INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES ARBITRATION TRIBUNAL: AWARD IN THE CASE OF BENVENUTI ET BONFANT v. PEOPLE'S REPUBLIC OF THE CONGO*

AWARD RENDERED BY THE ARBITRAL TRIBUNAL IN THE CASE OF

LTD. BENVENUTI ET BONFANT srl.

VERSUS

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF THE CONGO

DATED 8 AUGUST 1980

Table of Contents

*[Reproduced from the text provided by the International Centre for Settlement of Investment Disputes.

[The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, appears at 4 I.L.M. 532 (1965), and the I.C.S.I.D. Rules of Procedure for Arbitration Proceedings appear at 7 I.L.M. 376 (1968).

[The Court of Appeals of Paris Judgment of June 6, 1981, concerning the recognition and enforcement of the above award, appears at 20 I.L.M. 877 (1981).]

I

THE ARBITRATION PROCEDURE

The Request

1.1 On 15 December 1977, the Italian firm of Ltd. Benvenuti et Bonfant srl. (hereinafter referred to as B and B), the head office of which is in Rome, addressed to the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to as the Centre) in Washington, D.C., a request for arbitration dated 12 December 1977, accompanied by a Protocol of Agreement (hereinafter referred to as the Agreement) dated 16 April 1973 between B and B and the Government of the People's Republic of the Congo (hereinafter referred to as the Government) containing an arbitration clause referring to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to as the Convention), all in accordance with the provisions of Article 36 of the Convention and Rules 1, 2, and 4 of the Rules of Procedure for the Institution of Arbitration Proceedings and of Regulations 15(1) of the Administrative and Financial Regulations of the Centre. The text of the above-mentioned arbitration clause is reproduced in paragraph 1.15 below.

1.2 The Secretary-General of the Centre registered the above-mentioned request on 15 December 1977.

Constitution of the Tribunal

1.3 On 2 January 1978, B and B appointed Mr. Rudolf Bystricky, a Czechoslovakian national, domiciled in Switzerland, as arbitrator. Mr. Bystricky notified the Centre of his acceptance on 14 February 1978. On 14 March 1978, the Government appointed Mr. Edilbert Razafindralambo, a Malagasy national, as arbitrator. Mr. Razafindralambo notified the Centre of his acceptance on March 20 1978. Since the parties could not agree on the designation of the

arbitrator to be the President of the Tribunal, on 24 March 1978, B and B invoked Article 4 of the Arbitration Rules (hereinafter referred to as Rules) and requested the Chairman of the Administrative Council to designate the President. The Chairman of the Administrative Council, after consulting the parties, designated, in accordance with Article 38 of the Convention and Rule 4, Mr. Alex Bonn, a Luxembourg national, to be President of the Arbitral Tribunal on 26 April 1978. Mr. Bonn notified his acceptance on 8 May 1978. The Tribunal was deemed to be constituted and the proceeding to have begun on 9 May 1978, in accordance with the provisions of Rule 6(1). But on 25 May 1978, Mr. Bonn disqualified himself as arbitrator and on 3 June 1978 the Chairman of the Administrative Council, after having consulted the parties, designated, in accordance with the above-mentioned provisions of the Convention and the Rules, Mr. Jorgen Trolle, a Danish national, to be President. Mr. Trolle notified his acceptance on 5 June 1978.

Preliminary Consultation

1.4 The Tribunal met for the first time in Geneva on 14 and 15 June 1978. On the proposal of the President, the Tribunal decided, pursuant to Rule 15(3), to admit to its deliberations the Secretary-General of the Centre and the Secretary of the Tribunal appointed in accordance with Regulation 25 of the Administrative Regulations. Mr. Sella, the representative of the Secretary-General of the Centre, and Mr. Maffei, the Secretary of the Tribunal, attended the sessions. The session on 15 June was attended by the representatives of B and B; the representatives of the Government, although convened, were absent.

1.5 The purpose of this meeting was to ascertain the views of the parties regarding questions of procedure, in accordance with the provisions of Rule 20. In the course of this meeting, the Tribunal took the following steps to comply with the Convention and the Rules.

(1) As proposed by B and B in its request for arbitration and accepted by the Government in a letter dated 14 March 1978 addressed to the Secretary General, the legal seat of the Tribunal was established in Geneva, the Tribunal reserving to itself the possibility of meeting in any other place whose choice would be dictated by the needs of the proceeding or by the convenience of its members.

(2) It was decided that the presence of a majority of the members of the Tribunal would be required at all its sittings, pursuant to Rules 14 and 20.

(3) Pursuant to Rule 25, the Tribunal delegated to its President the power to make any orders relating to procedural time limits.

(4) In accordance with Rule 30, it was decided that B and B was to file its memorial before 21 August 1978 and the Government was to file its counter-memorial before 31 October 1978.

(5) It was decided that, at the end of the oral procedure, the Tribunal was to determine whether the parties should be allowed to submit conclusive memorials.

(6) Finally, it was decided to submit to the Government the proposal of B and B to confer on the Tribunal of the power to rule on the merits of the dispute ex aequo et bono, in accordance with Article 42(3) of the Convention, to ask it whether it agreed that all communications from the Centre to the Government during the proceedings might be validly made to its Embassy in Paris, and to kindly provide B and B and the Tribunal with the text of the Constitution, the Civil Code, the Commercial Code, legislative provisions relating to conflicts of law, and the Investment Code of the People's Republic of the Congo.

1.6 The Government was informed of this proposal and of this request by a letter dated 20 June 1978 from Mr. Broches, the Secretary-General of the

Centre. By a letter dated 30 August 1978 the Government gave a negative reply to the points relating to the judgment of the case ex aequo et bono and to the communication of all communications from the Centre to its Embassy in Paris. With respect to the legislation, the Government stated that "the Civil Code, the Commercial Code, and the legislation relating to conflicts of law in force in the People's Republic of the Congo are the same as those of France up to the time of our independence, that is to say, up to 15 August 1960."

The Procedure

1.7 B and B filed its memorial on 21 August 1978 (hereinafter referred to as the Memorial) and the Government filed a document entitled counter-memorial on 20 October 1978, which document was, in fact, an objection to jurisdiction.

1.8 The Tribunal met on 17 and 18 November 1978 in Paris in the presence of Mr. Piero Sella, the representative of the Secretary-General of the Centre, and Mr. Andres Rigo, appointed Secretary of the Tribunal to replace Mr. Maffei, and without the parties. The Tribunal found that the Government had filed an objection to jurisdiction and it decided to suspend the procedure on the merits of the case, in accordance with Rule 41(3). Furthermore, having found that B and B had filed its observations on the objection to jurisdiction on 14 November 1978, it invited the Government, in accordance with Rule 19, to submit its comments on the observations of B and B before 29 December 1978. The Tribunal also found that the facts on which the objection was based seemed to be closely linked to the merits of the case and invited the Government to file, together with the above-mentioned comments, a counter-memorial containing the elements referred to in paragraph (3) of Rule 30.

1.9 On 20 December 1978, the Government requested an additional delay of one month for filing its pleadings. The President of the Tribunal decided not to extend the time limit and the Government was so informed by cable on 20 December 1978.

1.10 A document entitled "counter-memorial", dated 26 December 1978, and sent through the post office in Brazzaville on 27 December 1978, was received at the office of the World Bank in Paris on 4 January 1979. In this document, the Government only insisted on the argument of the lack of jurisdiction of the Tribunal and repeated the pleadings of its "counter-memorial" dated 20 October 1978.

1.11 By a letter dated 8 January 1979, B and B pointed out that the Government

(a) had not attended the hearing held in Geneva on 15 June 1978;

(b) had not filed its counter-memorial within the time limit fixed by the Tribunal;

(c) had abstained from presenting its reply to the observations of B and B on the objection to jurisdiction; and

(d) had failed to deposit with the Centre the sum claimed from it for the costs of the procedure.

B and B therefore concluded that the Government should be declared in default, pursuant to Rule 42(1).

1.12 On 17, 18 and 19 January 1979, the Tribunal met in Paris, in the presence of the Secretary-General of the Centre and the Secretary of the Tribunal and without the parties. It rendered its decision on 19 January 1979. The Tribunal first examined the problem of the document from the Government received by the Centre in Paris on 4 January 1979, six days after the expiration of the time limit fixed by the Tribunal. Rule 25 stipulates that any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and after giving the other party an opportunity of stating its views, decided otherwise. The Tribunal was of the opinion that it was not appropriate to follow this exceptional procedure, the effect of which would be to delay the conduct of the case, the more so since

the document filed did not contribute any new element. The Tribunal therefore decided to disregard that document.

1.13 Next, the Tribunal embarked on a thorough examination of the problem of its jurisdiction. The positions of the parties expressed in the document entitled "counter-memorial" filed by the Government on 20 October 1978 and in the observations filed by B and B on 14 November 1978 may be summarized as follows:

(a) The Government bases its plea of lis pendens on the existence of a suit pending before the Revolutionary Court of Brazzaville. It does not give any details of this proceeding except that it involves a suit instituted by the Government against Mr. Bonfant in his capacity as agent of the PLASCO Company (see Chapter II on the establishment of this company). To this argument, B and B replies that a suit between the Government and Mr. Bonfant is quite different from a suit between B and B and the Government.

(b) The Government, basing itself on Article 25 of the Bylaws of the PLASCO Company (hereinafter referred to as the Bylaws) next claims that B and B should have first instituted proceedings before the Commercial Court in Pointe-Noire, where the headquarters of the company are located, instead of directly applying to the Centre. B and B states its disagreement with such an interpretation of Article 25. According to it, the text does not include any obligation to first exhaust domestic remedies. Furthermore, B and B points out that the Congolese argument totally disregards Article 12 of the Agreement signed between the parties on 16 April 1973, the same date as that of the Bylaws.

1.14 With respect, first, to the request of the Government to the Tribunal that it relinquish the case to the Revolutionary Court of Justice, the Tribunal declared that the pendency of a case was in order only in the event of the

identity of the parties, of the subject matter, and of the cause of the suits pending before the two tribunals. The Tribunal found that these conditions were not fulfilled. Specifically, the dispute submitted to this Tribunal actually involves B and B and the Government and not Mr. Bonfant in his capacity as agent of the PLASCO Company and the Government.

1.15 Next with respect to the question of whether the arbitration clause governs the present procedure, the Tribunal observed that the Government refers solely to Article 25 of the Bylaws to ground its objection to jurisdiction. The text of this article reads as follows:

> "Any disputes that may arise during the life of the company or its liquidation, either between the shareholders themselves concerning corporate matters, or between the shareholders and the company, which have not been settled either by the competent courts of the corporate jurisdiction or by negotiation, shall be arbitrated under the Convention of 18 March 1965 for the settlement of investment disputes between States and nationals of other States established by the International Bank for Reconstruction and Development and the procedural language shall be French."

For its part, B and B pleaded in favor of rejecting the objection to jurisdiction on the basis of Article 12 of the Agreement. This article stipulates that:

> "Any disputes that may arise between the parties in the execution of this protocol of agreement and are not settled by negotiation shall be arbitrated under the Convention of 18 March 1965 for the settlement of investment disputes between States and nationals of other States established by the IBRD, and the procedural language shall be French. The parties undertake herewith to submit themselves to the

decision of the arbitrator, undertake to ensure its execution, and renounce any appeal against the decisions rendered. Arbitration expenses shall be divided equally between the parties."

1.16 The disagreement between the parties about the interpretation to be given to Article 25 of the Bylaws has already been noted. The Tribunal was of the opinion that there was nothing to be gained in ruling on this question since it believed that the claims of B and B were essentially based on alleged violations of the Agreement and not on the acts of the Government as a shareholder of the PLASCO Company and did not directly arise from a dispute about the application of the Bylaws. The Tribunal especially took into account in this regard the fact that B and B's claims concerned an alleged failure of the Government to furnish the necessary guarantees for the financing which the PLASCO Company needed, to an alleged failure by the Government to define a fiscal regime for the PLASCO Company as well as to the imposition by decree of a "political price" for the sale of the production of the company. Taking into account the foregoing elements, the Tribunal, judging that the objection to jurisdiction should be treated as a preliminary question, declared its competency to settle the present dispute.

1.17 With respect to the request addressed by B and B to the Tribunal to the effect that it declare the Government in default, the Tribunal was of the opinion that the fact that the Government was not present at the preliminary consultation meeting on 15 June 1978 did not constitute a failure within the meaning of Article 45 of the Convention or of Rule 42 and that it was entitled to file an objection to jurisdiction within the time limit fixed for the filing of the counter-memorial (Rule 41). The Government had undoubtedly been invited by the Tribunal, for reasons of expediency, to file, at the same time as its additional observations on the question of jurisdiction

a counter-memorial on the merits of the case, but it was not obliged to do so, the procedure on the merits having been suspended pursuant to Rule 41(3) after the filing of the objection to jurisdiction. As for the failure to reply to the observations of B and B with which the Government is reproached, it did not appear to the Tribunal to be such as to be held against it, seeing that the Tribunal now considered itself to be in possession of all the necessary elements to give a decision, with a full knowledge of the facts, on the objection to jurisdiction.

1.18 Consequently, the Tribunal rejected both the objection to jurisdiction raised by the Government and the request of B and B that the Government be declared in default. Next and in accordance with Rules 19, 30 and 41(4), the Tribunal ordered the parties to submit to the Tribunal the following pleadings of the written procedure and set the following time limits for that purpose:

(a) counter-memorial of the Government: 8 March 1979;

(b) reply of B and B: 12 April 1979;

(c) rejoinder by the Government: 22 May 1979.

Finally, the Tribunal decided that the written procedure would be followed by a stage of oral procedure.

1.19 The Government did not file its counter-memorial within the time limit prescribed and B and B sent the Tribunal on 9 March 1979 a letter in which it requested that the written procedure be declared closed and that the oral procedure be begun forthwith. The Tribunal considered this letter to be a request by B and B within the framework of Article 45 of the Convention and Rule 42. In accordance with those provisions, the Tribunal granted a period of grace to the Government to file its counter-memorial by 30 April at the latest. This decision was communicated to the parties by telegram dated 11 April 1979. The Government did not file its counter-memorial within the grace period.

1.20 On 3 May 1979 the Government requested an extension of the time limit in view of the change that had taken place in the Department of Industry and Tourism. On 8 May 1979 the Government was informed by the Centre that the Tribunal had decided not to extend the time limit since: (a) the request for extension of the time limit was made after the expiration thereof; (b) it was the third time limit fixed for the filing of the counter-memorial; and (c) the written procedure has to be followed by the stage of oral procedure during which the Government would have every opportunity to present its defense.

1.21 At the beginning of May, the parties were informed that the hearings would be held on 6 and 7 June 1979 in Geneva. The Arbitral Tribunal met as scheduled and heard, on the one hand, Messrs C. Bonfant and M. Sinagra as representatives of B and B and, on the other, Messrs L. Zubabela and R. Martin as representatives of the Government as well as Miss Z. Ingster and Mr. C. Mazzieri whose hearing was requested by B and B as witness and expert respectively.

1.22 During the course of the hearings, the minutes of the meeting between the representatives of the two parties that was held in Rome on 5 June 1979, were presented to the Tribunal. The Tribunal took note of them by a procedural order dated 7 June 1979. According to the above-mentioned minutes, the representatives of the two parties had agreed to end their present dispute on the basis of an amicable settlement. For that purpose, the parties requested the Tribunal not to render its award before 30 August 1979, or, should it not be possible to reach an agreement before that date, to render its award as quickly as possible on the basis of an ex aequo et bono decision. The Tribunal declared that, in the last-mentioned eventuality, it planned, in order to complete the proceeding, to call for an accounting and economic appraisal of certain claims of B and B. In the course of the hearing of

6 June, the President of the Tribunal informed the parties that the Tribunal would again meet once the appraisal had been made.

1.23 By a letter dated 18 July 1979, B and B announced to the Tribunal that it considered the negotiations with the Government to have been definitely broken off and requested the Tribunal to order the preparation of the accounting and economic appraisal and to declare the proceeding closed pursuant to Rule 38.

1.24 The President of the Tribunal requested a preliminary appraisal from the Danish company, "The United Breweries Ltd.", which gave him its opinion on 28 August 1979. This preliminary opinion was transmitted to the parties on 25 September 1979 by the Centre and the President of the Tribunal invited the parties to transmit their comments to him.

1.25 Meanwhile, the representatives of the parties held conversations at the beginning of September in Paris and signed a draft agreement that was submitted to the Tribunal by B and B together with a letter dated 11 September 1979 in which B and B summarized its claims. But the Government informed the Tribunal by a telex dated 12 September 1979 that it rejected the above-mentioned draft agreement.

1.26 On 1 October 1979 the Government requested the Tribunal to convene a new hearing. For its part B and B, during the month of October, sent several communications to the Tribunal expressing its opposition to such a convocation. Furthermore, by a letter dated 10 October 1979, B and B submitted to the Tribunal its comments on the appraisal of The United Breweries company as well as a summary of its petitions and requested that the final award be rendered.

1.27 On 23 October 1979 the Government announced that it was going forthwith to file a counter-memorial. The President reminded the Government that after several extensions of the time limits fixed for the filing of the counter-

memorial, the Tribunal had granted a final grace period pursuant to Article 45 of the Convention, that that period had expired on 30 April 1979, and that, for that reason, it could no longer accept the above-mentioned counter-memorial (telex dated 10 and 25 October 1979).

1.28 Furthermore, on 25 October 1979 the President of the Tribunal asked the Government for particulars on the new elements, which, according to it, would justify an additional hearing and insisted that, before any convocation, the Government pay its share of the procedural costs, all before 30 October 1979.

1.29 In telexes dated 29 and 30 October 1979, the Government stated that it had in its possession certain documents concerning the dispute which could be submitted to the Tribunal if it were given an opportunity to do so and that, unfortunately, the political changes that had taken place during the procedure had prevented the Government from submitting to the Tribunal all the documents available on the dispute within the time limits established.

1.30 On 6 November 1979, the Tribunal then invited the Government to file the above-mentioned documents at the latest by 9:00 a.m. on 12 November 1979 and convened the parties to a hearing for the same day at 14:30 hours to enable the Tribunal to obtain explanations regarding those documents. On 9 November 1979 the Government paid in to the Centre an amount of FF 126,000 for procedural costs.

1.31 During the session held on 12 and 13 November in Paris in the presence of the Secretary-General of the Centre and the Secretary of the Tribunal, the Tribunal heard Messrs Jacquemaire and Vigneau as well as Messrs Sika and Mabouana, counsel and representatives respectively, of the Government, and Mr. Sinagra, Professor A. Sinagra and Mr. Bonfant, as counsel and representative of B and B.

1.32 The representatives of the Government requested that the Tribunal exercise the discretional authority granted it by the Rules to permit the Government to rebut the memorial of B and B and to submit a counterclaim. For their part the counsel and representatives of B and B were of the opinion that the documents presented by the Government should not be admitted by the Tribunal since they had been filed after the expiration of the time limit of 31 October 1979 and that any extension of the procedure subsequent to that admission would not be justified.

1.33 However, the Tribunal considered that special circumstances of a domestic political nature had prevented the normal operation of certain State agencies of the Congo and were such as to explain the failure on the part of the Government to meet the successive time limits set by the Tribunal. Furthermore, the Tribunal was of the opinion that the documents presented by the Government could be considered an indication that the Tribunal did not have in its possession all the necessary data for rendering its award. For that reason the Tribunal took the following decision:

1. In accordance with Rules 25 and 40, the parties were to submit the following pleadings to the Tribunal:

   (a) Counter-memorial and counterclaim of the Government, 21 December 1979, and

   (b) Observations of B and B on the counterclaim, 31 January 1980.

2. There would be no further exchanges of memorials between the parties.

3. All future expenses of the Tribunal and of the Centre would be advanced by the Government.

1.34 The Government filed a defense memorial and a counterclaim and B and B its observations (hereinafter respectively the Defense memorial and the Observations) within the time limits set. B and B requested the Tribunal, in

a letter dated 7 February 1980, to close the proceeding and render the award in accordance with Rule 60.

1.35 The Tribunal met in Paris on 27, 28 and 29 February 1980 without the parties being present and with the Secretary-General of the Centre and Secretary of the Tribunal in attendance. It was then decided that, after finding that the drawing up of the award did not require any additional information from the parties, the Tribunal would issue a procedural order declaring the proceeding closed.

Closing of the Proceeding

1.36 The Tribunal issued a procedural order dated 7 August 1980 declaring the proceeding closed pursuant to Rule 38.

II

STATEMENT OF THE FACTS

2.1 In this part the Tribunal will set forth the facts that gave rise to the dispute as they appear from an examination of the written pleadings of the parties, the hearing of the witnesses, and the counsel's speeches.

2.2 Towards the end of 1972, B and B was commissioned by the Government to study the possibilities of setting up and operating in the Congo an establishment for the manufacture of plastic bottles (Annex 2-M). (1)

2.3 In a letter dated 20 December 1972 addressed to the Government, B and B proposed to the Government that it take a 40 percent participation in a mixed-economy company to be established (Annex 1-M). This participation was subsequently increased to 60 percent.

2.4 The parties agreed to commission the construction of the plant to the Italian Engineering Company (hereinafter referred to as SODISCA) which, for that purpose, required a prefinancing.

2.5 B and B undertook to make this prefinancing in the amount of CFA 22,000,000 in a "proforma of the Preliminary Agreement" dated 2 March 1973 (Annex 9-M). This amount was to correspond to the entire share of B and B in the capital stock proposed for the constitution of the mixed-economy company. B and B paid the above-mentioned amount on 6 March 1973 (Annexes 10-M and 11-M).

2.6 On 16 April 1973, the parties signed the Agreement (Annex 12-M) which provided for:

(a) The establishment of a mixed-economy company with a capital stock of CFA 55,000,000, of which 60 percent from the Government and 40 percent from B and B (Article 1);

(b) The right of the Government to purchase B and B's shares after a period of five years from the constitution of the new company, the purchase

price being determined by mutual agreement between the parties or in default thereof by arbitration (Article 5);

(c) The commitment of the Government to fully guarantee any financing the above-mentioned company would need for conducting its program (Article 9) and to grant it a fiscal regime through an "establishment agreement" (Article 13);

(d) The commitment of B and B to guarantee the marketing of the products of the company to be established (Article 14).

2.7 On the same date as the Agreement, the parties signed the Bylaws of the PLASCO Company (Annex 13-M), which company was established for a duration of 99 years (Article 4) and was to be managed by a Board of Directors composed of seven members, of which at least four would be appointed by the Government (Article 9). In accordance with Article 15 of the Bylaws, the Board of Directors was to meet at least once a year pursuant to a convocation by its Chairman or at the request of two-thirds of its members. Under Article 22, the shareholders were entitled to an initial annual dividend "representing five percent of the amounts in which their shares are paid and not redeemed without, when the profits of a year do not permit this payment, the shareholders being entitled to claim them against the profits of subsequent years.

2.8 In minutes relating to the constitution of the PLASCO Company (Annex 14-M) dated 28 June 1973, provision was made for the PLASCO Company to have a single tax regime within the framework of the UDEAC treaties, which would be the subject matter of an establishment agreement. It was also stated in these minutes that the Government would intervene whenever necessary to ensure that the production of the PLASCO Company would not be subject to any foreign competition and that the PLASCO Company could transact business with different clients, in particular with SIACONGO, a State enterprise.

2.9 On 21 April 1973 a contract was signed between the PLASCO Company and SODISCA for a turn-key plant for the manufacture of plastic bottles with a production capacity of approximately 8 million units (probably per year) and of a mineral water bottling plant capable of producing 2,200 bottles an hour. The price of these two plants amounted to CFA 305 million (Annex 16-M). This contract was countersigned by the Minister of Industry of the Government on 4 May 1973.

2.10 For that purpose B and B and the Government guaranteed to SODISCA semi-annual drafts from the PLASCO Company totaling CFA 250 million, representing part of the cost of the above-mentioned plants (Annex 18-M). These drafts were backed by the Caisse Centrale d'Amortissement du Congo and bore interest at the rate of 8%.

2.11 In March 1973 the Government paid to SODISCA, on behalf of the PLASCO Company, CFA 22 million and charged CFA 9 million to the capital stock of the PLASCO Company representing the value of the land assigned for the construction of the plants. The Government authorized the occupation of this land on 21 August 1973. On the other hand, it failed to pay the amount of CFA 2 million which was outstanding for completing its participation.

2.12 The first meeting of the Board of Directors of PLASCO Company was held on 18 October 1973. It appears from the minutes of this meeting that no local bank was prepared to provide the PLASCO Company with working capital and that B and B undertook to guarantee the overdraft, if any, by a cash facility with the Banque Commerciale Congolaise. Furthermore, it was recalled therein by the Chairman himself that "in principle two meetings a year are held" (Annex 15-M).

2.13 Following a report on the status of the PLASCO Company (Annex 18-M) prepared by Mr. Mombou, Director General of the Ministry of Industry and

Manager of the PLASCO Company, the Minister of Industry convened a meeting of the Board of Directors for 4 June 1974 (Annex 19-M). The agenda (Annex 20-M) included the payment by the Government of the last tranche of capital stock in the amount of CFA 2 million and an increase in the overall cash facilities from CFA 15 million to CFA 100 million.

2.14 The representatives of the Government all withdrew from the meeting thus convened. On 17 September 1974 a revolving consultation made it possible to reach an agreement to enable the PLASCO Company to contract a loan from the Central Bank to reduce the lack of available funds.

2.15 B and B succeeded in having a meeting of the Board of Directors convened in January 1975, fifteen months after the first meeting (Annex 36-M). According to B and B, the minutes of this meeting recognized that B and B had advanced an amount of CFA 43,451,094 to meet the cash needs of the PLASCO Company and recorded the promise of the Government to immediately repay to B and B the amount of CFA 25 million. During the meeting, the selling price of mineral water was fixed, taking into account a profit margin of 10% for the PLASCO Company. These minutes were not submitted to the Tribunal, and B and B repeatedly stated that this document was in the head office of the PLASCO Company at the time of the appropriation, while the Government declared that it was not in its possession. The Government has not disputed the content of this document as presented by B and B to the Tribunal.

2.16 In February 1975, the Government gave its guarantee to a loan in the amount of CFA 100 million granted to the PLASCO Company by the Banque Commerciale Congolaise.

2.17 The bottle production plant began operations in February 1975, and a first batch of 800,000 bottles was delivered almost immediately to SIACONGO, which had ordered it. Since this delivery was not paid for, the PLASCO Company

did not make any further deliveries to SIACONGO. This state of affairs led to problems of marketing the production of the PLASCO Company from the outset, since the satisfaction of SIACONGO requirements had been one of the decisive reasons for the establishment of the PLASCO Company.

2.18 During the start-up of the plant, Mr. Bonfant, the Manager of the PLASCO Company and Miss Ingster, established the Entreprise de Distribution Congolaise (hereinafter referred to as EDICO) for the purpose of fulfilling the obligation of B and B to guarantee the marketing of the mineral waters prepared by the PLASCO Company.

2.19 On 3 October 1975, the Government unilaterally fixed by decree (Annex 21-M) the selling prices of bottles of mineral water at lower levels than those that had been established during the meeting of the Board of Directors of the PLASCO Company in January 1975. B and B protested this unilateral action of the Government and emphasized that the new prices meant a loss for the PLASCO Company of CFA 23.86 per bottle of mineral water (Annex 22-M).

2.20 Beginning in November 1975, the Government launched a "radicalization" policy, which was reflected in particular by the establishment of government agencies such as the Direction-Parti-Syndicat (The Trilogy), by the interference of these agencies in the management of the PLASCO Company, and, finally, by the winding up of EDICO by decree of 9 November 1975 (Annex 24-B-M).

2.21 In response to the repeated requests of B and B, the Government convened a meeting of the Board of Directors, which was held on 18 January 1976. During that meeting, new selling prices for bottles of mineral water were fixed and would have provided the PLASCO Company with a profit of 10%; furthermore, a projected operating account for 1976 was approved (Annex 20-M).

2.22 As a consequence of a service note dated 29 January 1976, Mr. Bonfant considered that the PLASCO Company had become a state company (Annex 32-M)

without any formal act of expropriation having taken place.

2.23 Believing that their personal safety was no longer guaranteed and on the advice of Mr. Corradello, the Charge d'Affaires of the Italian Embassy in Brazzaville, according to whom the arrest of Mr. Bonfant was imminent, Mr. Bonfant and most of the Italian staff of the PLASCO Company hastily left the Congo in February 1976 (Annex 4 to the statements of the representatives of B and B at the Geneva hearing). The head office of the PLASCO Company was subsequently occupied by the army. His hasty departure from the Congo did not permit Mr. Bonfant to take away all the documents of the PLASCO and EDICO Companies relating to the dispute.

2.24 The attempts B and B and the Government made to settle their dispute by negotiation were unsuccessful.

III

SUBMISSIONS OF THE PARTIES

3.1 B and B concludes its memorial as follows:

"The Benvenuti and Bonfant Company submits the following petitions for:

1)	Damages for failure to pay the minimum guaranteed profits of the PLASCO Company	5,500,000
2)	Compensation of the value of 40% of the PLASCO Company, at the end of the five-year period from its construction	110,098,936
3)	Reimbursement of the advances made to the PLASCO Company	226,970,885
4)	Reimbursement of the amounts paid to SODISCA for debts of the PLASCO Company	77,754,324
5)	Indemnification for the suppression of the EDICO Company	88,000,000
6)	Moral damages	250,000,000
	PROVISIONAL TOTAL	758,324,145

Plus the amount due for interest on damages (Memorial, page 70).

3.2 B and B reaffirmed these various petitions in its letter to the Tribunal dated 11 September 1978, but it declared that its petition relating to the repayment of the amounts paid to SODISCA for debts of the PLASCO Company was reduced to CFA 61 million, which figure was accepted, by agreement between the parties, during their meeting on 5 September 1979 in Paris.

3.3 B and B has again reaffirmed its case in its letter to the Tribunal dated 10 October 1979, confirming the amount claimed on the grounds mentioned in paragraph 3.2 and the amounts claimed for petitions 1), 5) and 6) of the memorial and stating that the amount claimed for reimbursement of the advances made to the PLASCO Company was CFA 142,780,253, without prejudice to interest on this amount. When the corrections are taken into account, the total capital amount claimed by B and B is CFA 657,379,189.

3.4 Finally, B and B reaffirmed in its Observations the petitions contained in its letter of 11 September 1979 and, in addition, claimed interest at the rate of 15% annually on the amounts that would be awarded to it by the Tribunal.

3.5 In addition to the objection to jurisdiction whose pleadings have already been the subject of a decision by the Tribunal, the Government has, on the one hand, pleaded in its Defense Memorial in favor of the rejection of all the counts of the principal request and, on the other, formulated a counterclaim containing the following counts:

1) Damages for non-payment of duties and taxes relating to the illegal importation by the PLASCO Company of equipment intended for third parties. 32,727,555CFA

Plus the amount due for interest at the rate of 10% annually, calculated between the date of each importation and the date of payment of the damages awarded on those grounds.

2) Overinvoicing of raw materials 31,590,000CFA

Plus the amount due for interest at the rate of 10% annually for the period between, on the one hand, 31 December 1975 and 31 December 1976 and, on the other, the date of payment of the damages awarded on those grounds.

3) Damages for defects in execution of the SODISCA contract 93,051,000CFA

Plus the amount due for interest at the rate of 10% annually for the entire period between the date of acceptance of the plant and the date of payment of damages awarded on those grounds.

4) Faults in the design of the plant 1CFA

5) Moral damages 250,000,000CFA

TOTAL 407,368,556CFA

IV

STATEMENT OF LAW

On the applicable law

4.1 As stated above, this dispute was submitted to the Tribunal under Article 12 of the Agreement (Annex 12-M) and Article 25 of the Bylaws (Annex 13-M).

4.2 These articles do not contain any stipulation with respect to the applicable law. In this case, pursuant to Article 42(1) of the Convention, the Tribunal applies the law of the Contracting State party to the dispute as well as such rules of international law as may be applicable.

4.3 Congolese law applies, in civil and commercial matters, the French legislation that was in force at the time the country achieved independence (1960). This corpus of rules, and in particular the French Civil Code, has force of law under Article 23 of the French Decree of 28 September 1897. This legislation is embodied in the Constitution of the People's Republic of the Congo of 24 June 1973 and the Fundamental Act of the Military Committee of the Party of 5 April 1977, which amended certain provisions of that Constitution.

4.4 In the instant case, the Tribunal also has the power to decide the dispute ex aequo et bono if the parties so agree, pursuant to Article 42(3) of the Convention. Such agreement was expressed to the Tribunal during the hearing on 6 June 1979 in Geneva. The Tribunal noted it in its procedural order of 7 June 1979.

On the principal claim

(A) On the merits of the principal claim

4.5 During the course of negotiations for a compromise that took place between the parties in Rome in June and in Paris in September 1979, the representatives of the Government acknowledged in principle the merits of the claims

of the plaintiff but not the quantum of the amounts claimed.

B and B states that this acknowledgement, as the Tribunal was so informed in the course of the proceeding, binds the Government, in accordance with the rules concerning the binding force of conventions and judicial admissions (French Civil Code, Articles 1354 and 1356).

In contrast, the Government argued that it had rejected the compromise in question, which could not bind it without its ratification.

4.6 In these circumstances, the Tribunal is of the opinion that it must analyze the evidence produced and adopt a position on the merits of the claims of the plaintiff and determine their amounts.

4.7 It should first be noted that the presentation by the plaintiff of the facts and circumstances of the case have not been disputed on the essential points and that the plaintiff has not had access to the evidence and documents that remained in the Congo.

4.8 The Tribunal will first deal with the grounds for complaint of B and B as they are set forth in the memorial, namely:

1) The Government has never fully paid its share of the capital stock (Articles 6 and 7 of the Agreement).

2) The Government interfered with the regular operation of the organs of the PLASCO Company.

3) The Government did not fulfill its economic contractual obligations with respect to the PLASCO Company, in particular as regards the guarantees for the financing of the activities of this company (Article 9(b) of the Agreement), the granting of a preferential fiscal regime (Article 30 of the Agreement) and protection against competition nor did take steps to require SIACONGO, a State enterprise, to execute its contract with the PLASCO Company.

4) The unilateral fixing of "political prices" is also a violation of the Agreement.

5) The dissolution of EDICO.

6) The seizure by the Government of the PLASCO Company and of all its activities.

1) <u>The question of the payment of CFA 2,000,000 of the capital of the PLASCO Company</u>

4.9 The Government has stated (cf. Defense Memorial, p. 6) that the remainder of its share of the capital stock of the PLASCO Company, namely CFA 2,000,000, was paid for provisions and fees for the registration of the company.

Now, bearing in mind that during the meeting of the Board of Directors of the PLASCO Company on 4 October 1973 (Annex 15-M, p. 30) it was stated that the amount had not been paid and that the same fact was mentioned in a report dated 28 May 1974 addressed to the Minister of Industry, Mines and Tourism by the Director-General of Industry of the Ministry, Mr. Augusto Mambou (Annex 18-M) in which he stated:

"The Congolese party thus still owes the PLASCO Company the amount of CFA 2 million."

The Tribunal has no alternative but to find that the above-mentioned sum has never been paid by the Government.

2) <u>The question of the origin of the difficulties of the PLASCO Company</u>

4.10 As mentioned earlier, B and B has complained that, on the one hand, the Chairman of the PLASCO Company did not convene the Board of Directors as often as would have been desirable for solving the difficulties of the Company and that, on the other hand, the Government committees and the Direction-Parti-Syndicat (The Trilogy) interfered with the management of the company.

4.11 With respect, first, to the question of the convocation of the Board of Directors, the Tribunal is of the opinion that it has been proven that B and B, in emergency situations, requested the convocation of meetings of the Board of Directors, but that such convocations were not issued.

4.12 A letter dated 21 October 1975, sent by the Managing Director to the Chairman of the Board of Directors of the PLASCO Company, states the following:

> "We ask you to be good enough to convene a special meeting of the Board of Directors as soon as possible, within the time limits that will be most convenient to you, between now and 5 November 1975." (Annex 7-M)
>
> A similar request was made by a letter dated 26 January 1976. (Annex 30-M)

4.13 And, finally, it also appears from the brief that on one occasion the Chairman of the Board of Directors of the Company, instead of convening the Board of Directors, consulted the Directors at their respective homes (Annex 21-M).

4.14 The Tribunal is of the opinion that the absence of regular meetings of the Board of Directors is contrary to the Agreement.

4.15 With respect to the allegation that Government Committees and the Direction-Parti-Syndicat (The Trilogy) interfered with the management of the PLASCO Company, Mr. Corrado Bonfant and Miss Ingster, as well as the representatives of the Government, gave full explanations in this regard during the oral procedure on 6 and 7 June 1979.

4.16 The Tribunal considers it probable that the behavior of these Government organs caused a certain confusion and a certain delay although it is unable to determine its extent. Without denying that these institutions were undoubtedly in accordance with the Congolese law, legitimate emanations of the new political system, the Tribunal must, however, find that the consequences

of their action were not provided for in the agreement concluded before their installation.

4.17 However, the Tribunal does not believe it useful to go further into this point, since the alleged violation of the contract in this regard does not seem to have had any substantial effect on the economic and financial position of the PLASCO Company and that other circumstances that will be dealt with below constitute a more typical violation of the contract involving the responsibility of the Government.

3) <u>The question of the non-fulfillment of the contractual obligations of the Government</u>

a) <u>The financing obligation</u>

4.18 Article 9, first part, lettered paragraph C, of the Agreement binds the Government "to provide all possible guarantees of the financing the new company will need to carry out its program".

4.19 The plaintiff asserts that the Government did not fulfill its undertaking to contribute to the financing of the activities of the PLASCO Company.

4.20 On the other hand, the plaintiff has stated that the Government, together with B and B, gave its guarantee for a loan from the Banque Commerciale Congolaise in the amount of CFA 100 million. This loan was used, according to the plaintiff, to pay the first bills of exchange issued to SODISCA.

4.21 In the opinion of the Tribunal, the plaintiff is correct in arguing that, by giving this guarantee, the Government has not adequately and completely fulfilled its obligation prescribed by Article 9 to give "all possible guarantees". Since the budget provided for in Article 7 and 8 of the Agreement is clearly insufficient for the management of the company, this obligation should also extend to the financial needs of the PLASCO Company.

4.22 The Tribunal is of the opinion, in the light of the letters dated 21 October 1975 and 26 January 1976 (Annexes 27-M and 30-M), that the Government did not give the financial support incumbent upon it, since B and B in those letters is calling for the release of the amounts specified for the PLASCO Company.

4.23 This failure is again underscored by the "Operating Account proposed for 1976" prepared for the purpose of the meeting of the Board of Directors of 18 January 1976, which states on page 2 that: "to solve it (the financial aspect of the problem) satisfactorily and definitely, it is absolutely necessary to have the Government release a credit of 100 million in order to meet the financial commitments and repay the debts as well as to provide for working capital to ensure the regular purchase of raw materials. This credit should be definitely granted before the end of the present month of January and be repayable with effect from 1977 in three years".

b) The obligation to grant a preferential tax regime

4.24 As already mentioned, Article 13 of the Agreement states that:

"The tax regime of the PLASCO Company under the Congolese investment code will be defined in the Establishing Agreement to be prepared".

The plaintiff asserts that, despite repeated requests on its part, it was not able to obtain such a tax regime.

In the operating account proposed for 1976 (Annex 29-M) and cited above it is stated that:

"In conclusion, to ensure the full production of PLASCO it would be absolutely necessary to take the following measures ...

4. Ascertain the tax regime and the excise tax in order to be able to make valid price proposals to its potential clients either within the country or abroad".

4.25 In addition, a memorandum dated 2 August 1975 of the Ministry of Finance, signed by Mr. M'Bizi and addressed to the Minister, takes note of the request of the PLASCO Company to grant it "a 5 percent reduction in the tariff on its equipment and total exemption on its imports of raw materials for its manufactures" (Annex 11 of the statement of B and B at the Geneva session in 1979).

4.26 For its part the Government has argued that the PLASCO Company has obtained such a tax regime. In this regard it refers to the letter from the Brazzaville Customs Directorate to the Comrade Director of the Cabinet of the Minister of Justice and of Labor dated 8 November 1979, according to which the PLASCO Company enjoys "the internal consumption regime", which in practice operates in accordance with the rules of the single tax (Annex 23-MED).

4.27 In the opinion of the Tribunal, the onus of proving the materiality of the grant of such an advantage is incumbent upon the Government since the pertinent official decrees are at its disposal.

4.28 Now, to clarify this question, the Tribunal only has, on the one hand, the above-mentioned memorandum of 2 August 1975, which creates a serious presumption that such a fiscal regime had not been granted in 1975, and, on the other, documents from 1979 presented by the Government (Annex 23-MED), the probative value of which seems to be very weak.

4.29 Accordingly, the Tribunal can only find that:

- The Government promised B and B a special tax regime for the PLASCO company, but

- Such a fiscal regime has not been granted.

c) The obligation to adopt protectionist measures

4.30 B and B has again asserted that the Government had promised it that, when the production of the PLASCO Company had attained a satisfactory level, it

would adopt protectionist measures to limit mineral water imports.

4.31 In this regard, it refers to the request made during the 28 June 1973 meeting of the Board of Directors of the PLASCO Company (Annex 14-M, p. 2) to the Government to intervene at the appropriate time to ensure that the production of the PLASCO Company would not suffer any competition. Mr. Bonfant was then told that "when there is quality, there will be no problem".

4.32 Item 7 of the agenda proposed by the Managing Director of the PLASCO Company in his letter to the Minister of Labor and Social Welfare dated 21 October 1975 lists the following matters:

"7) Effective measures to be taken to protect PLASCO products:

A) To completely block imports of water except so-called medicinal waters for exclusive sale by pharmacies

B) Approval of UDEAC (file already deposited in July)

C) Excise tax

D) Preferential CFCO rate for the routing of PLASCO products throughout the country". (Annex 27-M)

4.33 Furthermore, in the agenda of the Board of Directors of 18 January 1976 (Annex 28-M), the Italian party mentioned the need for protectionist measures.

4.34 Finally, in the form approving the operating account proposed for 1976 (Annex 29-M) "the need to prohibit all imports of water except so-called medicinal waters for exclusive sale by pharmacies" is reaffirmed.

4.35 B and B asserts that this operating account was approved unanimously during the meeting, and this fact was confirmed by the evidence of Mr. Corrado Bonfant and Miss Ingster given during the hearings of the Tribunal on 6 and 7 June 1979.

4.36 In view of the foregoing and the fact that the Government has not seriously contested these facts, in particular by the production of the minutes

of the meeting which are in its possession, the Tribunal considers it established that the decisions of the Board of Directors were taken unanimously.

4.37 The Tribunal also considers it established that the Government undertook to adopt protectionist measures, but that it did not fulfill its undertakings.

d) Fulfillment by SIACONGO of its contractual obligations

4.38 B and B further asserts that SIACONGO, to which the PLASCO Company sold its products, did not pay for the goods received. In this regard it declares that the PLASCO Company was forced to protest two drafts of CFA 5 million and CFA 7,300,000, respectively. These two drafts were produced at the request of the Tribunal as Annexes 10A and 10B to the declarations of B and B made to the Tribunal during the hearing in June 1979.

4.39 From the foregoing, the Tribunal finds it established that SIACONGO has not paid its debts to the PLASCO Company.

4.40 It is not disputed by the Government that the sales to SIACONGO, a State company, were an essential factor in the economic justification of the PLASCO project. The Tribunal is therefore of the opinion that this failure of SIACONGO to fulfill its obligation involves the responsibility of the Government.

4) The question of the price of bottles of mineral water

4.41 As stated above, Decree No. 6127/MC/DGC/DCP of 3 October 1975 (Annex 21-M) established certain prices for the "Mayo" mineral water of the PLASCO Company.

4.42 The Tribunal notes that these prices were lower than those adopted during the meeting of the Board of Directors of the PLASCO Company on 28 January 1975, as is shown by the document "III Selling price factory net of tax" attached to the letter of 24 January 1975 (Annex 36-M), containing the convocation by the Minister of Industry and of Mines of the above-mentioned meeting.

4.43 These prices are also lower than those that had been adopted during the meeting of 18 January 1976 (Annex 29-M). See also the letter of 26 January 1976 (Annex 30-M), in which it is stated that "we were all in full agreement about the new prices to be adopted".

4.44 B and B protested in a letter dated 4 December 1975 (Annex 22-M), arguing that the level of the prices established by the decree was lower than the cost price. During the oral procedure, B and B insisted on this fact.

4.45 With respect to the Government, it has limited itself, in replying to this argument, to recalling the context in which the decree was enacted. It stated in particular that:

> "It is true that officially the Government, at the end of 1975, fixed the selling prices of the PLASCO Company at a level lower than those requested by Mr. Corrado Bonfant; even lower, he says, than the cost price. The Congo recognizes that by its nature this official measure represents an interference in the operation of a mixed-economy company. However, the context in which this measure was taken should be recalled. As recalled above, it was precisely at the time when the representative of the Italian party refused to give satisfactory explanations of the many transactions falling, by reason of their nature, within the scope of Article 40 of the Company Law, which thus cast doubt on the justified character of the costs on which he based his calculations of the cost price".
>
> (Defense Memorial, p. 19)

4.46 The Tribunal is of the opinion that the fixing of the prices by the decree mentioned undoubtedly inflicted a loss on the PLASCO Company and that the Government must assume responsibility for it.

5) <u>The question of the winding-up of EDICO</u>

4.47 As mentioned above, Decree No. 75/508 of the Prime Minister of 9 November 1975 put an end to the existence of EDICO (Annex 24 B-M).

4.48 This company was established on 7 February 1975 by Mr. Corrado Bonfant and Miss Ingster (Annex 34-M). They established it at the request of B and B itself, with which they had concluded an arrangement for that purpose (Annex 41-M), and which supplied the founders with the necessary capital.

4.49 B and B argues that the company was established to enable it to fulfill its obligation provided for in Article 14 of the Agreement "to guarantee the marketing of the mineral waters produced by the PLASCO Company", and that the Government required that the marketing take place under the guarantee and on the responsibility of B and B through another company to be established under Congolese law.

4.50 Mr. Bonfant and Miss Ingster stated during the oral procedure in Geneva on 6 and 7 June 1979 that the establishment of EDICO was consistent with the intentions of both the Italian and the Congolese parties.

4.51 This statement has been contradicted by the representative of the Government, Mr. Zubabela, according to whom the marketing of the products was to have been undertaken by the PLASCO Company itself, the existence of EDICO only increasing the prices of the products of the PLASCO Company.

4.52 The Tribunal is of the opinion that, while it has not been established that the obligation of B and B under Article 14 of the Agreement to guarantee the marketing of the products of the PLASCO Company made it necessary to found another company nothing in the Agreement or in the Bylaws prohibited B and B from entrusting this marketing to the PLASCO Company itself.

4.53 Furthermore, it notes that the plans for the establishment of EDICO have been often mentioned in the documents of the case, in particular in the

agenda contained in Annex 28-M and the operating account proposed for 1976 (Annex 29-M).

4.54 It should be noted that EDICO was established and legally registered without protest of any kind and that it was able to operate normally from the date of its establishment in February 1975 to that of its dissolution in November of the same year.

4.55 The establishment of a company controlled by B and B for the marketing of the products of the PLASCO Company does not appear to be in any way abnormal, taking into account the minority position of B and B within the PLASCO Company. Consequently, the Tribunal is of the opinion that the dissolution of the above-mentioned company followed by the seizure of its corporate assets by the Government is without any legal justification.

6) The question of the seizure of the PLASCO Company by the Government

4.56 B and B asserts that the Government, by means of the service note mentioned in paragraph 2.22 and the use of the military occupation of the property and of the premises of the PLASCO Company mentioned in paragraph 2.22, dispossessed it of its share in the PLASCO Company and appropriated it.

4.57 The Government disputes, in its Defense Memorial, that it undertook any confiscation or nationalization and argues that the Italian party can return and take back its share at any time (pp. 17-20).

4.58 The Tribunal is of the opinion that it is difficult to follow this argument. First of all, there are a large number of facts and elements that go against the argument of the Government. In its service note (Annex 33-M) the Government treated the PLASCO Company as a state company.

4.59 Next, by instituting criminal proceedings against him, Mr. Bonfant was led to follow the advice of the Italian diplomatic representative and to leave the Congo, although the Tribunal has not received any document that would

enable it to determine the merits of this criminal proceeding. The fact that the Government did not respond to the subsequent request of B and B for the resumption of negotiations must be noted.

4.60 The Tribunal also notes that the Government has done nothing about convening the Italian party to the meetings of the Board of Directors or of the General Meeting of Shareholders.

4.61 Nor has any convocation been sent out by the provisional manager appointed on 13 June 1976. It should also be noted that, up to the hearings in November 1979, the Government has refused to give an explanation of the allegations of B and B according to which it has de facto expropriated its corporate shares in the PLASCO Company.

4.62 That is why the Tribunal is of the opinion that the Government has indeed appropriated the share of B and B in the PLASCO Company and owes it damages.

4.63 Furthermore, in its Defense Memorial the Government acknowledged: "the obligation not to proceed to an open or creeping confiscation and, of course, not to nationalize the share of the Italian investor without fair compensation". (p. 5)

4.64 This principle of compensation in the event of nationalization is in accordance with the Congolese Constitution and is one of the generally recognized principles of international law as well as of equity.

4.65 Accordingly, the Government must therefore be condemned to pay B and B damages, the amounts of which are going to be determined by the Tribunal ex aequo et bono in the following paragraphs.

B) On the assessment of the damage

1) The petition of B and B for compensation for loss of profits as the holder of 40 percent of the shares of the PLASCO Company

4.66 B and B has limited this claim to the profits not received during the five years at the end of which the Government, pursuant to Article 5 of the Agreement, could have repurchased its shares.

4.67 In this regard, B and B bases itself on Article 22 of the Bylaws, which provides that the shareholders were entitled to an initial annual dividend "representing 5% of the amounts in which their shares are paid up and not redeemed without, when the profits of a year do not permit this payment, the shareholders being entitled to claim them against the profits of subsequent years" (Annex 13-M).

4.68 On this point, the Tribunal first notes that this statutory clause clearly stipulates that the right to dividends is cancelled when, during a certain year, there are no sufficient profits to pay dividends.

4.69 During the first of the five years for which B and B claims compensation there were no profits. During the second year, which is that of the start-up of production, profits were, in the opinion of the Tribunal, not to be expected.

4.70 With respect to these two years, the Tribunal is therefore of the opinion that B and B is not justified in demanding compensation.

4.71 With respect to the last three years, the Tribunal considers that, if the contract had been executed as expected, the PLASCO Company would have had sufficient profits to pay the 5% of dividends. The partners themselves have admitted that by referring to probable profits in the projected operating account for 1976 (Annex 29-M).

4.72 The Tribunal therefore believes that, on this count, it should award B and B the amount of CFA 3,300,000.

2) Compensation for the value of 40 percent of the shares in the PLASCO Company

4.73 It was stated earlier that the Government had appropriated the PLASCO Company, which became the property of the State. The State must therefore pay compensation.

4.74 With respect to the evaluation of the PLASCO Company, B and B bases it essentially on the expected profits for the Company appearing in the 1976 operating account.

4.75 On the basis (a) of the projected profits, (b) of the duration of these profits (99 years), and (c) of the evaluation rates, Carlo Mazziere, the chartered accountant hired by B and B, in his statement dated 7 August 1978 (Annex 37-M), fixed the value of the PLASCO Company at CFA 275,276,840. Forty percent of this amount, that is, CFA 110,098,936, is the amount claimed by B and B.

4.76 During the hearing on 7 June 1979, the above-mentioned expert, who was heard as a witness without objection by the Government, confirmed the accuracy of that statement.

4.77 The Tribunal further deemed it advisable to obtain an additional statement from an independent expert and consequently asked the Danish company "The United Breweries Ltd." to kindly provide it with one.

4.78 In a statement drafted in English, the above-mentioned company has, in a notice signed by its Senior Vice President Per Green, stated, inter alia, that:

> "After studying the memorial, it seems that the evaluation of the PLASCO Company SA could not be based either on its projected receipts or on its value as an operating company, since as far as is known its market price has never been established. At the meeting of the Board of Directors of the PLASCO Company held on 9 January 1976, the prices were fixed, as was the projected profit for 1976, on the basis

of these prices, in the amount of CFA 36,340,740. As a result of the measures adopted by the Congolese authorities, these figures have not, however, ever been realized for the parties originating the PLASCO Company".

The conclusion that the "projected receipts" are not suitable as valid criteria in this case may be drawn, more generally, from the fact that, as things stand, one of the parties concerned has, throughout the duration of the arrangement, had full authority to fix the prices of the products of the PLASCO Company and, consequently, to a very large extent, the amount of the profits (or of the losses) of the company.

Under the circumstances, and since

The plant has just been constructed

The parties agreed upon a turn-key project

The PLASCO Company was technically operational at the time it was classified as a "state enterprise".

It seems to me that the logical starting point of the evaluation of the PLASCO Company must be the recent investment, which may be defined very accurately and which seems to be the best "objective" criterion available, that is to say, a criterion that does not depend on acts or omissions of either of the parties concerned. On the basis of this criterion B and B would be entitled to 40 percent of the original investment, that is to say, "CFA 122,000,000."

After being informed of this statement, the plaintiff declared that it limited its petition to the amount of CFA 110,098,936 claimed by it originally (letter from Mr. Sinagra to the Tribunal dated 10 October 1979).

4.79 The Tribunal is of the opinion that the findings of the expert report of Mr. Green taken as a whole may be accepted and decides that the Government

must pay B and B the amount claimed by it in this regard.

3) The advances made to the PLASCO Company

4.80 The Tribunal has already stated above that, in a letter dated 10 October 1979, B and B gave a new formulation to its petition amounting to CFA 142,780,253 excluding interest.

For its part, the Government stated that it was unable to reply in detail to each one of the claims of B and B on this point while disputing that the expenses that gave rise to the advances have been incurred in the sole interest of the PLASCO Company and pointing out that, in any event, the personal accounts of Mr. Bonfant and the accounts of the PLASCO Company were inextricably mixed (Defense Memorial, pp. 20-22).

4.81 However, during the negotiations conducted in Rome, the representatives of the Government recognized the claim and the Government has not disputed its merits in the Defense Memorial.

4.82 Consequently, the Tribunal considers it fair and equitable to award the amount of CFA 142,780,253 to B and B.

4) The amounts paid to SODISCA for debts of the PLASCO Company

4.83 In the negotiations that took place in Paris on 5 September 1979, the two parties agreed to reduce the amount of this claim, which originally amounted to CFA 77,754,324, to the amount of CFA 61,000,000.

4.84 Although the Government has not confirmed this Agreement, it has not raised any serious objections to this petition in the Defense Memorial.

4.85 Since B and B has maintained the figure of CFA 61,000,000 as the amount of its claims in this regard, this is the amount that must therefore be awarded to it.

5) Compensation on account of the dissolution of EDICO

4.86 The Tribunal stated above that the Government must compensate B and B

for the dissolution of EDICO.

4.87 The capital stock of EDICO was CFA 1,000,000. The shares were the property of Mr. Bonfant and Miss Ingster but had been paid by B and B (Annex 34-M, Article 7 and Annex 41-M, Article 1), which consequently submits a petition for this amount.

4.88 B and B claims that, in addition, it paid CFA 15,000,000 and CFA 12,000,000, respectively, for the installation of the offices, and as working capital (Annex 41-M, Article 4) and for accommodation and equipment (Annex 41-M, Article 5). It claims compensation in this regard.

4.89 Finally, it makes another claim for the amount of CFA 60,000,000, which it justifies by the stipulations of an agreement concluded with Mr. Bonfant and Miss Ingster (Annex 41-M, Article 6). According to this agreement, on the expiration of a period of five years, B and B would be entitled to repurchase the shares of Mr. Bonfant and Miss Ingster for the token price of CFA 1, while the two last-mentioned persons would be entitled to oppose the repurchase subject to repayment of the amounts advanced by B and B, or a total of CFA 28,000,000, and payment to it of an additional amount of CFA 60,000,000. According to B and B, these stipulations prove that, after five years, EDICO would have had a value of CFA 28,000,000 plus CFA 60,000,000. This is why its claims are for the payment, in addition to the above-mentioned amounts of CFA 1,000,000, CFA 15,000,000 and CFA 12,000,000, of an indemnification of CFA 60,000,000.

4.90 In the first place, the Tribunal considers that, in the light of the copy of the registration of EDICO appearing in the brief (Annex 4-MED), it is established that the capital stock of CFA 1,000,000 has been paid in. This amount has been paid by B and B. Therefore the Tribunal deems it reasonable and fair to condemn the Government to repay the above-mentioned amount to B and B.

4.91 With respect to the amounts of CFA 15,000,000 and 12,000,000, the Tribunal, by a telegram dated 23 May 1979, invited B and B to produce the evidence that these sums have been actually paid.

4.92 B and B has not done so, because it does not have any evidence other than that already presented (Annex 34-M and 41-M) since the documents of EDICO have remained in the Congo.

4.93 The Tribunal considers this reply unsatisfactory since it believes that B and B could have found in the accounting records and the documents that remained in Italy elements capable of supporting its argument. In these circumstances, the Tribunal can only reject the claims of B and B for the payment of the two amounts in dispute.

4.94 Finally, with respect to the amount of CFA 60,000,000, the Tribunal considers that the above-mentioned agreement (Annex 41-M) does not in any way constitute a legal basis such as to justify the claim according to which the value of EDICO would, after five years, have increased by CFA 60,000,000. The petition of B and B on this count must therefore be rejected. To sum up, B and B is entitled, with respect to all its petitions, to the reimbursement of the amount of CFA 1,000,000.

6) Moral damages

4.95 To justify its petition for the payment of CFA 250,000,000 in this regard, B and B asserts that it:

"A. has lost opportunities for work and investments in Italy;

B. has no longer been able to resume its own activity in Italy because of lack of capital, since it invested all its financial resources in the Congo;

C. has lost its credit with suppliers and banks, since it put the latter in touch with the Congolese Government for transactions

in which the Government has shown itself to be a defaulter;

D. has seen its own organization at the managerial level and its own technical personnel dispersed, following their forced and precipitious departure from Congolese territory (certain managerial and technical personnel remained in the Congo where they have taken up other activities; others, who returned to Italy, have found employment in other companies)". (Memorial, p. 67)

4.96 The Tribunal does not have available any element capable of establishing the materiality of the allegations of B and B, which limits itself to mere assertions unaccompanied by concrete evidence, or even the beginning of evidence. Likewise, it is not established that, even after having received the compensation that is due it with interest, B and B would not have an opportunity to work or invest or to resume its activities in Italy or elsewhere. The Tribunal has reasons for doubting the mere assertion by B and B that it has lost its credit with its suppliers or bankers or that it would not be able to obtain the necessary personnel. However, in view of the measures to which B and B has been subject and the suit that was the consequence thereof, which have certainly disturbed the activities of B and B, the Tribunal deems it equitable to award it the amount of CFA 5,000,000 for moral damages.

7) Interest

4.97 On account of the provisional agreement reached by and between the parties -- not confirmed by the Government -- B and B has claimed interest at the rate of 15% annually on the total amount that would be awarded it.

4.98 The Tribunal does not believe that it can accept this petition since the applicable law, that is to say that of the Congo, provides for a legal rate of interest that is clearly lower. But the Tribunal notes that the Government, in its Defense Memorial, has proposed an interest rate of 10% for its

counterclaim. In view of its power to decide ex aequo et bono, the Tribunal deems it equitable to accept this rate for the compensation awarded to B and B.

4.99 B and B has claimed interest on the above-mentioned amounts with effect from the following dates:

1. Loss of profits on the 40% of the shares of the PLASCO Company. Interest with effect from 16 April 1978 (end of the five-year period from the constitution of the PLASCO Company).
2. Compensation for the value of 40% of the PLASCO Company: interest with effect from 16 April 1978 (end of the five-year period from the constitution of the PLASCO Company).
3. Advances made to the PLASCO Company: interest with effect from 1 January 1975 for the amounts advanced in 1973 and 1974 (CFA 64,002,539) and with effect from 1 January 1976 for the amounts advanced in 1975 (CFA 78,777,714).
4. Amounts paid to SODISCA: interest with effect from 1 August 1978 (date of the agreement between B and B and SODISCA).
5. Indemnification for the dissolution of EDICO (4.8(5)): interest with effect from 9 November 1975, date of the dissolution of EDICO.
6. Moral damages: interest with effect from 3 February 1976.

4.100 The Tribunal finds these petitions reasonable and fair and therefore condemns the Government to pay those interests with effect from the dates mentioned.

On the counterclaim

4.101 As mentioned above, the Government submits a counterclaim bearing on the following points:

1) Damages for non-payment of duties and charges relating to the importation under the cover of the PLASCO Company of equipment

intended for third parties.

2) Overinvoicing of raw materials.

3) Damages for defects in the execution of the SODISCA contract.

4) Faults in the design of the plant.

5) Moral damages.

1) Receivability of the counterclaim and jurisdiction of the Tribunal in respect thereof

4.102 The Tribunal is of the opinion that the counterclaim whose receivability has been disputed by B and B may nevertheless be accepted pursuant to Rule 40(2), since the Tribunal considers that the Government has provided a sufficient justification for the delay in presenting its claim after having taken the objections of the other party into account (cf. Procedural Order of 14 November 1979).

4.103 The Tribunal then examined the question whether one or more counts of the counterclaim lay outside its jurisdiction established in Article 12 of the Agreement and Article 25 of the Bylaws.

4.104 Finding that the counterclaim relates directly to the subject matter of the dispute, that the jurisdiction of the Tribunal has not been disputed and that it falls within the jurisdiction of the Centre, the Tribunal is consequently of the opinion that it should retain its jurisdiction (Rule 40(1)).

2) The issue of duties and charges

4.105 Referring to the fact that the PLASCO Company enjoyed a preferential customs regime, the Government states that it was a preferential tax regime and that Mr. Bonfant misused it under the cover of the PLASCO Company by importing equipment unrelated to the activity of the PLASCO Company and intended for third parties that did not enjoy the same regime.

4.106 In this regard the Tribunal recalls as mentioned earlier that it has

not been established that the PLASCO Company obtained a preferential tax regime. Furthermore, no indisputable evidence has been presented that the company has in fact enjoyed preferential customs duties.

4.107 None of the documents submitted to the Tribunal make it possible to establish that Mr. Bonfant committed frauds to the detriment of the Customs Directorate. In these circumstances the Tribunal can only reject this count of the petition of the Government without there being any need to discuss the issue of whether the plaintiff should be considered responsible for frauds, if any, committed by Mr. Bonfant.

3) The issue of the overinvoicing of raw materials

4.108 The Government has asserted that Mr. Bonfant has always refused to say at what price the suppliers of the PLASCO Company themselves obtained their raw materials, which is understandable according to the Government "since it appears that the prices invoiced by the four suppliers of the PLASCO Company were in fact unduly high relative to the prices ruling on the European market" (Defense Memorial, p. 29).

4.109 However, the Tribunal considers that an examination of the documents produced does not make it possible to establish the merits of these allegations. The Tribunal can therefore not accept this count of the counterclaim.

4) The issue of defects in the execution of the SODISCA contract

4.110 As mentioned earlier, the Government, in support of its pleadings on this point, asserts that "the Congo is justified in demanding full compensation for the wrong suffered as a consequence of any failure or defect in the execution of the work".

4.111 In this regard the Tribunal recalls that the contract for the construction of the plant (Annex 16-M) was signed on behalf of the PLASCO Company by its Chairman Mr. Justin Lekoundzou. Now, on 10 December 1974, the PLASCO

Company, vis-a-vis SODISCA, unreservedly accepted the facilities (Annex 2 of the Observations). The acceptance certificate was signed on behalf of the PLASCO Company by Messrs Bonfant, Claudio Mele, and Ludovico Branchetti. The documents submitted in the discussion, in particular photographs, show that the acceptance took place in the course of a ceremony attended by the Congolese authorities.

4.112 It is only after the appropriation of the company by the Government that the PLASCO Company, by a letter addressed to SODISCA on 12 April 1976 and signed by the new Managing Director (name illegible) (Annex 16-MED), presented claims relating to a long list of defects in the construction of the plant.

4.113 These grounds for complaint were refuted in an undated, fully documented letter from SODISCA, received by the Ministry of Trade on 16 June 1976 and by the PLASCO Company on 14 July 1976 (Annex 17-MED).

4.114 The Tribunal is of the opinion that the reply of SODISCA appears to deal with the allegations of the Government. Furthermore, it does not seem that the issue was seriously argued either by the PLASCO Company or by the Government before the Defense Memorial.

4.115 Furthermore, the Tribunal does not believe it advisable to order, as the Government requests, a technical appraisal of the plant since it could not produce really pertinent and convincing evidence about the status of the plant in 1974. In short, the Tribunal can only reject this count of the Government's counterclaim as well.

5) The issue of faults in the design of the factory: the cap mould and purity of the water

4.116 The Government has also asserted that a factory such as that envisaged in the contract with SODISCA cannot operate without a cap mould and that the Agreement made it an obligation of B and B to guarantee the purity and the

good quality of the water to be processed.

4.117 On the first point, the Tribunal refers to the letter of SODISCA cited above (Annex 17-MED). This letter states that the invoice for the mould was cancelled as a result of a request of the PLASCO Company and that the moulds could not form part of the contract since the shape of the patterns and the type of bottles were unknown; the cost of the moulds varies greatly (Part C, paragraphs f) and g)).

4.118 With respect to the problem of the purity of the water, it follows from a document dated 4 July 1975, from the head of the bacteriology service of the National Public Health Laboratory of Brazzaville that three samples and analyses made on 16 July 1975 (Annex 12 of the Observations) proved that the water was bacteriologically fit for consumption.

4.119 The Tribunal cannot therefore accept this count of the Government's counterclaim.

6) Moral damages

4.120 On this point the Government asserted that:

"- It has an incomplete table water production plant, not in accordance with the contractual specifications and not meeting the necessary sanitary standards since the products involved are intended for human consumption.

- It has been abandoned by the industrial partner with whom it entered in good faith into a joint industrial venture and whose presence was essential for ensuring the technical management of the plant.

- Furthermore, it is unjustly brought before an international jurisdiction, which, for a State, is an exceptionally serious matter".

(Defense Memorial, pp. 37-38)

4.121 The foregoing developments lead the Tribunal to reject all this argument.

Indeed, it has not been established that the construction of the plant, which the Government took possession of, was incomplete and that the water was not fit for consumption. Furthermore, it has been emphasized above that it is because of the action of the Government itself that the representative of its Italian partner left Congolese territory and that B and B was forced to refer the matter to the arbitral jurisdiction.

4.122 The Tribunal therefore believes that there can be no question of moral damages suffered by the Government and that its counterclaim in this respect is without any legal basis.

4.123 In short, the Tribunal rejects all the grounds for complaint, counts, and pleadings of the counterclaim without it being necessary to examine the other arguments presented by the Government either because they are not pertinent or because they deal with time-barred facts.

Costs of the proceeding and additional petition for damages

4.124 Article 12(3) of the Agreement stipulates that:

> "The costs of the arbitration shall be distributed equally among the parties".
>
> Article 25(2) of the Statutes contain an identical provision (Annex 13-M).

4.125 In the opinion of the Tribunal, these two articles imply that each one of the parties will have to bear its own expenses without being compensated. Consequently, the Tribunal decides that each party must pay its own expenses.

4.126 On the other hand, in accordance with the above-mentioned provisions of the arbitration clauses, each of the parties will have to pay half the costs of the Centre and of the Tribunal as soon as they are established and notified to the parties.

4.127 Furthermore, in view of the fact that before the session in Paris on 30 November 1979 the Government did not take any significant part in the

procedure and that this attitude caused substantial delays as well as additional expenses to B and B, B and B has requested the Tribunal to draw the consequences thereof in its final decision.

4.128 The Tribunal notes that the Government has not formally disputed this claim.

4.129 The Tribunal therefore deems it fair that this petition be accepted and consequently decides that the Government must pay to B and B, over and above the amounts already awarded, the amount of US$15,000 with legal interest of 6% annually with effect from the date of the award up to the time of payment.

FOR THESE REASONS

The Tribunal decides that:

(a) With respect to the petitions of B and B:

(i) the counts of the principal petition of B and B are justified in principle.

(ii) the Government is required to pay to B and B damages:

(A) as compensation for loss of profits as the holder of 40% of the shares of the PLASCO Company ..... CFA 3,300,000
Plus interest with effect from 15 April 1978 at an annual rate of 10%

(B) as compensation for the value of the 40% of the shares in the PLASCO Company ..... CFA 110,098,936
Plus interest with effect from 16 April 1978 at an annual rate of 10%

(C) as advances made to the PLASCO Company ..... CFA 142,780,253
Plus interest with effect from 1 January 1975 for the amounts advanced in 1973 and 1974 (CFA 64,002,539) and with effect from 1 January 1976 for the amounts advanced in 1975 (CFA 78,777,714), all at an annual rate of 10%

(D) as reimbursement of the amounts paid to SODISCA for debts of the PLASCO Company ..... CFA 61,000,000
Plus interest with effect from 1 August 1978 at an annual rate of 10%

(E) indemnification as a consequence of the dissolution of EDICO ..... CFA 1,000,000
Plus interest with effect from 9 November 1975 at an annual rate of 10%

(F) As moral damages ..... CFA 5,000,000
Plus interest with effect from 3 February 1976 at an annual rate of 10%, and

(iii) In addition, the Government is condemned to pay B and B as additional damages the amount of US$15,000 plus interest on this amount at an annual rate of 6% with effect from the date of this award.

(b) With respect to the counterclaim:

All the submissions of the counterclaim of the Government are rejected.

(c) With respect to the costs of arbitration and the expenses of the parties:

(i) The Government and B and B must each bear half the arbitration expenses and to the extent that one of the parties has paid in to Centre amounts exceeding half the arbitration expenses established, as mentioned below, the other party must pay to it the difference plus the interest on this amount at an annual rate of 6% with effect from the date of this award; and

(ii) Each party must bear the burden of its own expenses.

The costs mentioned in item (1) above cannot be definitely established until they have been calculated by the Controller Department of the World Bank The Tribunal instructs the Secretary General to send to the parties

a statement of these expenses as soon as they have been established, certified by him in accordance with the provisions of the Administrative and Financial Regulations.

/s/ J. Trolle
President

/s/ R. Bystricky
Arbitrator

/s/ E. Razafindralambo
Arbitrator

Done in Paris, 8 August 1980

I certify that this document is a true copy of the award of the Arbitral Tribunal in the case of Benvenuti and Bonfant srl. Ltd. versus the People's Republic of the Congo (ARB/77/2).

A. Rigo

Secretary of the Tribunal
15 August 1980

NOTICE OF OTHER DOCUMENTS
(Not Reproduced in International Legal Materials)

1. UN Assembly Resolution on the Peaceful Settlement of Disputes Between States

The General Assembly, acting by consensus, passed Resolution A/37/590 on November 15, 1982. The Resolution approves and urges implementation of the Manila Declaration on the Peaceful Settlement of Disputes [reproduced at 21 I.L.M. 449 (1982)], as drafted by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The Manila Declaration is annexed to this Resolution.

2. ICSID Arbitration Tribunal Award in the Case of Benvenuti et Bonfant v. Peoples Republic of the Congo

Please note that the text of the award rendered by the ICSID Arbitral Tribunal [Reproduced at 21 I.L.M. 740 (1982)] was reproduced from an English translation of a French text submitted to the Court of Appeals of Paris, under Article 54 of the ICSID Convention of March 18, 1965. Paragraph (2) of Article reads: "A party seeking recognition or enforcement in the territories of the Contracting State shall have furnished to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General". The identification of the text as having been received from ICSID is therefore in error.

3. Materials on Jurisdictional Immunities of States and Their Properties

This 657-page volume, part of the 1982 United Nations Legislative Series, was prepared by the Codification Division of the Office of Legal Affairs in connexion with the work of the International Law Commission. It is a compilation of submissions by 27 member States of relevant national legislation, tribunal decisions, executive orders, diplomatic correspondence, and treaty extracts concerning immunities. The final section is a compilation of State responses to a questionnaire on the topic: "Jurisdictional Immunities of States and Their Property". Copies are available for $32 from United Nations Publications, A-3315, New York, N.Y., 10017 (sales number E/F.81V.10).

4. Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order: Analytic Papers and Analysis of the Texts of Relevant Instruments

This report, prepared by the UN Institute for Training and Research, is an analysis of four principles of the NIEO: 1) preferential treatment for developing countries; 2) stabilization of export earnings; 3) permanent sovereignty over natural resources; and 4) the right of every State to benefit from science and technology. Following each analysis is a look at primary sources (General Assembly Resolutions, treaties, and international tribunal decisions), and an evaluation of those norms which are, or are moving towards, law. This document, UNITAR/DS/5 (August 15, 1982), should be read as part of the Report to the Secretary-General, A/37/409, October 1, 1982.

5. Soviet Pipeline Sanctions Lifted

International Trade Administration, Department of Commerce, denials of export privledges to six U.S. foreign subsidiaries (reproduced at 21 I.L.M. 1099) were rescinded on Monday, November 22, 1982 (U.S. Federal Register, Vol. 47, No. 225, pp. 52489-52491). The Presidential address announcing this decision appears at Presidential Documents, Monday, November 22, 1982 (Volume 18, Number 46).