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CASES NOS. 227 and 12384

CHAMBER THREE

AWARD NO. 329-227/12384-3

Case No. 227

EASTMAN KODAK COMPANY,
EASTMAN KODAK INTERNATIONAL SALES CO.,
and KODAK (NEAR EAST) INC.,
Claimants,
and

THE GOVERNMENT OF IRAN,
RANGIRAN PHOTOGRAPHIC SERVICES CO. (P.J.S.C.),
BANK MELLI,
BANK SEPAH,
BANK TEJARAT and
BANK MARKAZI IRAN,

Respondents.

Case No. 12384

EASTMAN KODAK INTERNATIONAL
CAPITAL COMPANY, INCORPORATED,
a claim of less than U.S. \$250,000
presented by
THE GOVERNMENT OF THE
UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	11 NOV 1987 تاریخ ۱۳۶۶ / ۸ / ۲۰
No.	227

PARTIAL AWARD

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Presenter.

For the Respondents:

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Assistant to the Legal
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Mr. Abdol Hamid Shiri,
Representative of Rangiran's
Liquidators;
Mr. Hossein Ali Farzad,
Assistant to the
Representative of Rangiran's
Liquidators;
Mr. Mohammad Reza Khavari,
Representative of Bank
Sepah;
Mr. Mansour Vali Asaadi,
Representative of Bank
Melli;
Mr. Abbas Younesi,
Representative of Bank
Tejarat.

TABLE OF CONTENTS

		<u>Para.</u>
I.	PROCEEDINGS	1
II.	FACTS AND CONTENTIONS	6
III.	THE CLAIMS AND THE COUNTERCLAIM	25
IV.	JURISDICTION	
	A. The Claimants' Nationality	33
	B. The Respondents' Status	34
	C. The Claim against Bank Markazi	36
V.	THE CREDITORS' CLAIM	37
	A. Rangiran's Status	38
	B. Liquidation and Bankruptcy Proceedings..	56
VI.	THE SHAREHOLDER'S CLAIM	57
VII.	THE GUARANTEE CLAIM AND COUNTERCLAIM	63
VIII.	COSTS	71
IX.	FURTHER PROCEEDINGS	73
X.	AWARD	74

I. PROCEEDINGS

1. On 12 January 1982 EASTMAN KODAK COMPANY ("Eastman Kodak"), EASTMAN KODAK INTERNATIONAL SALES COMPANY ("Kodak Sales") and KODAK (NEAR EAST) INC. ("Kodak Near East") (collectively "the Claimants") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), RANGIRAN PHOTOGRAPHIC SERVICES CO. (P.J.S.C.) ("Rangiran"), BANK MELLI, BANK SEPAH, IRANO-BRITISH BANK and BANK MARKAZI IRAN ("Bank Markazi"). This Claim was filed as Case No. 227.

2. On 19 January 1982 the Government of the United States of America ("United States") presented a claim of less than U.S.\$250,000 on behalf and for the benefit of EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY, INCORPORATED ("Kodak Capital") against Iran, which was filed as Case No. 12384.

3. A Pre-Hearing Conference was held in Case No. 227 on 1 February 1985. Thereafter, on 13 June 1985, the Claimants in Case No. 227 submitted an Application for Consolidation or Simultaneous Hearing, which the United States, on behalf of Kodak Capital, joined, requesting that the proceedings in Cases Nos. 227 and 12384 be joined or simultaneously heard, on the grounds that Kodak Capital is wholly owned by Eastman Kodak and that the claims in Case No. 12384 are "identical in all material respects to the trade-debt component of Case No. 227." Case No. 12384 was subsequently assigned to Chamber Three and on 11 October 1985 the Tribunal advised the Parties that it would hold a simultaneous hearing in Cases Nos. 227 and 12384. In addition the Tribunal permitted the Parties to incorporate by reference documents filed in either of the two Cases into the other.

4. Pursuant to the Tribunal's Order of 7 March 1985 briefing of the issues in Case No. 227 was bifurcated into two stages, deferring to the second stage consideration of the valuation of Eastman Kodak's allegedly expropriated shareholder interest in Rangiran. The Parties have submitted memorials and evidence on all other issues in this Case.

5. A consolidated Hearing was held in Cases Nos. 227 and 12384 on 7 November 1986. The Parties appeared and presented oral argument.

II. FACTS AND CONTENTIONS

6. Rangiran¹ is an Iranian corporation which Eastman Kodak established on 2 October 1976 to act as its Iranian distributor of Kodak products and to operate a photo finishing laboratory. Eastman Kodak was issued 9,998 of the original 10,000 shares while Kodak Capital and Kodak Near East were issued one share each. On 21 March 1977 Rangiran acquired the assets of two existing distributors of Kodak products in Iran and commenced operations in April 1977.

7. Rangiran purchased its resale inventory from Kodak Sales, Kodak Near East, and other Kodak affiliates. Claims that Rangiran failed to pay for some of the inventory received make up part of this Case. In addition, Kodak advanced certain amounts to Rangiran as loans. Rangiran's alleged failure to repay these loans is an additional portion of the Claim.

¹Rangiran was originally named Eastman Kodak Company (P.J.S.C.), and later assumed the name Kodak (Iran) (P.J.S.C.). It changed its name to Rangiran Photographic Services Co. in June 1979. For ease of reference the company will be referred to throughout this Award as Rangiran.

8. In December 1978, with the advent of the Iranian Revolution, Rangiran's expatriate management personnel left Iran, appointing four middle level Rangiran employees of Iranian nationality to manage the company under their direction in their absence. In February 1979 two of the American management personnel returned to Iran to resume on-site management of Rangiran. It appears that Rangiran was able to function relatively undisturbed from February through October 1979.

9. On 4 November 1979 the United States Embassy in Tehran and its personnel were seized. On 10 November 1979 the two remaining expatriate officers of Rangiran, the General Manager, Mr. Joseph E. Murphy, and the Operations Manager, Mr. Patrick O'Gorman, both U.S. citizens, left Iran. Before leaving they appointed a management committee consisting of three of the four Rangiran employees who had managed Rangiran during the earlier evacuation. Mr. Murphy has stated that even after his departure he had as his "fulltime responsibility to try to work out the best solutions to the various problems that arose. In furtherance of that end [he] was in constant contact by telephone with Messrs. Paknejad and Chassebi, and to a lesser degree, Mr. Eftekhar. [He] received frequent reports from them on the status and activities of Rangiran."

10. Rangiran held checking accounts at Bank Melli and Bank Sepah and an overdraft account, in effect a loan facility, at the Irano-British Bank (now Bank Tejarat). Sometime after 17 November 1979 Rangiran officials sought to withdraw money from one of Rangiran's bank accounts but were refused. Rangiran addressed an inquiry both to Bank Melli and Bank Sepah, to which the banks replied in late December 1979, advising Rangiran that all its bank accounts had been frozen by order of the "General Public Prosecutor of Islamic Revolutionary Republic of Iran" on 17 November 1979. The

freeze was to be effective "till next instruction" from the General Public Prosecutor.²

11. The Respondent Rangiran explained to the Tribunal that following the appointment of local Iranian management by the departing U.S. officials certain "devoted personnel" of the company were "doubtful about the performance of the said directors." Accordingly, they "notified to the Follow-Up and Evaluation Board of the Revolutionary Council, Bonyad Mostazafan (Foundation for the Oppressed) and Revolutionary Public Prosecutor of their opinion." According to Rangiran, the Revolutionary Council and the Bonyad Mostazafan sent representatives to the company but apparently initially took no action. Thereafter the following occurred, in Rangiran's words:

Having noticed no change in the method of management, the personnel applied again to the Revolutionary Public Prosecutor, who, by an order blocked the Bank Account of Rangiran and required the key personnel to make available to the Revolutionary Public Prosecutor's office of all the vouchers for due examination before any payment was made. This order aimed at preventing any embezzlement and misappropriation of the public property and of the company's assets. From October to March, even the salary and allowances of the staff and certain expenditures were paid under the supervision of the Revolutionary Public Prosecutor.

12. Ten days after the freeze of Rangiran's bank accounts, on 27 November 1979, Rangiran's Workers' Council, an organization of Rangiran's employees, received a notice from the Investigation Department of the Attorney General's Office which provided that:

²The terms "General Public Prosecutor," "Revolutionary Public Prosecutor," "Attorney General," and "Revolutionary Attorney General" apparently are various translations of the same title.

Prior to final decision in respect of foreign companies especially American companies, we hereby inform the Council that you should temporarily supervise the importation, delivering and sale of the company's products. And, the company's official are bound to get the employees' council approval for the running of the company's affairs. In the case of observation of anything wrong, it should be reported to this office.

13. Mr. Murphy has further stated that the Workers' Council thereafter exercised virtually all management functions of the company including establishing prices, determining where remaining inventory should be sold, reviewing and approving all payments and expenditures, and setting the salary of management and employees. The Claimants allege that the shareholder-appointed managers were threatened with bodily harm if they refused to cooperate. As evidence of the authority of the Workers' Council the Claimants also rely on the declaration of bankruptcy submitted to the Tehran Civil Court in 1981 which stated that "the management of the Company was requested to obtain the Worker's Council approval for the Company's affairs," and that payments were made from Rangiran's bank account "after obtaining approval from the Revolutionary Public Prosecutor's office." Similarly the liquidation report which was prepared in August 1981 by an Iranian accounting firm confirms that "based on the instruction of . . . the Attorney General Office, the board of directors were forced to get approval of the employees' council for the running of the company's affairs."

14. On 24 December 1979 the Revolutionary Council of the Islamic Republic of Iran appointed Mr. Akbar Khodakhah to supervise Rangiran's affairs. According to the letter of appointment, Mr. Khodakhah was "assigned, until further notice, to have complete supervision on the manner of operation of the workers council, the management, the financial affairs and good performance of Rangiran Photographic Company and to keep this [Revolutionary] Council informed of the manner of operations."

15. The Respondents contend that Mr. Khodakhah remained as manager of Rangiran only "for a short period of time (less than two months)." The Claimants argue, however, that "although Mr. Khodakhah was physically present at Rangiran's offices only over a limited period, he exercised complete control, during that period and his authority was never revoked. [He] called meetings with all company supervisors and demanded reports and lists concerning sales, inventory and market demand." In addition the Claimants allege that under Mr. Khodakhah's supervision a meeting was held and a vote taken as to whether the managers chosen by the shareholders should be retained or fired. The employees voted to retain the managers, but Mr. Murphy stated that "it was clear that they remained only at the pleasure of the Workers' Council and Mr. Khodakhah."

16. On 10 March 1980 the shareholders of Rangiran held an Extraordinary General Meeting in the United States. At this meeting it was decided that Rangiran be placed in liquidation, and a Board of Liquidators was appointed. Rangiran's former outside accountant, Mr. Nezam Motabar, and his partner, Mr. Abbas Hoshi, were appointed by the Board of Liquidators to oversee the liquidation and, specifically, to negotiate termination agreements with the employees and arrange for the payment of liabilities out of realizable assets.

17. The Board of Liquidators decided to cease operations and delivered termination notices to all employees. These notices were initially rejected by the Workers' Council. In Rangiran's words, "the personnel decided to continue the company's business until the disposition of service pay of the employees as well as the future of the company was established." Faced with this decision Rangiran's shareholders authorized Mr. Motabar to negotiate with the Workers' Council to resolve the question of termination pay.

18. It appears that ultimately negotiations between Mr. Davoud Beheshti, the head of the Workers' Council³, and Mr. Motabar were successful, and with the cooperation of the Workers' Council the liquidation proceeded. On 25 June 1980 Mr. Beheshti telexed Mr. Murphy notifying him that:

We have agreed with all the employees to submit our final proposal for termination payment as follows: [listing conditions].

Your urgent response will be appreciated.

19. Two days later, on 27 June 1980, Eastman Kodak responded by telex⁴ to Mr. Beheshti "C/o Nezam Motabar, Price Waterhouse, Intercontinental Hotel, Tehran" rendering its "final proposal" for termination pay to the Rangiran employees. In all essential aspects this proposal corresponded to Mr. Beheshti's proposal. In late 1980 termination checks were issued to Rangiran's ex-employees. According to Mr. Murphy, despite the agreement termination payment was withheld by the Revolutionary Prosecutor from employees of the Bahai faith and certain higher-paid employees.

20. In mid-September 1980, according to Rangiran, "the company's office building was sealed up and the personnel were prevented from working at the order of the officials of the Public Prosecutor's office." Rangiran adds that it was thereafter decided, apparently by the Government, that the representatives of the shareholders "be empowered with full authority for dissolution of the company" so long as the company appoint as a liquidator "one of the members of the company's Staff [i.e., Workers'] Council acceptable to the

³The liquidation report later referred to Mr. Beheshti as "the Trustee of the Attorney General Office."

⁴On record is only page one of what seems to be a multi-page document.

Public Prosecutor." In fact, on 10 December 1980 the Board of Liquidators appointed by the shareholders of Rangiran addressed a telex to Mr. Hoshi. This telex stated, as follows:

Communication to the office of the Attorney-General, Revolutionary Republic of Iran, from the Board of Liquidators of Rangiran

1. The Board of Liquidators of Rangiran . . . hereby appoints either Nezam Motabar or Abbas Hoshi acting jointly or severally with full power to act on behalf of the Board, provided that Davoud Beheshti, by virtue of his having been appointed by one of the offices of the Attorney General as its representative and having been responsible for the custody of the assets of the company since the departure of management, agrees to act jointly with either Nezam Motabar or Abbas Hoshi and to accept responsibility to implement the following instructions, namely to carry out the existing obligations of the Board of Liquidators to make payment of termination payments to the former employees of Rangiran . . . in accordance with the schedule of payments prepared by the Employee Council of Rangiran . . . and already submitted to approved and accepted by the said Board of Liquidators.

7. Such foregoing is an official decision of the Board of Liquidators of Rangiran Any party in Iran asked to act upon the matters covered shall be entitled to rely upon this cable as authority for such action.

21. Such was the state of affairs as of 19 January 1981, the date of the Claims Settlement Declaration ("CSD") and the date as of which the Tribunal must determine whether Iran controlled Rangiran for purposes of jurisdiction. For the sake of completeness, however, related subsequent events are set forth below.

22. The Claimants state that so far as they were aware liquidation proceeded pursuant to the power of attorney issued in December 1980. Rangiran in its Statement of Defense, however, reports that initially, sometime after April 1981, "the Power of Attorney was not approved by the

Public Prosecutor." Apparently necessary approvals were ultimately obtained and on 6 August 1981 Mr. Hoshi, on behalf of the Board of Liquidators, submitted a "report on liquidated company of Rangiran" ("Report"). This Report describes the history of the facts and events pertinent to Rangiran, including the imposition of the freeze, the empowering of the Workers' Council and the involvement by the General Public Prosecutor. Having examined the financial status of Rangiran, the Report made the following suggestions:

We hereby inform you that the board of liquidators, without the financial support from the shareholders, are not able to continue liquidating of the company. In addition, by taking (i) accumulated loss and (ii) the total liabilities of the company into the accounts, the board of liquidators should call an extra-ordinary shareholders' meeting for the purpose of either liquidating the company or going to the bankruptcy.

23. The Board of Liquidators called an extraordinary general meeting of shareholders for 31 August 1981 at which "it was unanimously resolved that the company be declared as bankrupt and that its bankruptcy be notified to the competent authorities." The Board further authorized two Iranian attorneys to take all relevant actions for the bankruptcy.

24. On 14 November 1981 the attorneys filed a bankruptcy petition on behalf of Rangiran with the Public Court in Tehran, and the Public Court in Tehran sought the opinion of an Official Expert of the Ministry of Justice. The expert submitted his report on 10 June 1982, which stated as follows:

Since the losses of said company exceeded its capital before 17 November 1979, when the company was taken under control and its assets were frozen by the office of the Revolutionary District Attorney, and since the Shareholders disregarded the provisions of Article 141 of the Commercial

Code, therefore, Rangiran . . . has been inactive before said date.

In its judgement of 17 July 1983 the Public Court of Tehran ultimately declared that Rangiran was bankrupt as of 31 October 1977.

III. THE CLAIMS AND THE COUNTERCLAIM

25. The Claimants raise three different sets of claims. First, all Claimants appear as creditors of Rangiran ("Creditors' Claim"). Second, Eastman Kodak asserts a claim against Iran as the majority shareholder of Rangiran ("Shareholder's Claim"). Finally, Eastman Kodak asserts a claim for a declaratory judgment with regard to certain loan guarantees it provided Rangiran ("Guarantee Claim").

26. The Creditors' Claim is based on the allegation that, at the relevant time, Rangiran was an entity controlled by Iran within the terms of the CSD. The Claimants seek payment of trade debts, promissory notes and other debts.

27. The trade debts relate to photographic supplies allegedly delivered to Rangiran by the Claimants or their foreign subsidiaries but not paid for. The amount claimed in both Cases totals U.S.\$2,122,950.48. The claim for loans allegedly provided Rangiran by Eastman Kodak is evidenced by promissory notes which total U.S.\$3,368,243. In addition to the principal amount of the loans, Eastman Kodak claims contractually provided interest at 8% calculated up to 16 November 1979, for a total claim of \$3,602,040.

28. The "other debts" include a claim for recovery of U.S.\$41,390 allegedly paid by Eastman Kodak on Rangiran's behalf to Rangiran's two American employees as reimbursement

for personal property which these two employees left behind in Iran and which has not been returned or otherwise compensated. In addition, Eastman Kodak seeks recovery of any amount it may be held liable to pay to Bank Tejarat, as the guarantor of Rangiran's indebtedness to Irano-British Bank, as discussed below.

29. In the Shareholder's Claim, Eastman Kodak as holder of all but two of Rangiran's shares alleges that Iran has expropriated its shareholder interest in Rangiran, for which Iran is liable to pay compensation. As noted, this part of the claim has not yet been quantified. (See paragraph 4, supra.)

30. The Guarantee Claim consists of Eastman Kodak's request for a declaratory judgment in relation to a financial guarantee issued by Eastman Kodak to the Irano-British Bank to secure an overdraft facility extended to Rangiran by this bank. Eastman Kodak seeks a declaration of non-liability or, alternatively, it requests the Tribunal to direct Iran to satisfy and extinguish Rangiran's indebtedness to Bank Tejarat, to be paid from funds in Rangiran's accounts with Bank Melli and Bank Sepah.

31. The Claimants also seek interest and costs.

32. Only Bank Tejarat has raised a counterclaim. This counterclaim is based on the Guarantee Claim and seeks payment by Eastman Kodak as the guarantor of a remaining outstanding indebtedness, incurred by Rangiran, in the amount of Rls. 38,749,866, plus interest "up to the final date of the above indebtedness."

IV. JURISDICTION

A. The Claimants' Nationality

33. On the basis of the evidence submitted, the Tribunal is satisfied that, at all relevant times, Eastman Kodak, Kodak Sales, Kodak Near East and Kodak Capital were United States nationals within the meaning of the CSD. The Claimants rely on documentary and testimonial evidence in the form set forth in the Tribunal's Order of 20 December 1982 in Flexi-Van Leasing, Inc. and Islamic Republic of Iran, Case No. 36, Chamber One, reprinted in 1 Iran-U.S. C.T.R., 455. The Tribunal further finds that the evidence establishes that the German corporation, Kodak Aktiengesellschaft ("Kodak A.G") and the Swiss corporation, Kodak Soci  t   Anonyme ("Kodak S.A."), are subsidiaries of Eastman Kodak and Kodak Capital respectively, which entitles the latter corporations to assert indirect claims of their subsidiaries in accordance with Article VII, paragraph 2, of the CSD.

B. The Respondents' Status

34. It is undisputed that Bank Melli, Bank Sepah and Bank Tejarat are entities controlled by Iran within the meaning of Article VII, paragraph 3, of the CSD. The Tribunal concludes that it has jurisdiction over these Respondents, as well as over Iran itself. It is also undisputed that Bank Tejarat is the successor in title to the Irano-British Bank and therefore is a proper Respondent for the Guarantee Claim arising from the latter bank's dealings.

35. The Claimants finally allege that Rangiran is a controlled entity, while the Respondents affirm that it is

not. The Tribunal will consider separately below this issue in the discussion of the Creditors' Claim against Rangiran.

C. The Claim Against Bank Markazi

36. The Tribunal notes that the Claimants have named Bank Markazi as a Respondent solely on the ground that Bank Markazi has undertaken to perform the obligations of Iran with respect to maintenance and replenishment of the Security Account. The Tribunal finds that the Claimants have failed to raise any claim against Bank Markazi pertaining to the subject matter of the present Case. Consequently the Tribunal finds that Bank Markazi is not a proper party to this Case.

V. THE CREDITORS' CLAIM

37. The crucial jurisdictional issue relative to the Creditors' Claims concerns the status of Rangiran as a Respondent in these Cases.

A. Rangiran's Status

38. The Claimants contend that essentially three events, i.e., (1) the freeze of Rangiran's bank accounts, (2) the Revolutionary Prosecutor's grant of management authority to the Workers' Council at Rangiran and (3) the appointment of Mr. Khodakhah, had the effect of depriving the shareholders of their control over Rangiran and that by the end of 1979 it had thus become an entity controlled by Iran. The Respondents contend that these three events were legitimate "precautionary and provisional" actions taken in response to Rangiran's abandonment by its shareholders and intended to preserve and protect its assets.

39. As an initial matter, the Tribunal rejects the Respondents' allegations that the departure of Rangiran's expatriate management on 10 November 1979 constituted an abandonment of the company. It is notorious that the political situation in Iran after 4 November 1979 justified a departure by United States nationals. The Claimants have shown that the departing officials appointed an interim managing team and that Rangiran's former General Manager, Mr. Murphy, "was in constant contact by telephone" with the local management group and that he received "frequent reports from them on the status and activities of Rangiran."

40. The Respondents justify the freeze of Rangiran's bank accounts as necessary to protect Rangiran's assets. The Tribunal finds this contention to be unsupported by any contemporaneous evidence. The subsequent declaration that Rangiran was bankrupt as of 31 October 1977 cannot be given determinative effect in this context as this judgment was rendered more than three years after the events here at issue.

41. Whatever its cause, the freeze of all Rangiran's bank accounts by the General Public Prosecutor on 17 November 1979 had an immediate effect on the management of the company. It is clear, too, that the notice of 27 November 1979 vested special powers in Rangiran's Workers' Council to supervise the activities of Rangiran, and that the management of Rangiran was thereafter bound to obtain the approval of the Council for the running of the company's affairs. Mr. Murphy described the procedure as follows:

Each time funds were needed to pay salaries, Rangiran's management prepared a salary list and signed a check. The Workers Council took the check to the Revolutionary Council, which (if it so chose) submitted it to the Public Prosecutor, who approved or disapproved it. If the check was approved, Rangiran was eventually informed by the bank that funds had been debited against

Rangiran's account and credited to the individual employees' accounts.

42. The last event invoked by the Claimants to show Iran's control over Rangiran is the appointment of Mr. Khodakhah. Nothing in the record suggests that Mr. Khodakhah's appointment was ever terminated. The Tribunal finds it difficult, however, to determine Mr. Khodakhah's role and function on the evidence on record. The Tribunal notes that the Report of the Board of Liquidators (see para. 22, supra), which recites the history of events relative to Rangiran, makes no mention of the appointment of Mr. Khodakhah, or of any supervisory function he performed for Rangiran. The Tribunal thus concludes that Mr. Khodakhah's role was minor and temporary and intended to help to solve problems which arose between the local management and the Workers' Council.

43. In the view of the Tribunal the foregoing facts establish that as of 27 November 1979 there was a joint management of Rangiran between the Board of Directors acting for themselves and through their locally appointed officials, the Workers' Council and the General Public Prosecutor, whose approval was required for the use of Rangiran's bank accounts.

44. The Tribunal further notes that the Claimants focus on the events of November and December 1979 to establish that Rangiran was controlled by Iran by the end of 1979. The Tribunal, however, must establish the status of Rangiran not only at this point in time but also as of 19 January 1981, the effective date of the CSD. Consequently, the events subsequent to December 1979 must also be taken into consideration.

45. On 10 March 1980 Rangiran's shareholders decided to vote Rangiran into liquidation. The Claimants, through the declaration of Mr. Gilges, Eastman Kodak's in-house

attorney, have explained this decision by stating that the shareholders were faced with two choices:

(i) simply abandon Rangiran entirely; or (ii) vote liquidation so as to freeze Rangiran's liabilities, which otherwise would continue to accrue; to attempt an orderly termination of its employees and winding up of their salary and severance claims; and -- most significantly -- thereby to minimize the risk that the physical threats to the safety of our local management team would be carried out.

46. The Tribunal finds that the Claimants have not substantiated the implied allegation by Mr. Gilges that the decision to liquidate Rangiran was taken under duress.

47. The Tribunal further considers that, whatever the reasons given to explain the decision to liquidate, this decision is understandable only in a context where the Board of Directors considered itself sufficiently in control of the activities of Rangiran to be able to determine the future of Rangiran in the best interests of the shareholders, as it perceived them. This holds true even though the management committee it had appointed did not have full freedom of action, in particular regarding the use of the bank accounts.

48. In fact, the shareholders proved to be able to have their decision to liquidate Rangiran implemented. The Tribunal finds that this fact is not only unsupportive of the Claimant's allegations of control over Rangiran by Iran, but actually contradicts these allegations. It should be noted that nothing in the record indicates that the decision to liquidate Rangiran was subjected to any approval from either the General Public Prosecutor or the Workers' Council. Furthermore, the Board of Liquidators, through its local appointees, Mr. Motabar and Mr. Hoshi, effectively accomplished their functions, although with the concurrence of Mr. Beheshti. This is evidenced, for example, by the

exchange of telexes in May and June of 1980 in which the termination salaries for Rangiran employees were negotiated (see paragraphs 17-18, supra). The fact that this negotiation, imposed by the Workers' Council, delayed the liquidation operations is immaterial, since these operations, eventually, were carried out.

49. The concept of control, as used in commercial and international law, is far from being as clear and unequivocal a legal concept as one would desire. Its meaning and import depends, to a great extent, on the purpose for which it is used and on the legal context in which it appears (see, e.g., Anaconda Company v. Overseas Private Investment Corp., 59 I.L.R 406, 420 (17 July 1975)). Its meaning can therefore vary considerably. In view of this uncertainty, legal texts embodying this concept very often define its intended meaning. This is not the case with the CSD. Article VII, paragraph 3, does not clarify the meaning of control as used in the expression "entity controlled " by either of the two Governments concerned (or of any political subdivision thereof). Consequently, it is incumbent upon the Tribunal to determine, in each case, whether a designated Respondent is a "controlled entity" within the meaning of the CSD. In doing so the Tribunal has to take into account all relevant indications contained in the CSD as well as all pertinent circumstances of the case in order to establish the construction of "control" relevant here.

50. First of all, it is remarkable that the word "control" is also used in the same Article VII at paragraph 2, in relation to claims indirectly owned by nationals of either State Party, through ownership of capital stock or other proprietary interests in juridical persons. Such indirect claims will be considered "claims of nationals" of Iran or the United States only if "the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity".

(Emphasis added.) The concept of control is not defined in this case either, but since it refers to ownership of capital stock or other property interests and to relationships between private persons, natural or corporate, it is not necessarily used with the same meaning as in the phrase "entity controlled by [a] Government". This follows from the fact that it is generally accepted that a Government can take control of a legal entity by means other than acquiring ownership of capital stock or other property interests.

51. Under such circumstances it becomes necessary to rely on other considerations in order to establish the specific meaning of "control" in the context of Article VII, paragraph 3. The Tribunal first has to examine and to assess the consequences attached by the CSD to a finding that an entity against which a claim is filed is a "controlled entity."

52. A finding that a corporation, or any other entity, is an "entity controlled" by the Government of Iran (or by the Government of the United States) has as a first consequence that a claim presented against such an entity falls within the jurisdiction of the Tribunal, if all the other conditions of the CSD also are met. But another consequence, of no less importance, is that where a claim is filed by a national of the United States, and the claimant prevails, the damages which the entity in question will be obligated to pay will, in fact, be satisfied by payment out of the Security Account. As is commonly known, the Security Account was established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981, initially with funds transferred out of Iranian deposits and securities in United States banking institutions in the United States; it must be maintained at a minimum balance of U.S.\$500 million through new deposits by Iran; and, finally, after the President of the Tribunal has certified that all arbitral awards against

Iran have been satisfied, any amount remaining in the Security Account shall be transferred to Iran. In other words, through the Security Account the State of Iran becomes fully substituted for the respondent "controlled entity" for the purpose of payment of all damages for which such entity may be held liable.

53. Such a system is more than a simple procedural mechanism of enforcement of the awards rendered by the Tribunal, freeing American claimants from any need to seek enforcement through municipal court procedures. As just emphasized, it has a far reaching effect, which is particularly remarkable in cases where the "controlled entity" previously was a subsidiary of, or otherwise controlled by, the Claimant. Even if this enforcement system only favors successful American claimants, this aspect of the issue should not be overlooked when the meaning of the concept of control has to be determined in the context of assessing the Tribunal's jurisdiction. It has an obvious bearing on the determination of the kind of control which is to be taken into account.

54. In the present case, as already stated, the Claimants were able, in spite of the measures affecting their property rights which were taken by the Iranian authorities, to have their decision to liquidate the company implemented. They also admitted that, after the filing of their claim with the Tribunal, they decided to declare Rangiran bankrupt and were able to obtain a judicial declaration to this effect. These facts evidence that the Claimants retained a measure of control over Rangiran which was sufficient to preclude this corporation from being considered as an "entity controlled" by Iran, within the meaning of Article VII, paragraph 3, of the CSD, with the consequences attached to this characterization. In any event, irrespective of the reasons for which they decided to

adopt such a course of action they must accept the consequences stemming therefrom.

55. On the basis of the foregoing, the Tribunal finds that on 19 January 1981 Rangiran was not an entity controlled by Iran as required by the CSD to establish the Tribunal's jurisdiction over claims directed against Rangiran. This finding disposes of the Creditors' Claim raised in Case No. 227, as well as of all the claims raised in Case No. 12384, which are hereby dismissed for lack of jurisdiction.

B. Liquidation and Bankruptcy Proceedings

56. In view of the Tribunal's findings above that it lacks jurisdiction over the claims raised against Rangiran, the Tribunal does not need to determine the possible effect, if any, the liquidation and ensuing bankruptcy proceedings might have on the Tribunal's jurisdiction.

VI. THE SHAREHOLDER'S CLAIM

57. Based on the facts outlined above (see paragraphs 9-20, supra) Eastman Kodak, as the majority shareholder of Rangiran, alleges that Iran's actions with respect to Rangiran amounted to an expropriation of its shares in Rangiran and that Iran on that ground is liable to compensate Eastman Kodak for the value of those shares. Iran's defense to this claim is the same as the defense raised against the alleged control over Rangiran by Iran.

58. The question whether, for jurisdictional purposes, a company is controlled by Iran is distinct from that of whether a company has been expropriated. The Tribunal's

determination that Rangiran was not an entity controlled by Iran as of 19 January 1981, however, precludes a finding that Iran's interference in Rangiran's affairs amounted to an expropriation of the Claimant's shareholders' rights in Rangiran as of that date. The Tribunal further finds that the facts in this Case do not warrant a finding that Eastman Kodak was deprived of its ownership rights. It is undisputed that the legal title to the shares was unaffected by Iran's interference. (See Foremost Tehran Inc. and Islamic Republic of Iran, Award No. 220-37/231-1 at 31-33 (11 April 1986); Sporrong and Lönnroth, European Court of Human Rights, Judgment of 23 September 1982, Series A, No. 52). In reaching this decision the Tribunal has attached particular importance to the fact that the Claimant, as majority shareholder, was able effectively to decide to liquidate and to declare Rangiran bankrupt at points in time significantly later than the occurrence of the events which the Claimant contends caused the loss of its shareholding interest.

59. The fact that Iran's interference did not rise to the level of an expropriation or of a deprivation of ownership rights does not, however, preclude the Tribunal from considering whether the interference established here was such as to constitute "other measures affecting property rights" as contemplated by Article II, paragraph 1, of the CSD. See Foremost, supra, at 32. Such measures, while not amounting to an expropriation or deprivation, may give rise to liability in so far as they give rise to damage to the Claimant's ownership interests.

60. The Tribunal is satisfied that the Claimant's claim for expropriation must be taken to include a claim for a lesser degree of interference with its property rights.

61. The Tribunal determines that an interference of the type described above exists in the present Case, and

that this interference is attributable to Iran. The remaining issue for the Tribunal is therefore to determine whether such an interference has caused damage to Eastman Kodak and what compensation, if any, consequently is due to the latter.

62. Pursuant to the Tribunal's orders the Parties have not, however, briefed all issues in Case 227 (see paragraph 4, supra). The Tribunal therefore decides to defer the final disposition of this Case until such time as the Parties have been given an opportunity to submit the evidence on which they wish to rely in support of their contentions on these issues.

VII. THE GUARANTEE CLAIM AND COUNTERCLAIM

63. By a document dated 19 March 1979 Eastman Kodak guaranteed Rangiran's debts to the Irano-British Bank up to a maximum amount of Rls. 105,000,000 ("Guarantee"). This Guarantee was to expire on 31 March 1980. On 22 November 1979 the Irano-British Bank advised Rangiran that "new regulations of the Central Bank of Iran does [sic] not agree with guarantees issued by foreign companies for banking facilities in Iran." Rangiran was requested to replace the Guarantee with a "foreign Bank's counter guarantee." On 14 December 1979 Eastman Kodak sought to cancel the Guarantee with reference to the 22 November 1979 letter. By telex dated 17 December 1979, and confirming letter dated 19 December 1979, the Irano-British Bank objected to the cancellation of the Guarantee. The bank clarified that the 22 November 1979 letter could not be interpreted as a release of Eastman Kodak; it was a request to Eastman Kodak to replace the existing Guarantee with a bank guarantee. On 20 December 1979 Rangiran sought to pay off the overdraft facility it had with the Irano-British Bank by submitting a check of Rls. 45,000,000. The check, which was drawn on

Rangiran's account at Bank Sepah, was not honored, although Rangiran, at the time, had sufficient funds in the account to cover the amount of the check. It appears that Rangiran, equally unsuccessfully, sought to resubmit this check in early January 1980. On 10 March 1980 the decision to liquidate Rangiran intervened. By telex dated 17 March 1980 the Irano-British Bank sought payment from Eastman Kodak Company of Rls. 38,749,866, "being the present overdraft outstanding of Rangiran." Eastman Kodak referred the Irano-British Bank to Mr. Nezam Motabar and continued:

[Mr. Motabar] is currently acting on behalf of the Board of Liquidators of [Rangiran]. He has been requested to give you every assistance in obtaining the funds from bank accounts of [Rangiran] with Bank Sepah and Bank Melli, which are more than adequate to cover your claim. As you are [a]ware, attempts to satisfy your claim by delivery of a check have been twice frustrated by actions of your own employees, and also by the action of the general public prosecutor in ordering the freezing of [Rangiran's] bank accounts.

64. Subsequently, on 21 May 1980, the Executive Department of the General Courts of Tehran levied an attachment on Rangiran's account with Bank Melli in the amount of Rls. 39,000,000. On 7 July 1980 the Board of Liquidators requested the General Courts of Tehran to collect the attached amount from Bank Melli and pay the Rls. 39,000,000 to the Irano-British Bank. This request was apparently not granted, as the record establishes that the attachment on this amount in Rangiran's Bank Melli account was lifted only on 12 December 1984. It was lifted, however, in favor of the Department of Liquidation and Bankruptcy Affairs.

65. On the basis of the foregoing, Eastman Kodak now seeks a declaratory judgement of release from any liability under the Guarantee, on the ground that the underlying obligation either has been satisfied by attachments seized on Rangiran's assets in Iran, or that it could have been

satisfied by a drawing from Rangiran assets remaining in Iran, which as far as Eastman Kodak is aware, are still subject to the freeze order of 17 November 1979. In any event, Eastman Kodak contends that because Rangiran twice tendered payment by checks drawn on accounts with sufficient funds Eastman Kodak is relieved from any liability as a guarantor. Alternatively, Eastman Kodak seek a declaration from the Tribunal directing Iran to satisfy and extinguish Rangiran's indebtedness to the Irano-British Bank by payment out of funds in Rangiran's accounts with Bank Melli and Bank Sepah.

66. Bank Tejarat opposes the requested relief on the ground that the Guarantee indisputably is valid and enforceable, that the underlying debt has not been extinguished and that the demand for payment was timely. On these grounds Bank Tejarat also counterclaims for payment of Rangiran's debt by Eastman Kodak as a guarantor.

67. As an initial matter the Tribunal cannot agree with Eastman Kodak's contention that the letter from the Irano-British Bank of 22 November 1979 constituted a cancellation of the Guarantee.

68. The Tribunal finds it established, however, that the prime obligor, Rangiran, twice tendered payment of the amount due to the Irano-British Bank. This entitles Eastman Kodak to a declaration of release under the Guarantee here at issue. Although there is some confusion in the record as to the amount of the overdraft at the time of the tendered payment, the Tribunal finds it established that the tendered Rls. 45,000,000 would in any event have covered the amount of the debt. The Respondents have not evidenced that Rangiran at this time was declared insolvent, or that Rangiran was otherwise precluded from making use of the funds held in its bank accounts. The only reason why Rangiran was unable to extinguish the debt to the Irano-

British Bank was the freeze imposed by the office of the General Public Prosecutor, i.e., an organ of Iran. Under such conditions the Tribunal must grant Eastman Kodak's relief as sought.

69. This finding disposes of the counterclaim raised by Bank Tejarat against Eastman Kodak.

70. In view of this finding, the Tribunal does not need to consider the alternative relief sought by the Eastman Kodak against Bank Melli and Bank Sepah. As the Claimants have not raised any other specific claim against either of these Respondents, the Tribunal hereby terminates the proceedings in so far as Bank Sepah and Bank Melli are concerned.

VIII. COSTS

71. The Tribunal defers its consideration of the awarding of costs in Case No. 227 until the final disposition of this Case.

72. In Case No. 12384 each Party shall bear its own costs of arbitration.

IX. FURTHER PROCEEDINGS

73. The Tribunal will establish the time schedule for the submission by the Parties of pleadings and evidence on the remaining issues in this Case by separate order. The Tribunal will issue its final Award on the basis of the written pleadings and evidences so submitted.

X. AWARD

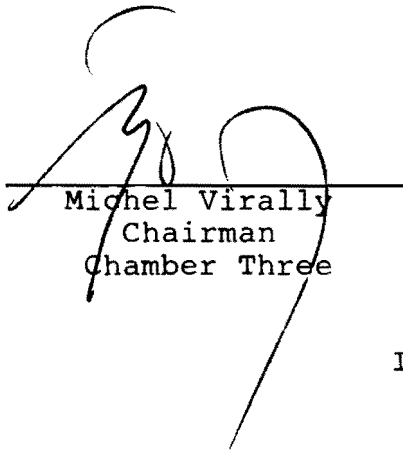
74. For the foregoing reasons

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claims against RANGIRAN PHOTOGRAPHIC SERVICES COMPANY (P.J.S.C.) are dismissed for lack of jurisdiction.
- b. The Claimant EASTMAN KODAK COMPANY is hereby released from any liability which has arisen or may arise out of a letter of Guarantee, issued on 19 March 1979, in favor of the Irano-British Bank, now succeeded by the Respondent BANK TEJARAT and the Respondent BANK TEJARAT is obligated to withdraw any and all demands for payment thereunder against EASTMAN KODAK COMPANY.
- c. BANK TEJARAT'S counterclaim against EASTMAN KODAK COMPANY is dismissed.
- d. The final disposition of Case No. 227 is deferred until such time as the Parties have been given an opportunity to submit the evidence on which they wish to rely in support of their contentions on the issue whether the interference with the Claimant's property rights here found attributable to the Respondent Iran has caused damages to EASTMAN KODAK COMPANY as the majority shareholder of Rangiran Photographic Services Company (P.J.S.C.) and what compensation, if any, is due to the latter. The Tribunal therefore retains jurisdiction over the claim raised in Case No. 227 by EASTMAN KODAK COMPANY in its capacity as majority shareholder of Rangiran Photographic Services Company (P.J.S.C.) against the GOVERNMENT OF IRAN.


- e. The proceedings against BANK MELLI and BANK SEPAH are terminated.
- f. The proceedings in Case No. 12384 are terminated.
- g. The Parties to Case No. 12384 shall each bear their own costs of arbitration.

Dated, The Hague,
11 November 1987

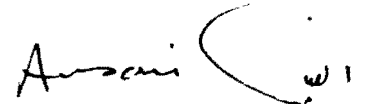


Michel Virally
Chairman
Chamber Three

In the name of God



Charles N. Brower
Concurring and
Dissenting Opinion



Parviz Ansari Mo'in
Concurring in part
Dissenting in part