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ORIGINAL DOCUMENTS IN SAFE

Case No. 227

Date of filing: 30/12/91

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 30 Dec 91
_____ 5 pages in English _____ 6 pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

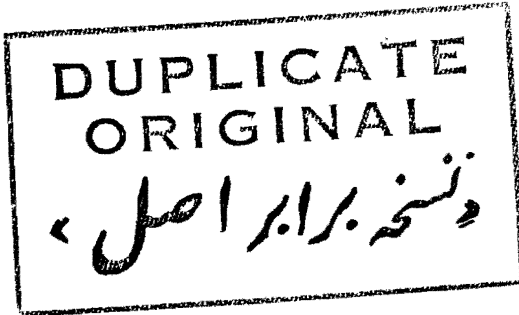
DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

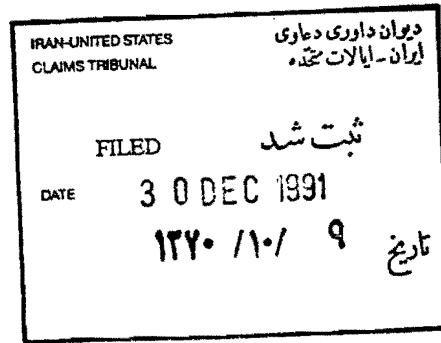
دیوان داوری دعاری ایران - ایالات متحدہ



CASE NO. 227

CHAMBER THREE

DECISION NO. DEC 102-227-3



EASTMAN KODAK COMPANY,
Claimant,

and

THE GOVERNMENT OF IRAN,
Respondent.

DECISION

1. On 3 October 1991 the Respondent, The Government of Iran, filed a submission entitled "Respondent's Objection to Final Award No. 514-227-3 dated 2 September, 1991." The English version of the Final Award to which the Respondent objects was filed on 1 July 1991; the Persian version was filed on 2 September 1991 and served upon the Agent of the Government of the Islamic Republic of Iran on 3 September 1991 (the "Final Award"). On 11 November 1987 the Tribunal had 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").

2. The Respondent describes the legal basis of its objection as "the failure to observe the Tribunal's findings in the Partial Award, erroneous quotation of a part of the Partial Award in the Final Award and the conflict and inconsistency between the Tribunal's findings in the Partial and Final Awards." Attached to the Respondent's submission is a document entitled "Legal Memorandum in the Kodak v Government of Iran Case," written by Professor B. Stern. The Respondent states that this Memorandum constitutes a supporting document and that it invokes the Memorandum "in order to prove the inconsistencies in the issues determined, the breach of finality of the Partial Award, and the need for interpretation of the Final Award."

3. Following a discussion of "[t]he facts of the case," Professor Stern's Memorandum contains an analysis of the relationship between the Partial Award and the Final Award under the following headings: "[t]he theoretical problems raised by the existence of contradictions between the two Awards;" and "[t]he concrete analysis of the existence of contradictions between the two Awards." Focusing on the Final Award, Professor Stern argues that it contradicts "the jurisprudence of the ICJ in the ELSI Case" and "the international rules on *lucrum cessans*."

4. The Legal Memorandum concludes, inter alia, that, while "according to the Partial Award the loans are not shareholder's rights" and "[t]he Final Award should ... have restricted itself to examine whether the interferences with the shareholder's right to manage ... resulted in losses suffered by the shareholder, [i]n fact, the Final Award, contrary to the Partial Award, decided that the loans could be qualified as shareholder's rights." "[E]ven assuming that the loans could be considered as shareholder's rights," Professor Stern argues, "Eastman Kodak's shareholding interest was completely valueless before the interference, and could not afford a basis for the allowance of damages, as was done in the Final Award."

5. The Respondent concludes its submission by requesting the Tribunal "to give a just and fair review to this submission and the said legal memorandum, and to render an appropriate award."

6. The Respondent does not identify the relevant Tribunal Rule under which it submits its request. While the Respondent refers to "the need for interpretation of the Final Award," it also argues that the Tribunal's findings in the Partial Award and the record of the Case warrant a conclusion different from that reached by the Tribunal in the Final Award. Based on this argument, the Respondent asks the Tribunal to issue "an appropriate award." The Tribunal is unable precisely to understand what relief the Respondent seeks in its request. Under these circumstances, the Tribunal will examine it under the particular Tribunal Rule that might be applicable. See Norman Gabay and The Islamic Republic of Iran, Decision No. DEC 99-771-2, para. 4 (24 Sept. 1991), reprinted in -- Iran-U.S. C.T.R. --, --.

7. According to the Tribunal Rules, after a final award has been rendered, a party may only request the Tribunal to "give an interpretation of the award" (Article 35), "to

correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature" (Article 36), or "to make an additional award as to claims presented in the arbitral proceedings but omitted from the award" (Article 37). A request under any of these Rules must be made "[w]ithin thirty days after the receipt of the award;" the Respondent's submission was filed within this time limit.¹

8. Article 37 of the Tribunal Rules clearly is not applicable to the Respondent's request. As to Article 36, the Respondent has not identified the alleged "erroneous quotation" of the Partial Award in the Final Award, nor is the Tribunal aware of any such error. Accordingly, there is no basis for any correction within the meaning of Article 36 of the Tribunal Rules.

9. Article 35 of the Tribunal Rules is applicable to awards that contain ambiguous language and thus require clarification. See Paul Donin de Rosiere, et al. and The Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 6 (10 Feb. 1987), reprinted in 14 Iran-U.S. C.T.R. 100, 101-02. The Tribunal cannot identify any ambiguous language in the Final Award. While the Respondent expresses its disagreement with certain findings contained in the Final Award, it has not pointed to any ambiguity in the Tribunal's wording thereof. Accordingly, there is nothing that requires interpretation within the meaning of Article 35 of the Tribunal Rules. See Sedco, Inc. and National Iranian Oil Company, et al., Decision No. DEC 64-129-3, para. 7 (22 Sept. 1987), reprinted in 16 Iran-U.S. C.T.R. 282, 284.

¹See Hood Corporation and The Islamic Republic of Iran, et al., Decision No. DEC 34-100-3, pp. 1-2 (1 Mar. 1985), reprinted in 8 Iran-U.S. C.T.R. 53, 54.

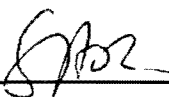
10. Finally, insofar as the Respondent's request constitutes an attempt to reargue certain aspects of the Case on which the Respondent disagrees with the Tribunal's conclusions in the Final Award, there is no basis in the Tribunal Rules or elsewhere for review of an award on such grounds. See Phibro Corporation and Ministry of War-ETKA Co. Ltd., et al., Decision No. DEC 97-474-3, para. 3 (17 May 1991), reprinted in -- Iran-U.S. C.T.R. --, --.

11. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:


The request filed by the Respondent, The Government of Iran, on 3 October 1991 in respect of Award No. 514-227-3 is denied.

Dated, The Hague
30 December 1991

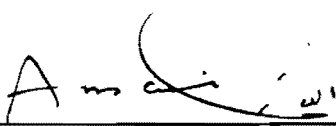


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Charles N. Brower



Parviz Ansari Moin
See my Dissenting
Opinion filed on
8 July 1991