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DUPLICATE
ORIGINAL
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CASE NO. 227

CHAMBER THREE

AWARD NO. 514-227-3

EASTMAN KODAK COMPANY,
Claimant,

and

THE GOVERNMENT OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
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FINAL AWARD

I. INTRODUCTION AND PROCEDURAL ISSUES

1. On 11 November 1987 the Tribunal issued a Partial Award in this Case, Partial Award No. 329-227/12384-3, reprinted in 17 Iran-U.S. C.T.R. 153 (the "Partial Award"), reserving decision on one element of the claim and deciding all others. The aspect of the Case on which the Tribunal reserved decision was whether the interference in Rangiran Photographic Services Company P.J.S.C. ("Rangiran") found to have existed and to be attributable to THE GOVERNMENT OF IRAN ("Iran") had caused damage to the Claimant, EASTMAN KODAK COMPANY ("Eastman Kodak"), and, consequently, what compensation, if any, was due to Eastman Kodak.

2. The procedural background and jurisdictional aspects of the Case are set out in full in the Partial Award. The Partial Award indicated that a final Award would be issued on the basis of written pleadings and evidence to be submitted to the Tribunal and that no further Hearing would be held. See Partial Award, para. 73. By Order dated 22 January 1988 the Tribunal requested that the Parties submit evidence and pleadings on the remaining issue. The Claimant submitted a "Memorial on Damages" to the Tribunal on 25 April 1988 and Iran filed a "Brief in Reply" on 22 May 1989.

3. In that document Iran stated: "The Respondent is trying to obtain rebuttal affidavits from various individuals and an audit report which task requires extensive time. However, the Respondent has not been able so far to prepare and file the documentation and evidence intended by it." In earlier correspondence requesting extensions of time for filing this document, Iran had stated that it was necessary to carry out an audit and that the dispersal of the staff of Rangiran had made it difficult to obtain the affidavits it required. No specific details were given. In response, Eastman Kodak, in a letter dated 30 June 1989 and also in its rebuttal, asserted that "Iran retains no right to submit

further evidence," and requested that, if such filings are allowed, it be given "the opportunity to file such further rebuttal material as may be made necessary by any filing by Iran."

4. Rebuttal memorials were filed by Eastman Kodak and Iran on 28 June 1989 and 8 September 1989, respectively. With its rebuttal Iran submitted six exhibits. No further pleadings were scheduled in the Case and so the Claimant has had no opportunity to comment on, or rebut, these exhibits.

5. The Tribunal has examined the documents submitted by Iran with its rebuttal. Of the six documents presented, one is a copy of a Power of Attorney dated 9 March 1981 appointing a Mr. Hoshi or a Mr. Motabar as liquidators of Rangiran. Of the remaining five items, three are affidavits concerning the events in 1979 and 1980, one is an affidavit from an expert of the Ministry of Justice and the final item is a report from the Mahallati firm of auditors, prepared in June 1989 pursuant to a letter of engagement from Iran dated 13 May 1989. The report purports to be a valuation of Rangiran as at 31 October 1979.

6. It is evident that all of the material contained in these items was available to Iran and could have been submitted to the Tribunal with Iran's earlier filings. As such, the Tribunal finds that these items do not constitute proper items of rebuttal, which the Tribunal has described as "material submitted in response to specific evidence previously filed." See Henry F. Teichmann, Inc. and Hamadan Glass Co., Award No. 264-264-1, p. 11 (12 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 124, 133. The Tribunal concludes that all exhibits submitted with Iran's "Memorial and Evidence in Rebuttal" are inadmissible.

II. THE CLAIM FOR DAMAGES

A. The Claimant's Contentions

1. The nature of the damage

7. Eastman Kodak submits that the interference found by the Tribunal unquestionably caused it to suffer damage and that it is entitled to substantial compensation therefor. In particular, Eastman Kodak asserts that the measures taken by Iran in November 1979 had an immediate and damaging effect upon Rangiran's business, such that: "Rangiran's sales during the period of Workers' Council management dropped by a third from the sales attained by Kodak management over the comparable period a year before. The company's operating losses more than doubled." Further, it is alleged that suppliers were not paid and inventories not replaced, so that "Rangiran's business was . . . allowed to wither and its assets and goodwill were being rapidly dissipated." In support of these allegations Eastman Kodak submits an unaudited statement of Rangiran's earnings for 1979 and affidavit evidence from certain employees.

8. Eastman Kodak states that, as sole shareholder of Rangiran¹, it was entitled to exercise three fundamental rights: (a) the right to receive profits in the form of dividends; (b) the right to manage the business as it saw fit; and (c) the right to sell the shares in the company or to wind it up. It asserts that Iran's interference was directed at Eastman Kodak's right to manage the business as an ongoing concern and that the cumulative effect of the actions taken was to vest the essential elements of day-to-day management control in the Workers' Council and the

¹Eastman Kodak held 179,998 of the 180,000 shares originally issued, the other two being held one each by Eastman Kodak International Capital Company and Kodak (Near East) Inc., both of which were wholly owned by Eastman Kodak.

General Public Prosecutor. Eastman Kodak thus contends that its role in the operation of Rangiran after 27 November 1979, the date as of which the Partial Award found the joint management to be established (see Partial Award para. 43), was "at most advisory and formal."

9. Eastman Kodak further argues that the alleged deprivation of the right to manage the day-to-day operations of Rangiran was not merely a deprivation of an abstract right and that this is shown by the change in the results of Rangiran's performance. Eastman Kodak asserts that Rangiran's poor performance during this period cannot be blamed on conditions in Iran. Rangiran had produced its first quarterly net profit in the second quarter of the financial year ending 31 October 1979, i.e., 1 February to 30 April 1979, at the height of revolutionary activities. Eastman Kodak also asserts that, as a whole, the photographic market in Iran remained essentially unchanged. Eastman Kodak concludes: "[T]he inexperienced Workers' Council exercised their powers in complete contravention to what management appointed by [Eastman] Kodak as shareholder regarded as sound business practices."

10. Eastman Kodak claims that it would not have liquidated Rangiran in March 1980 absent the interference of Iran. Eastman Kodak explains the decision to liquidate in the following terms: "In light of the already severe effect of the measures taken by Iran on the value of [Eastman] Kodak's shares and in order to stop the further accrual of needless liabilities, Rangiran's Board of Directors chose to exercise this final option on March 10, 1980." In January 1980 Eastman Kodak had written off to the Reserve for bad debts all amounts due from Rangiran "[d]ue to recent circumstances in Iran." It contends: "It is pure fantasy to suggest that [Eastman] Kodak would have liquidated the company absent Iran's measures." Eastman Kodak contends that "the measures taken by Iran deprived Kodak of substantially all of its

rights to manage its property effectively. The only significant right retained by Kodak was the right to put the company into liquidation." Eastman Kodak concludes that

the shareholders' decision to put the company into liquidation in March 1980 did not result in a restoration of Kodak's ability to manage the company. It is the taking of the right to control the day-to-day operation of the company for which Kodak seeks compensation, and that taking had already been accomplished. The fact that Kodak exercised that sole remaining right it had -- the de jure power to put the company into liquidation -- does not mean it somehow recovered its more fundamental, and valuable, right to manage the company as a going concern.

11. Even when Eastman Kodak decided to liquidate Rangiran it experienced interference. When it attempted to terminate employees' contracts so as to cease incurring additional expenses, the Workers' Council rejected the termination notices and negotiations continued for several months. This was confirmed by the Tribunal in the Partial Award. See Partial Award, paras. 17-19. In its rebuttal Eastman Kodak asserts that Iran's control of day-to-day operations persisted even after 10 March 1980 and interfered substantially with the liquidation of Rangiran, thus reducing even further the value of Eastman Kodak's shareholder interests.

2. The quantum of damage

12. Eastman Kodak contends that the proper method of valuing the loss suffered by it is to establish the value to Eastman Kodak of its ownership of Rangiran as of the date of the interference and then to deduct the value of the rights retained by it. The balance remaining represents the loss suffered by it.

13. Eastman Kodak cites various Tribunal precedents in support of its assertion that the proper date for valuation is just prior to the date of the interference, 27 November

1979. See, e.g., SEDCO, Inc., et al. and NIOC, et al., Interlocutory Award No. ITL 55-129-3, pp. 41-42 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 278. It rejects any contention that the date when Rangiran was put into liquidation, i.e., 10 March 1980, should be used, stating:

The fact that Kodak put the company into liquidation in March 1980 does not signify a later date of taking. The right exercised at that time was the sole right that Kodak had retained, the right to liquidate; Kodak was not then exercising the right to manage the operations of Rangiran as an ongoing enterprise. This latter right had long since been lost, and it is the deprivation of that right that is at issue here. Moreover, by March 1980 the loss of that right had already had devastating economic effects on Rangiran, and it was in fact those economic effects that had brought about the decision to liquidate the company. It would therefore be unfair and unrealistic to value the company as of this later date.

14. Eastman Kodak acknowledges that, pursuant to the reasoning in the Partial Award, it retained, and therefore is not entitled to compensation for, certain of its shareholder rights. Eastman Kodak submits, however, that the rights it retained effectively were limited to the right to place the company in liquidation. Furthermore, it contends that because it did, in fact, exercise that right, it is possible to identify and quantify the value of such right.

15. Eastman Kodak notes that as of 31 July 1981, the date used by the liquidators in their report, there was available to Eastman Kodak, after payment to third-party creditors²,

²This does not provide for repayment of shareholders' capital. It also excludes Rls. 397,316,341 due to Eastman Kodak and its affiliated companies but includes cash liabilities of Rls. 82,527,687 not shown on the 31 July 1981 balance sheet.

Rls. 49,005,604 or U.S.\$700,080³. Eastman Kodak contends that this figure must be discounted over the period from the date of Iran's intervention, i.e., 27 November 1979, to the date on which the liquidation of Rangiran was finally completed by the liquidator appointed by the Tehran Department for Liquidation of Bankruptcy Affairs. This date has not been established in these proceedings but a report submitted to the Tribunal by the liquidator in May 1986 confirmed that the process of liquidation was still continuing at that time. Eastman Kodak thus submits that the residual value of its retained rights as of the date of Iran's interference "was in fact well under U.S.\$400,000." Eastman Kodak also asserts that it has not received a distribution of any amount following the liquidation of Rangiran.

16. Eastman Kodak next contends that, as the owner of all of the shares in Rangiran⁴, the most appropriate method of valuing its shareholding is to establish the net asset value of Rangiran. This can be ascertained from the balance sheet for the financial year ending 31 October 1979, i.e., less than one month prior to the acts of interference. Eastman Kodak notes that such an approach is conservative as it does not reflect certain assets such as goodwill and future prospects and uses lower values for assets than actually may be realized. Eastman Kodak speculates that it may be for this reason that such an approach has been advocated by Iran in many expropriation cases before the Tribunal. See, e.g., Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Partial Award No. 310-56-3 (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189.

³Using an exchange rate of U.S.\$1 = Rls. 70.

⁴See supra n. 1.

17. The balance sheet for Rangiran's financial year ending 31 October 1979, prepared by Price Waterhouse & Co., shows a net deficit of Rls. 145,956,006 (U.S.\$2,085,085). However, this is after allocation of Rls. 250,415,752 (U.S.\$3,577,368) to repay long-term advances made by Kodak affiliated companies, mainly Eastman Kodak itself. The Claimant contends that these intercompany debts should be excluded because "the aim is to determine the value of [Eastman] Kodak's own shareholder rights." Eastman Kodak argues that such exclusion will not lead to double recovery because the Tribunal already has held that it lacks jurisdiction over Eastman Kodak's claim for recovery against Rangiran and because the advances were not, and cannot now be, claimed in the bankruptcy proceeding in Iran. Eastman Kodak acknowledges that if such an approach is accepted by the Tribunal, monies shown on the balance sheet as due from Kodak affiliated companies, amounting to Rls. 4,312,702 (U.S.\$61,610.03), also must be excluded from the valuation. Eastman Kodak thus calculates the net asset value of Rangiran as of 31 October 1979, after exclusion of debts owed to or by Eastman Kodak itself, to be Rls. 224,199,802 (U.S.\$3,202,854).

18. Eastman Kodak contends, however, that this valuation still is too low and should be adjusted upwards to reflect more accurately the fair market value, rather than the book value, of Rangiran's inventories and the allegedly high prospects of recovery of its trade receivables. Eastman Kodak proposes an upward adjustment of Rls. 30,399,317 (U.S.\$434,276).

19. Consequently, Eastman Kodak asserts that Iran's interference has caused it to suffer loss and damage of at least U.S.\$3.2 million, i.e., the adjusted net asset value of Rangiran (U.S.\$3.6 million) less the value of the rights retained by it (U.S.\$400,000), and claims interest thereon from the date of the interference, plus costs.

20. In addition, Eastman Kodak asserts that the Tehran court's finding in July 1983 of Rangiran's insolvency as of 31 October 1977 does not bind it or the Tribunal on the basis that: "The Claims Settlement Declaration specifically divested the Iranian courts of jurisdiction and established an alternative forum to proceedings in municipal courts. That forum was already in place more than two years before the bankruptcy decision." Consequently, Eastman Kodak asserts that it was not required to participate in or appeal from those proceedings. Eastman Kodak contends that the finding is both questionable and inapplicable to these proceedings, stating: "The court's finding clearly has no relationship to the economic meaning of the term 'insolvent' -- the ability to pay one's debts when due -- because, until the freeze on its bank accounts in November 1979, Rangiran was able to pay its debts on a current basis."

B. The Respondent's Contentions

1. The nature of the damage

21. Iran denies that Eastman Kodak has suffered any damage from interference with its property rights. Iran contends that Eastman Kodak is relying on the same incidents of alleged interference as were considered by the Tribunal in the Partial Award. It asserts: "[T]he said actions are nothing new but they are the very same actions which the Claimant has mentioned in its Statement of Claim from the very outset as the measures depriving the shareholders of their control over Rangiran." Iran contends that the Tribunal already has examined each of these acts and determined that they do not constitute control, expropriation or interference in the Claimant's ownership rights in the shares. In particular, Iran asserts:

- (i) Mr. Khodakhah's appointment to supervise the affairs of Rangiran has been held by the

- Tribunal to be of temporary and limited nature and was intended to be of benefit to Rangiran. Thus the Tribunal is now precluded from considering this as an act affecting the Claimant's property rights;
- (ii) the Tribunal found the grant of management rights to the Workers' Council was insignificant and that the limited power of the Workers' Council did not extend to the determination of Rangiran's policies and future activities;
 - (iii) Rangiran's Board of Directors considered itself able to control the actions of Rangiran and could act in its own discretion for the present and future interests of the shareholders; and
 - (iv) only the blocking of Rangiran's bank accounts constituted an act of interference.

22. Iran asserts that the power of the Workers' Council was limited and overshadowed by the power of the shareholders and did not interfere with the shareholders' proprietary interests. Thus it repeats an earlier assertion that the appointment and activities of the Workers' Council did not constitute an interference, citing in support various paragraphs of the Partial Award, in particular, paragraphs 39, 43, 47 and 48. Iran contends that these paragraphs "estbalish [sic] the fact that Rangiran's Board of Directors considered itself sufficiently able to control the operations of Rangiran and it could decide and take action on the present and future interests of the shareholders at its own discretion." Iran cites an assertion in a report dated 6 August 1981 and prepared by the liquidators of Rangiran to confirm that Eastman Kodak continued to control Rangiran until liquidation. That report states: "Prior to liquidation time, the company was run by board of directors, appointed by shareholders." From that statement Iran concludes that the appointment of Mr. Khodakhah and the intervention of the Workers' Council did not cause injury to Rangiran. Iran contends that a seizure of the right to manage business and property in a company, such as is alleged by the Claimant, amounts to taking control of that company, a finding that the Tribunal already has rejected in

the Partial Award. Thus Iran denies that it seized the right to manage Rangiran's business.

23. Iran acknowledges that the freezing of Rangiran's bank accounts constituted an interference but argues that, in view of the short period of time between the freezing of the accounts and the liquidation of Rangiran, this was not, and could not be, injurious. Iran asserts that Eastman Kodak has not established any causal connection between the blocking of the accounts and the alleged injury, placing the burden of proof of both the existence of such causal connection, and the quantum of any damage suffered, on Eastman Kodak.

2. The quantum of the damage

24. Iran asserts that no compensation is due to Eastman Kodak. It contends that the blocking of Rangiran's bank accounts was not injurious, but that even if it was, little or no damage was caused to Rangiran, as the accounts were blocked on 17 November 1979 and the company put into liquidation on 10 March 1980. Iran concludes that it would be unreasonable to determine that the blocking of Rangiran's account could have affected the interests of the company to such an extent that it would lead to the bankruptcy and liquidation of Rangiran. Iran asserts that Eastman Kodak failed to find a basis and justification for the relief sought by it in the original claim and is now demanding its original relief under a different guise.

25. Iran further asserts that Eastman Kodak cannot demand the recovery of damages for losses suffered prior to the alleged interference. Iran relies on Rangiran's tax returns, the voluntary liquidation of Rangiran, the voluntary decision of the shareholders to file a petition in bankruptcy in August 1981 and the Tehran court's subsequent declaration of Rangiran's bankruptcy as of 31 October 1977

to establish that Eastman Kodak's shareholding interest was valueless after that date. Iran points to the rejection by the Tehran court of the Claimant's objection to the declared date of the bankruptcy as further evidence of this. The date selected by the Tehran court is based on the investigations and opinion of a court-appointed expert, whose report has been submitted to the Tribunal. Iran contends that Eastman Kodak's failure to appeal the Tehran court's declaration of bankruptcy indicates that Eastman Kodak did not believe that Rangiran's bankruptcy stemmed from Iran's interference and concludes: "The causal relationship between the alleged injury and the Respondent's act has not been proved by the Claimant, and in fact does not exist."

26. Iran also challenges Eastman Kodak's basis for the calculation of damage suffered by it. It asserts that there is no need to value the shares in Rangiran as Iran's acts did not cause any injury to Rangiran. To rebut Eastman Kodak's calculations as to the value of Rangiran and the Claimant's interest therein, Iran refers to the report of the official liquidator of Rangiran, contesting the Tribunal's jurisdiction. It is asserted in that report that Rangiran was

insolvent due to economic stagnation, inability to meet its obligations, interruption in payments, failure to pay its tax debts, etc. long before the triumph of the Islamic Revolution in Iran, its bankruptcy having been caused by its own financial economic situation, not by any act of the Iranian government or governmental organizations.

Iran also refers to a valuation report prepared in June 1989 by an Iranian firm of auditors, A.M. Mahallati & Co. and asserts that the report concludes that the value of the share capital of Rangiran was nil. This report is one of the items excluded from the record. See supra para. 5.

27. Iran concludes that no injury was caused by its single short-lived act of interference and therefore no damages are due to Eastman Kodak.

C. The Tribunal's Decision

1. The finding of interference in the Partial Award

28. In paragraph 59 of the Partial Award the Tribunal held that "measures [affecting property rights], 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." The Tribunal went on in paragraph 61 to determine "that an interference of the type described above exists in the present Case, and that this interference is attributable to Iran."

29. An analysis of the Tribunal's finding of interference attributable to Iran is the obvious starting point for an assessment of the level of damage, if any, suffered by Eastman Kodak. In the Partial Award the Tribunal considered three acts of alleged interference and drew certain conclusions therefrom. The Tribunal also made several factual findings that are relevant to the current proceedings. The three main acts of alleged interference were:

- (i) the freeze of the Rangiran bank accounts on 17 November 1979;
- (ii) the grant of management authority to the Workers' Council on 27 November 1979, empowering it to supervise company operations;
- (iii) the appointment of Mr. Khodakhah to supervise the affairs of Rangiran on 24 December 1979.

The Partial Award found that:

- (i) Iran's contention that the freeze of Rangiran's bank accounts was necessary to protect Rangiran's assets was unsupported by the evidence. See Partial Award para. 40;
- (ii) 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." See Partial Award para. 41;
- (iii) the notice of 27 November 1979 "vested special powers in Rangiran's Workers' Council to supervise the activities of Rangiran, and . . . the management of Rangiran was thereafter bound to obtain the approval of the Council for the running of the company's affairs." See Partial Award para. 41;
- (iv) "[t]he management committee [appointed by Eastman Kodak] did not have full freedom of action, in particular regarding the use of the bank accounts." See Partial Award para. 47;
- (v) 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." See Partial Award para. 43;
- (vi) Eastman Kodak retained a measure of control over Rangiran 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." See Partial Award para. 54; and
- (vii) the role played by Mr. Khodakhah "was minor and temporary and intended to help to solve problems which arose between the local management and the Workers' Council." See Partial Award para. 42.

30. The Tribunal is bound to observe the finding in the Partial Award that the appointment of Mr. Khodakhah was only

minor and temporary and was intended as a problem solving measure. Contrary to Iran's contentions, however, the Tribunal determines that paragraphs 40, 41, 43, 47, 59 and 61 of the Partial Award must be read to mean that, together, the freeze of Rangiran's bank accounts and the imposition of joint management by the Board of Directors, the Workers' Council and the General Public Prosecutor constituted "measures affecting property rights" and thus may be the basis of a claim before the Tribunal.

31. The Tribunal therefore rejects Iran's contention that the only act of interference found by the Partial Award was the freeze of Rangiran's bank accounts. The Tribunal notes, as Iran has argued, that the Tribunal's award in Schering Corporation and Islamic Republic of Iran, Award No. 122-38-3 (13 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 361, held that Iran was not responsible for the actions of the Workers' Council appointed to that company. However, the Tribunal finds that the instant Case differs from Schering in a number of respects. In particular, in Schering it was held that:

[T]here is no evidence in this case that the Workers' Council in fact acted on behalf of the Government of Iran or any of its agencies or entities, that there was any governmental influence over the election of the members of the Council, that any governmental orders, directives or recommendations were issued to the Council or that it acted under instructions of any governmental body.

Id. at p. 17, reprinted in 5 Iran-U.S. C.T.R. at 370. (Emphasis added.) In the case of Rangiran, however, the Partial Award found that the General Public Prosecutor, who was unquestionably a representative of the government, played an active role in the management of Rangiran, in particular with respect to use of its bank accounts. See Partial Award, paras. 41, 43 and 47. Furthermore, the Workers' Council received direct authorization from the Investigation Department of the Attorney General's Office to

assume supervision of the "importation, delivering and sale of [Rangiran's] products." See Partial Award, para. 12.

32. The Tribunal has no power, nor does it wish, to reopen the issues decided in the Partial Award. The Tribunal concludes that the Partial Award establishes interference attributable to Iran caused by both the freeze of Rangiran's bank accounts and the imposition of joint management in place of Eastman Kodak's undisputed right of sole management.

2. The existence of damage

33. Having confirmed which were the acts of interference, the Tribunal now must consider whether Eastman Kodak has established to the satisfaction of the Tribunal that these acts caused it to suffer damage. The Tribunal found in the Partial Award that the Management Committee appointed by Eastman Kodak did not have full freedom of action to manage Rangiran. See Partial Award, paras. 47, 54. The Tribunal now determines that this loss of freedom of action and, in particular, the loss of day-to-day management control, led Eastman Kodak to exercise such management rights as did remain, i.e., the right to liquidate Rangiran, which Eastman Kodak exercised some three and one-half months after the interference here at issue. There is nothing in the record to indicate that, under the previous independent managerial conditions, Eastman Kodak would have acted to liquidate Rangiran at that time. Indeed it seems most unlikely that, after carrying losses for three years, it would liquidate a company which, in the previous year, had produced its first quarterly net profit since incorporation and into which a large capital investment had recently been made. The Tribunal therefore finds that the liquidation of Rangiran in March 1980 was a direct consequence of Iran's interference and would not have occurred otherwise.

34. The issue before the Tribunal therefore is to determine whether the liquidation of Rangiran caused Eastman Kodak to suffer loss which it would not otherwise have incurred and, if so, the degree of damage resulting from such liquidation.

35. Eastman Kodak asserts that it did suffer such loss and that the proper method of assessment of damage is to establish what it had before, and to compare this with what remained after, the acts of interference, arguing that the difference between the two is the damage suffered. Eastman Kodak asserts that the value of its shareholding, calculated on this basis, was U.S.\$3,600,000, less the value of the rights retained, i.e., U.S.\$400,000, giving a net value of at least U.S.\$3,200,000.

36. Iran strongly contests the use of this method for the calculation of damages. The approach advocated by Iran is to assess the quantum of loss actually realized by Eastman Kodak in the period from 7 November 1979 to 10 March 1980 as a result of the blocking of Rangiran's bank accounts, which would not otherwise have been incurred. It relies on the argument that Rangiran was insolvent throughout its life to establish that Eastman Kodak's shareholding interest in Rangiran was worthless, both before and after liquidation, and therefore the short-lived period of interference arising out of the blocking of the bank accounts caused no actual loss.

37. The first approach accords with Tribunal practice for valuations in expropriation cases, although its application to a claim based on a lesser degree of interference still may require consideration. The crucial element to be established with regard to the second approach is that of the causal link. Iran contends that Eastman Kodak has failed to demonstrate that it suffered any loss as a result of Iran's interference that it would not have incurred otherwise. In the context of this Case, where the Partial Award found that

Eastman Kodak's legal title to Rangiran's shares was "unaffected by Iran's interference" and that it still was able to decide to liquidate Rangiran, and where the Partial Award also indicated that the issue remaining was for the Tribunal to determine whether the interference caused damage to Eastman Kodak, the Tribunal is satisfied that the focus must be on the causal connection between interference and any loss incurred.

38. In order to determine whether the liquidation of Rangiran at that time caused Eastman Kodak to suffer loss which it would not otherwise have incurred, the Tribunal must examine the financial status of Rangiran at the time of the interference. It is an established principle of Tribunal decisions that the date to be used for valuation of an asset subject to expropriation is a date immediately prior to such interference. See, e.g., SEDCO, Interlocutory Award No. ITL 55-129-3, reprinted in 9 Iran-U.S. C.T.R. 248. The Tribunal finds no reason to depart from this principle in the case of a lesser degree of interference.

39. The Partial Award found that the interference existed no later than 27 November 1979. The Claimant has submitted in evidence Rangiran's audited financial statements for the financial year ending 31 October 1979, less than one month prior to the established date of interference. This balance sheet, with its attachments, is the only contemporaneous audited valuation before the Tribunal.

40. The balance sheet shows that Rangiran had current assets (Rls. 292,940,592) exceeding current liabilities (Rls. 213,955,986) by Rls. 78,984,606. This is before inclusion of capital assets. However, the balance sheet shows an overall deficit of Rls. 145,956,006. Thus, as stated by Iran, Rangiran was running at a loss and carried significant liabilities. These liabilities, however, which would greatly affect Rangiran's value to a third party

purchaser, include not only the current liabilities but also long-term advances from Eastman Kodak and affiliated companies in the sum of Rls. 250,415,752 and, in accordance with standard accounting procedures, provision for redemption of shareholders' capital stock in the sum of Rls. 18,000,000.

41. It is evident from the balance sheet that, in fact, Rangiran was able to satisfy all of its third party debts, other than the inter-company advances, from its assets and earnings. As noted above, the balance sheet shows that Rangiran's current assets exceeded current liabilities by Rls. 78,984,606. By putting Rangiran into liquidation, the loans and advances made by Eastman Kodak and its subsidiaries for working and capital expenses, which otherwise were payable only on demand, became payable immediately. Indeed, it is only the provision for repayment of these loans and advances on the 1979 and previous balance sheets that leads to the conclusion that Rangiran was insolvent, either at the time of liquidation or, as found by the Tehran court⁵, on 31 October 1977 (the end of its first financial year). Although Eastman Kodak undeniably had the right to demand repayment of these amounts at any time, from a business point of view it is inconceivable that it would do so until such time as Rangiran was generating profit on a regular basis. By liquidating Rangiran prematurely, however, Eastman Kodak lost even the potential to generate future revenue from which to satisfy the inter-company debts. Instead, the liabilities became due and payable immediately, without funds being available to satisfy them.

⁵In the Partial Award it was held: "The subsequent declaration that Rangiran was bankrupt as of 31 October 1977 cannot be given determinative effect in this context [the protection of Rangiran's assets] as this judgment was rendered more than three years after the events here at issue." Partial Award, para. 40.

42. The Tribunal already has determined that the liquidation of Rangiran was a direct consequence of Iran's interference (see supra para. 30). The Tribunal now also determines that the premature liquidation of Rangiran caused Eastman Kodak to incur losses which would not otherwise have been incurred at that time. Eastman Kodak's loans and advances to Rangiran would not have been called if the company had not been put into liquidation. Iran's interference crystallized the inherent debts at that moment in time and caused the Claimant to lose any prospect it had of repayment. The Tribunal finds there to be an uninterrupted causal link between Iran's interference, the crystallization of the inherent debts and the loss by Eastman Kodak of any potential for repayment of those amounts, i.e., it lost the ability to recover certain of its assets. Therefore the damage suffered by Eastman Kodak logically is to be ascertained by reference to both the value of those assets and the likelihood of actual repayment.

3. The quantum of damage

43. In this Final Award the Tribunal is concerned only with the claim of Eastman Kodak in respect of damage to its property rights in its capacity as majority shareholder of Rangiran. Consequently, even though the premature liquidation of Rangiran caused Eastman Kodak to lose the prospect of repayment of all amounts due to it, the Tribunal must direct its attention solely to those losses which Eastman Kodak suffered in its capacity as majority shareholder and not to any incurred in its capacity as a trade creditor of Rangiran.

44. The liabilities shown on Rangiran's balance sheet include Rls. 124,052,798 current liabilities due to Kodak companies, long-term advances of Rls. 250,415,752 and capital stock of Rls. 18,000,000, giving a total of Rls. 392,468,550. Also shown is Rls. 4,312,702 due from Kodak

companies. These amounts are specified in more detail in the Notes to the Financial Statements, which are stated to form "an integral part of [the] financial statements." The Notes indicate that, of the current liabilities, only Rls. 2,997,959 was owed to Eastman Kodak while Rls. 1,358,190 was due from Eastman Kodak to Rangiran.

45. The Tribunal determines that the current liabilities owed to Eastman Kodak and its subsidiaries constitute trade debts incurred in the normal course of business. In particular, the trade debts to the subsidiaries are evidenced by invoices and appear to be regular arms-length transactions. In its Statement of Claim Eastman Kodak acknowledges that the goods or services were supplied pursuant to ordinary business relationships between the supplying company and Rangiran. The Tribunal concludes that such sales constitute normal commercial transactions which were entered into by the parties irrespective of their corporate relationship. In addition, the trade debts were all due and payable prior to the established acts of interference and thus were not crystallized by the premature liquidation of Rangiran in the same way as other advances. Although the prospect of repayment of these debts also was lost as a result of the liquidation of Rangiran, the Tribunal finds that such losses do not represent damage to property rights belonging to Eastman Kodak in its capacity as shareholder of Rangiran within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration. Therefore, these losses are not recoverable in this Final Award.

46. The next item of liability on the balance sheet is the long-term advances of Rls. 250,415,752. The Notes to the Financial Statements indicate that these represent "mainly advances received from Eastman Kodak Company, Inc., USA." The 1977 and 1978 Financial Statements, which are also in evidence, show specific advances from "Eastman Kodak Company, Inc., Rochester, New York, U.S.A.," which company

is stated to own all of the shares in Rangiran. The Tribunal notes that the share certificate issued to the Claimant states its address to be in Rochester, New York, even though the Claimant is incorporated in the State of New Jersey. The copy correspondence in the file also evidences that the Claimant operated from Rochester, New York. The Tribunal concludes that the references in the Financial Statements to "Eastman Kodak Company, Inc., Rochester, New York, U.S.A." are references to the Claimant.

47. In 1978, the advances identified as being from the Claimant totalled Rls. 10,510,633. No similar details are included in the 1979 Statements and so it is not immediately apparent whether all of that amount is due to Eastman Kodak or if part is due to other Kodak companies. The Tribunal thus is faced with certain difficulties when attempting to determine the quantum of the advances actually made by the Claimant.

48. A total of \$3,368,243⁶ advanced by Eastman Kodak, however, is evidenced by three promissory notes dated 10 December 1976, 25 January 1977 and 1 February 1979 which form part of the record before the Tribunal. Also in evidence are three letters dated 7 January 1980 from Eastman Kodak to various internal departments confirming the amounts due from Rangiran and written off as bad debts "[d]ue to recent circumstances in Iran." One of these letters specifically refers to the amounts secured by the promissory notes together with another advance of U.S.\$8,865. This latter advance is not documented in any form. The Tribunal finds that the three promissory notes reflect accurately the sums advanced to Rangiran by Eastman Kodak, as included in the long-term liabilities on the balance sheet.

⁶Equivalent to Rls. 237,427,449 at the exchange rate of U.S.\$1 = Rls. 70.49 used for capital investment.

49. Having examined the promissory notes and their terms the Tribunal concludes that these were not, by their nature, commercial loans forming part of an arms-length transaction but rather were advances made by Eastman Kodak in its capacity as majority shareholder to its fledgling subsidiary. The notes bear eight percent interest and have no fixed repayment date, being payable on demand. Interest is payable quarterly on two of the notes totalling U.S.\$125,000, but is payable only at the time of demand on the note for U.S.\$3,243,243. This advance was made in February 1979, less than one year before the acts of interference. Considering, in particular, the fact that the advances represented a disproportionately high ratio of debt when compared with the assets of the company and were unsecured, the Tribunal finds that they were not made on arms-length terms. Indeed, it is improbable that either party would have entered into loans on such terms with an independent third party, but instead they were relying on the corporate relationship between them. The Tribunal determines that these advances constituted long-term investments by Eastman Kodak in its subsidiary, and were made in its capacity as majority shareholder. Therefore, any loss of potential for repayment also constitutes damage to Eastman Kodak's property rights in Rangiran and falls to be considered as part of this Final Award.

50. The task before the Tribunal is to evaluate the damage, if any, suffered as a result of the loss, not of the advances themselves, but of the premature crystallization of the advances and the loss of potential for their repayment. The quantum of damage suffered as a result of the loss of potential of repayment is not necessarily the same as the quantum of the advances themselves. In order to assess the quantum of such damage the Tribunal must consider the likelihood of repayment of those advances and, in particular, the proportion that any repayment would bear to the amount actually due. That amount would constitute the

principal sums plus interest at eight percent accrued thereon in accordance with the terms of each note. The Claimant has calculated this to be U.S.\$3,602,040 as of 16 November 1979.

51. The Tribunal is mindful of the fact that, had Rangiran not been liquidated, Eastman Kodak would have received repayment of these advances only over a period of time, if at all. Repayment would have been dependent upon Rangiran generating revenues over a continued period. The evidence before the Tribunal indicates that, while Rangiran had produced its first quarterly net profit in the second quarter of 1979, six months prior to the acts of interference, it continued to record losses in the subsequent quarters to the end of October 1979. The statement of operations for the financial year ended 31 October 1979 shows a drop in operational earnings from the previous year and increased net and accumulated deficits. Despite the losses in previous years, in February 1979 Eastman Kodak made the substantial advance of U.S.\$3,243,243 evidenced by the third promissory note. It is evident that, had Eastman Kodak decided to liquidate Rangiran in November 1979, immediately prior to the acts of interference, or demanded repayment at that time, it would not have received repayment in full. The Tribunal concludes that in November 1979 the prospect of the future repayment of these advances in full was less than certain.

52. The Tribunal has no way of knowing with certainty whether, if Rangiran had been permitted to continue trading to the present day, the advances would have been repaid in part or in full, or whether, due to insufficient revenue or other reasons, they would remain on the balance sheet as long-term liabilities. To assess these issues, the Tribunal is required to make a reasonable forecast of future events. As stated by the Tribunal in Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran,

et al., Award No. 314-24-1, para. 338 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 221, such matters may not always be "capable of precise quantification because they depend on the exercise of judgmental factors that are better expressed in approximations or ranges. In these circumstances, the Tribunal must make an overall determination of a global amount."

53. The Tribunal has considered many methods of calculation of the damage suffered by Eastman Kodak, so as to reflect these uncertainties, looking in particular at the period of time over which repayment was likely to occur, if at all, and the question of whether Rangiran would ever generate sufficient revenues to repay these advances. The Tribunal again notes that Rangiran's trading deficits had increased, not decreased, in the financial year ending 31 October 1979, and that, in that same year, Eastman Kodak had felt it necessary to make a substantial injection of capital to its subsidiary on terms which were extremely favorable to Rangiran.

54. The Tribunal determines that the damage suffered by Eastman Kodak can only be quantified by way of a reasonable and equitable adjustment to the total value of the promissory notes to reflect these uncertainties. It is the established practice of the Tribunal that "when the circumstances militate against calculation of a precise figure, the Tribunal is obliged to exercise its discretion to 'determine equitably' the amount involved." See id. at para. 339, reprinted in 16 Iran-U.S. C.T.R. at 221. After taking into account all relevant considerations, the Tribunal concludes that an adjustment of 50% of the total value of the promissory notes (including the interest that had accrued thereon to the time of the interference) is equitable in all the circumstances.

55. The Tribunal must also now consider the effect of the subsequent declaration of bankruptcy by the Tehran court,

following the voluntary decision to seek court protection. The Tribunal has been required to consider such matters in other cases. For example, in Rexnord Inc. and The Islamic Republic of Iran, Award No. 21-132-3 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6, the Tribunal examined the effect on its jurisdiction of liquidation or bankruptcy proceedings. The Tribunal noted that the two processes were distinct with different legal consequences. However, the Tribunal concluded that the Claims Settlement Declaration does not exclude claims brought under either of these processes.

56. The Tribunal notes that the decision by the Board of Liquidators of Rangiran to file in bankruptcy, the appointment of a court-nominated administrator and the declaration of the Tehran court were all made after 19 January 1981, the effective date of the Claims Settlement Declaration. As at 19 January 1981, Rangiran was still an independent legal entity which, although it had been placed in liquidation by its shareholders, had not yet been declared bankrupt. The Tribunal also is mindful of the fact that Eastman Kodak's claim in this part of the proceedings is against Iran, not Rangiran. The subsequent declaration of bankruptcy of Rangiran therefore cannot affect either the rights of the parties to this part of the proceedings, i.e., Eastman Kodak and Iran as of 19 January 1981, or the jurisdiction of the Tribunal. See, e.g., Time, Incorporated and The Islamic Republic of Iran, et al., Award No. 139-166-2 (29 June 1984), reprinted in 7 Iran-U.S. C.T.R. 8; Behring International, Inc. and Islamic Republic Iranian Air Force, et al., Interim and Interlocutory Award No. ITM/ITL 52-382-3 (21 June 1985), reprinted in 8 Iran-U.S. C.T.R. 238. Furthermore, the subsequent declaration of the bankruptcy of Rangiran is not inconsistent with a finding by the Tribunal that Eastman Kodak suffered loss as a result of the interference by Iran. The Tribunal's attempts to quantify that loss relate not to the value of Rangiran,

whether evidenced by the declaration of bankruptcy or otherwise, but to the loss suffered by Eastman Kodak as a result of the crystallization of the inherent debts on the premature liquidation of Rangiran and the loss of any potential of repayment of the sums found to have been advanced by Eastman Kodak in its capacity as majority shareholder of Rangiran.

57. The Claimant has calculated the principal amount of the promissory notes plus the interest accrued thereon (at eight percent in accordance with the terms of each note) as of 16 November 1979 to be U.S.\$3,602,040. As the Tribunal has determined that the date of interference was 27 November 1979, some eleven days later, that figure is increased to U.S.\$3,610,160.49. The Tribunal therefore awards Eastman Kodak the sum of U.S.\$1,805,080.24 compensation for loss and damage incurred as a result of Iran's interference with its property rights as majority shareholder of Rangiran.

58. The Tribunal must also consider Eastman Kodak's investment in the share capital of Rangiran in the amount of Rls. 18,000,000. This is not recoverable in these proceedings because share capital does not constitute a debt due to shareholders unless there is a surplus available on liquidation. Furthermore, such amount as may be available is distributable only on exercising the right to liquidate, a right that Eastman Kodak acknowledges it retained.⁷

59. As the Tribunal's award is based not on the value of Rangiran but on the loss suffered by Eastman Kodak as a result of the crystallization of the inherent debts on the premature liquidation of Rangiran, following Iran's

⁷The Tribunal notes, however, the assertion by Eastman Kodak that it has never received any distribution following the liquidation of Rangiran.

interference, and the loss of potential of their repayment, no assessment or further deduction need be made in respect of the value of those shareholders' rights retained and exercised after 27 November 1979 by Eastman Kodak.

III. INTEREST AND COSTS

60. The Claimant seeks interest at the rate of ten percent on the amount awarded from the date of the interference to the date of payment, plus costs. The amount awarded by the Tribunal has been calculated by way of reference to the potential of repayment of the amounts advanced under the promissory notes, which bore interest at the rate of eight percent per annum. The Tribunal determines that the contractual rate of interest is as closely linked to the Claimant's expectation and the potential for repayment as it would have been to repayment itself. Therefore the Tribunal determines that the contractual rate of interest agreed between the parties and provided for in the promissory notes should apply to the amount awarded herein, in accordance with the approach taken in R.J. Reynolds Tobacco Company and The Government of the Islamic Republic of Iran, et al., Award No. 145-35-3, p. 21 (6 Aug. 1984), reprinted in 7 Iran-U.S. C.T.R. 181, 193. Interest is to run from 27 November 1979, the date of the interference.

61. The Partial Award deferred consideration of awarding the costs of arbitration in Case No. 227 pending final disposition of the Case. See Partial Award, para. 71. Having regard to the various determinations made in both the Partial Award and this Final Award, the Tribunal determines that each party shall bear its own costs of arbitration.

IV. AWARD


62. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Respondent THE GOVERNMENT OF IRAN is obligated to pay to EASTMAN KODAK COMPANY, INC. the sum of One million eight hundred five thousand eighty United States Dollars and Twenty-four Cents (U.S.\$1,805,080.24) plus simple interest due at the rate of eight percent per annum (365-day basis) from 27 November 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.
- (b) All of the above obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.
- (c) Each Party shall bear its own costs of arbitration.

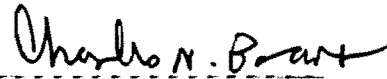
- (d) This Award is hereby submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague,
1 July 1991

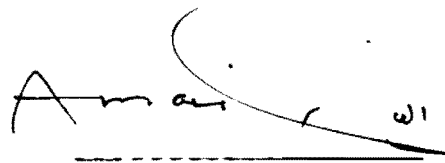


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Charles N. Brower
Concurring and
Dissenting Opinion



Parviz Ansari Moin
Dissenting Opinion