</i>, expropriation of a manufacturer and distributor of tissue products.</p>	<p>Expropriation not held to be unlawful.</p>	<p>Shares directly or beneficially owned in the expropriated companies.</p>	<p>The Tribunal accepted the claimants’ argument that the later appointment of board members should be used as the date of expropriation and valuation, even though the appointment of a ‘temporary manager’ approximately three and a half months later amounted to a deprivation of property.</p>	<p>Compensation for expropriation.</p>

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>The full equivalent of the property taken, in accordance with the Treaty of Amity. The value of shares held by one of the claimants, a dual national, was excluded on the basis that allowing him to take advantage of his dual nationality to obtain a benefit not otherwise available to him would amount to an abuse of right.</p>	<p>The value of the shares held directly or beneficially (through nominees) in the expropriated companies.</p>	<p>Applied the definition of fair market value adopted in <i>INA</i>. Following AIG, 'prior changes in the general political, social and economic conditions which might have affected the enterprise's business prospects' as of the date of taking should be considered.</p>	<p>An offer made for 45% of the company five years before the taking was regarded as an appropriate indicator of the company's willing-buyer, willing-seller value. On the facts, rejected claimant's argument that the offer was subject to a 'minority discount' ie that the value per share of the entire company was greater than the value per share reflected in an offer for a minority stake. The valuation of the companies, based on the offer, was adjusted for the effects of inflation (increased) and changes in political economic and social conditions (reduced) since the offer had been made. Valuations calculating net value of assets and liabilities are inadequate for valuing a going concern.</p>	<p>The Tribunal noted that compensation awarded fell between claimants' and respondent's estimates of value.</p>	<p>The value of shares held directly or beneficially by Allan Saghi, a dual national, were, applying the caveat in case A18, excluded from the claim because Saghi had obtained Iranian nationality in order to obtain benefits in relation to these shares that would not otherwise have been available to him. The Tribunal held that 'to rule otherwise would be to permit an abuse of right'.</p>	<p>US\$3,693,690 in respect of claimants' interest in NPI and US\$514,250 in respect of their interests in Novin plus simple interest at 9.5% pa calculated from the date of the taking to the date of payment of the award.</p>

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Sea-Land Service, Inc v The Islamic Republic of Iran, Ports and Shipping Organisation</i> (Case No 33) Award, 20 June 1984 Chamber One – Lagergren (Chairman), Kashani; Holtzmann (Dissenting Opinion as to Award on the claims; concurring Opinion as to dismissal of counterclaim), 1 November 1984 (Award No 135-33-1) (6 Iran-US CTR 149)	In respect of claims based in contract, Iranian law. In respect of expropriation claims, international law. The Tribunal held that the Treaty of Amity did not extend Iran's international responsibility for expropriation of alien property.	Deprivation of 'Claimant's right to continued use of a containerised cargo facility constructed and operated by it'	No unlawful taking found. The majority held that the Ports and Shipping Organization ('PSO') had been unjustly enriched by its use of the facility built by Claimant.	Containerised cargo facility and the rights to operate it	No taking found. The dates for determining unjust enrichment were from November 1980 (date from which PSO was deemed to have used the facility) to 28 November 1982 (when PSO was entitled to take possession of the facility).	Compensation for PSO's enrichment at Claimant's expense

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
'Damages should be assessed to reflect the extent by which the state has been enriched.'	The estimated value of PSO's actual use and benefit of the facility. Holtzmann stated that an actual use standard was not recognised in international law.	A monetary value on the extent to which PSO was enriched by its premature acquisition of the facility.	No explanation of the method of valuation was provided. Estimation based on 'scanty evidence'. Holtzmann, dissenting, criticised the Majority for pulling a figure 'out of the air'.	Unjust enrichment is 'inherently flexible'. Compensation would, 'of necessity' be an approximation.	Unjust enrichment is an 'equitable device' with an 'equitable foundation'. Its purpose is to 're-establish a balance'. It is 'necessary to take into account all circumstances'.	US\$750,000. No interest awarded

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Sedco, Inc., Sedco International, SA and Sediran Drilling Company v National Iranian Oil Company and The Islamic Republic Of Iran</i> (Case No 129) <b>First Interlocutory Award</b> , 24 October 1985 Mangard (Chairman), Brower (separate concurring opinion), Moin (dissenting) (Award No 55-129-3) (9 Iran-US CTR 248); <b>Second Interlocutory Award</b> , 27 March 1986, Mangard, Brower (separate opinion), Moin (dissenting) (Award No 59-129-3) (10 Iran-US CTR 180) <b>Final Award</b> , 2 July 1987 Mangard (Chairman), Brower, Moin (did not sign award) (Award No 309-129-3) (15 Iran-US CTR 23)	The Tribunal for the First Interlocutory Award found that the Treaty of Amity 'incorporate[d] the rules of customary international law' as regards what constitutes a taking. The Tribunal for the Second Interlocutory Award applied the Treaty of Amity following the ruling in <i>Phelps Dodge Corp v Iran</i> , but came to the same conclusions through a parallel application of customary international law. The Tribunal for the Final Award applied the Treaty of Amity on the same bases as the Interlocutory Awards; however, to the extent the taking was seen as a non-governmental appropriation, 'general principles of commercial law then become controlling'.	Discrete, de facto expropriation of Sediran Drilling Company ('Sediran') and the expropriation of physical assets of Sedco International, SA ('SISA').	The Tribunal for the Second Interlocutory Award found that there was a taking, but explicitly refrained from ruling on whether it was lawful or unlawful, as the standard of compensation would be the same regardless of the legality of the taking. Brower, concurring, cast doubt on the 'alleged public purpose' of the taking, highlighting the 'misapplication' of Iranian law and the lack of any provision for compensation having been made by Iran at the time.	The Claimant's 50% interest in a drilling company (Sediran); oil rigs, warehouse stock and invoices of a company (SISA) wholly owned by the Claimant.	The Tribunal for the First Interlocutory Award found the date of taking of Sediran to be 22 November 1979, as 'on the date of the government appointment of 'temporary' managers there is no reasonable prospect of return of control... A taking should conclusively be found to have occurred as of that date'. The Tribunal for the Main Award found the date of taking for SISA's oil rigs and warehouse stock to be 2 August 1980.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>The Tribunal for the Second Interlocutory Award applied the standard in Article IV of the Treaty of Amity, independently of customary international law, and concluded that the appropriate standard for Sediran was the 'full value of the expropriated interest'. The Tribunal for the Main Award valued SISA's relevant assets at 'fair market value', ie what a willing buyer and a willing seller would reasonably have agreed on as a fair price at the time of the taking in the absence of coercion on either party, based on the Tribunal's decision in <i>INA Corporation v Iran</i>.</p>	<p>The Claimant only sought the 'liquidation value' of its holding in Sediran. The Claimant was awarded an element of lost revenues for the expropriation of SISA's oil rigs by the Tribunal for the Main Award. This was awarded for the nine month period it would have taken Sedco to replace the rigs less the 60 days it would have taken for Sedco to restart operations in another country; ie seven months in all. The Tribunal for the Second Interlocutory Award held that this aspect of the claim was in fact a 'direct loss resulting from the unavailability of the rigs to Claimant for use elsewhere' and was thus <i>damnum emergens</i>.</p>	<p>The Claimant claimed the liquidation value of Sediran as of the date of the expropriation. The Tribunal for the Main Award agreed that the liquidation value was a 'fair measure of value' for the case, allowing the Claimant 'one-half of the full value of all of Sediran's assets, including property, cash, securities, and accounts receivable, reduced by the liabilities of the company outstanding at the date of taking'. No discount as might occur in actual distress liquidation circumstances was applied. The Tribunal also sought to award the 'actual value' of SISA's assets.</p>	<p>The Tribunal for the Main Award took into account comparable sales, appraisals, the amount of insurance coverage, replacement value, and current net book value when evaluating Sediran and SISA's assets, relying on net book value for much of the warehouse stock and invoices and on comparable sales and insurance coverage for the oil rigs. Ansari, dissenting, highlighted the lack of a depreciation factor when valuing all the physical assets.</p>	<p>The Tribunal for the Main Award calculated the value of SISA's oil rigs as 'a prudent estimate'. The Claimant's valuation, based on the appraisal of a leading officer of Sedco and the President of SISA, was accepted by the Tribunal in principle but reduced in the face of other evidence. A similar process was followed when valuing Sediran's oil rigs.</p>	<p>Ansari, dissenting from the Main Award, stated that it failed 'to reflect just and equitable rules of arbitration in the slightest'. He highlighted the evidential imbalance between Sedco and National Iranian Oil Company ('NIOC') and criticised the Majority for requiring NIOC to prove aspects of the valuation of the oil rigs; he indicated that this should affect the value of the award.</p>	<p>US\$68,210,816 plus interest, comprising: US\$26,000,000 (SISA oil rigs); US\$4,817,064 (lost revenue from SISA oil rigs); US\$2,116,007 (SISA warehouse stock); US\$4,494,655 (SISA invoices); US\$30,783,090 (Sediran). Simple interest at 10% pa from the dates of taking. The date for calculating interest on the award for SISA's oil rigs was 2 May 1981, as it was 'not appropriate to award interest on the value of the appropriated property (which also is intended to compensate for loss of the use of the property) until the theoretical replacement date, ie, in this case nine months following the taking of the rigs on 2 August 1980.' The date for interest on lost revenue was taken to be 17 January</p>

---

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
--	----------------	---	------------------------	-----------------------	---	---

---

Sedco/NIOC  
(cont.)

---

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
--------------------------	--------------------------	-------------------------	---------------------	-------------------------------	--------------------------	------------------------------

---

1981, the midpoint of the seven months for which lost revenue was awarded. The date for interest on SISA invoices was held to be 21 May 1979 as the midpoint between the dates for invoices payable.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Sola Tiles, Inc v The Government Of The Islamic Republic Of Iran</i> (Case No 317) Award, 22 April 1987 Chamber One – Bockstiegel (Chairman); Holtzmann; Mostafavi (dissenting) (Award No 298-317-1) (14 Iran-US CTR 223)	The Tribunal used the Treaty of Amity as part of the ‘legal background’ in their application of customary international law, as both the Treaty of Amity and customary law applied the ‘same standard’. Neither party addressed the applicability of the Treaty of Amity, the Claimant basing his claims on ‘general principles of law’.	Discrete, <i>de facto</i> expropriation of a tile manufacturer.	Expropriation not held to be unlawful.	An Iranian tile-making business (‘Simat’) allegedly wholly owned by the Claimant.	The Tribunal found the date of taking to be a progressive one, completed by November 1979 at the latest. The date of taking for the purposes of valuation was held to be ‘late 1979’.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
The Tribunal applied the standard of 'appropriate compensation', which could encompass the 'full equivalent' standard of the Treaty of Amity if justified by the facts of the case.	The Tribunal rejected the Claimant's contention that Simat was a going concern at the time of the Revolution, assigning no value to the loss of goodwill and potential future profits claimed by the Claimant.	The Tribunal held that the Claimant was entitled to compensation based on Simat's 'market value'.	The Tribunal valued Simat's tangible assets based on a contemporary valuation of Simat by a competitor of the Claimant. Simat's intangible assets were considered in light of that report, but the Tribunal incorporated 'Simat's prospects of continuing active trading after the Revolution'.	The value of the award was 'a global assessment of the compensation due, representing the value of Simat's business in late 1979.' The Tribunal went through its own valuation procedure, examining the competitor's valuation and rejecting the Claimant's 'going concern' analysis owing to changes in the market for Simat's products. The Tribunal made 'a reasonable estimate of the total amount of accounts receivable' owing to a lack of documentation.	Not discussed	US\$625,000 plus simple interest at 10.75% pa from the 'the date on which compensation might reasonably have been paid to Simat's owners' to the date of payment of the award.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<p><i>Starrett Housing Corporation, Starrett Systems, Inc, Starrett Housing International, Inc, v The Government of the Islamic Republic of Iran, Bank Omran, Bank Mellat</i> (Case No 24) <b>Interlocutory Award</b>, 19 December 1983 Chamber One – Lagergren (Chairman), Holtzmann (separate concurring opinion), Kashani (dissenting) (Award No ITL 32-24-1) (4 Iran-US CTR 122) <b>Final Award</b>, 14 August 1987 Chamber One – Lagergren (Chairman), Holtzmann (separate concurring opinion), Ameli (did not sign award) (Award No 314-24-1) (16 Iran-US CTR 112)</p>	<p>Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957 ('The Treaty of Amity')</p>	<p>Discrete expropriation of a housing development</p>	<p>The Tribunal found there was a taking, without deciding whether the taking was lawful or unlawful. Holtzmann, concurring, noted that the Treaty required an award of full value, even if the taking was lawful. Holtzmann nevertheless regarded the taking as unlawful. Holtzmann stated that additional compensation for an unlawful taking might be appropriate in some circumstances.</p>	<p>Physical property; contractual rights to carry out a housing development ('the Project'); contractual right to a management fee; loans</p>	<p>30 January 1980 (taking – the date on which the Ministry of Housing appointed a temporary manager for the Project); 31 January 1980 (compensation date – for accounting convenience). Holtzmann, concurring, considered that the date of taking was earlier.</p>	<p>The Tribunal consistently describes the relief granted as 'compensation' for the taking.</p>

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
Just compensation, representing the 'full equivalent of the property taken' (in accordance with the Treaty of Amity)	The claimants sought only losses directly attributable to the taking. Compensation awarded included the claimants' share of the anticipated profits.	Compensation at fair market value was awarded. The Tribunal defined this as the amount a reasonable buyer – deemed by the Tribunal to be an Iranian businessman – would pay for the Project. Political upheavals that temporarily depressed prices were excluded. Holtzmann, concurring, endorsed this approach and stated that it implicitly valued the Project as a going concern.	DCF valuation in respect of the value of the Project, including Starrett's contractual rights to management fees and repayment of loans. Holtzmann, concurring, endorsed the DCF method and advised against mixing valuation methods.	The Tribunal reduced compensation in respect of the value of the Project 'by a global amount', in view of uncertainty as to the likely future revenue from the Project. Holtzmann, concurring, disagreed with this reduction.	Not discussed	US\$33,897,000, comprising: US\$247,308 (physical property and the right to carry out the Project); US\$2,847,000 (management fees); US\$30,703,000 (loans) plus simple interest at 8.5% pa from the date of taking to the date of payment of the award. Holtzmann, concurring, maintained that compound interest, at a higher rate, should have been awarded.

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Vivian Mai Tavakoli, Jamshid David Tavakoli, Keyvan Anthony Tavakoli v The Government of the Islamic Republic of Iran</i> (Case No 832) Award 23 April 1997 Chamber Three – Arangio-Ruiz (Chairman), Allison (Concurring and Dissenting Opinion), Aghahosseini (Dissenting in respect of awards in favour of claimants) (Award No 580-832-3) (33 Iran-US CTR 206)	The Tribunal did not expressly state the law applicable to the award of compensation, but referred to the <i>Ebrahimi</i> award, where the Tribunal applied customary international law	Following <i>Kiaie v Iran</i> , based on the same facts, the Tribunal held that a company in which claimant held shares was expropriated.	Not discussed	Shares in WIG, a company that owned land in Iran on which it was developing an industrial estate, including roads, water and power and on which it had planted trees. WIG had also entered into contracts to construct factories on the site and owned shares in the factories that were to run these factories. WIG was entitled to charge electricity connection fees in respect of an electrical plant it had installed.	26 November 1979, as decided in <i>Kiaie v Iran</i> , based on the same facts.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
Full compensation (the Tribunal referred to <i>Ebrahimi</i> ).	The claimant requested an award of adjusted NAV, which did not include possible future earnings, goodwill or other intangible value but only the value of tangible assets. The Tribunal agreed that this was appropriate.	As it was unlikely that WIG 'would find another company like itself to purchase the operation', the value of its assets 'depended critically on whether it was expected that they would be developed and realised over the longer term by WIG itself'. The Tribunal therefore had to determine whether WIG was a going concern at the date of taking. To determine whether it was a going concern, the Tribunal looked both at whether WIG's current assets exceeded its liabilities and its business prospects under the new regime. The Tribunal concluded that WIG was a going concern.	The Tribunal discounted the value of certain land 'to reflect the generally poor conditions in Iran at the time of the expropriation and the less auspicious atmosphere for industrial developments under the new regime.' The Tribunal held that 'a reasonable purchaser at the time would have assumed either that less of the land would have been sold, that it would have to have been sold for a lower price or that it would have taken longer to sell'. The Tribunal accordingly discounted the value of the land by 20% from the market price prior to the Iranian Revolution. Similarly, it determined that the potential earnings from electricity connection fees that the company (in which Claimant held	The evidence 'was not as precise or complete as could be desired. Following <i>Birnbaum</i> , the Tribunal said that it would 'make its best approximation...taking into account all the circumstances'. Following <i>Sola Tiles</i> , it said it would 'take some account of the disadvantages suffered by the Claimant, namely its lack of access to the detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place'.	Following <i>Sola Tiles</i> , it said it would 'take some account of the disadvantages suffered by the Claimant, namely its lack of access to the detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place'.	US\$375,952 plus simple interest at 8.1% pa from date of taking to the date of payment of the award.

---

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
--	----------------	---	------------------------	-----------------------	---	---

---

Tavakoli  
(cont.)

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
--------------------------	--------------------------	-------------------------	---------------------	-------------------------------	--------------------------	------------------------------

shares) had to be discounted by 20%. In respect of the valuation of shares WIG held in other companies, the Tribunal held that basing value on the amount WIG had originally paid for these shares was appropriate 'when valuing an interest that was in an advanced state of preparation but was not yet operating on the date of expropriation' (following *Phelps Dodge*).

Case title, tribunal and awards (alphabetical order)	Applicable law	Nationalization/expropriation/other measure	Lawful/unlawful taking	Description of assets	Date of taking and date for calculation of compensation	Choice of remedy (restitution/compensation)
<i>Tippettts, Abbet, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran, The Government of the Islamic Republic of Iran, Civil Aviation Organization, Plan and Budget Organization, Iranian Air Force, Ministry of Defence, Bank Melli, Bank Sakhteman, Mercantile Bank of Iran and Holland (Case No 7) Award, 22 June 1984 Chamber Two – Riphagen (Chairman), Aldrich, Shafeiei (refused to sign the award) (Award No 41-7-2) (6 Iran-US CTR 219)</i>	International law and general principles of law. Neither party had argued that the Treaty of Amity was applicable.	Expropriation	There was no suggestion that the taking was unlawful.	The Claimants' 50% interest in TAMS-AFFA, an Iranian entity	The date of the taking and for valuation purposes was 1 March 1980.	Compensation

Standard of compensation	Elements of compensation	Principles of valuation	Method of valuation	Approximation of compensation	Equitable considerations	Amount of award and interest
<p>The Tribunal held that the Claimant was entitled under international law and general principles of law to compensation for the 'full value' of the property of which it had been deprived. Shafeiei, in his reasons for not signing the award, stated that the notion of 'full' compensation 'was a myth' created by the US and did not reflect the reality of international law, citing sources that argued that state practice showed substantial deviation from full or prompt, adequate and effective compensation.</p>	<p>Claimant sought only the dissolution value of its interest in the company, which the Tribunal said required an estimation of the assets and liabilities of TAMS-AFFA at the date of the taking. This included: (i) bank accounts and fixed assets; (ii) TAMS-AFFA's accounts receivable. (iii) TAMS-AFFA's debts; and (iv) potential liabilities such as those raised in counter-claims and which could possibly arise under bank guarantees.</p>	<p>The Tribunal recognised difficulties in valuing elements of the loss, such as the value of accounts receivable, in the light of role that contractual disputes falling outside the jurisdiction of the Tribunal would play in determining their value. TAMS-AFFA's debts were also difficult to estimate, as they involved assessing tax and social security liabilities, issues also outside the Tribunal's jurisdiction. The Tribunal felt it necessary to make a 'best estimate' of these amounts, but stated that it was not adjudicating the rights and obligations of the parties in this regard.</p>	<p>The Tribunal accepted that they could only make 'a very rough evaluation' of the dissolution value, and stated that there was little evidence for facts asserted and divergent legal appreciation of the facts. Shafeiei, in his reasons for not signing the award, accused the Majority of giving no explanation as to their method of valuation.</p>	<p>The Majority expressly stated that its award was an approximation requiring many disputed facts, which were outside the Tribunal's jurisdiction, to be taken into account for the purposes of valuing the property taken.</p>	<p>It would be unjust and logically indefensible not to take into account issues outside the Tribunal's jurisdiction, such as the accounts receivable and tax and social security liabilities. It is a general principle of many municipal systems and international law that no one should profit from their own wrong, which would be possible if these issues were not taken into account in the valuation.</p>	<p>US\$5,594,405 plus simple interest at 12% pa from the date of taking to the date of payment of the award.</p>