

RM 1987-0027 OMD de Karosière: Country Files

Iran May-Jul 1983

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LAW OFFICES
WALD, HARKRADER & ROSS
1300 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036-1697
(202) 828-1200

1101 SAN JACINTO TOWER
DALLAS, TEXAS 75201
TELEPHONE (214) 754-0100

JOSEPH P. GRIFFIN

DIRECT DIAL
(202) 828-1606

24 UPPER BROOK STREET
LONDON, W1Y 1PD
TELEPHONE 629-1076

July 26, 1983

ORIG: LEG

Mr. George P. Nicoletopoulos
Director, Legal Department
International Monetary Fund
Washington, D.C. 20431

CC: MD

DMD

MR. FINCH

MR. SHAALAN

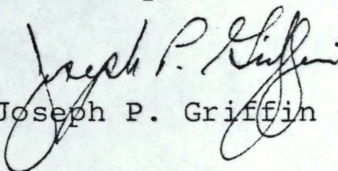
Dear Mr. Nicoletopoulos:

Thank you very much for your letter of July 22.

I appreciate you taking time from your busy schedule to respond to my letter of March 24, 1983.

In connection with paragraph 5 of your letter, I reiterate my apologies to you and your colleagues for any misunderstanding on my part as to proper Fund procedures. As I explained to you on the telephone, we had no alternative because Iran did not notify us of its assertion that it had received Fund approval for various exchange controls until a few days before the hearing was to be held. Thus, there was no time for a formal exchange of letters.

Sincerely,


Joseph P. Griffin

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COMMUNICATIONS
DIVISION



Office Memorandum

JUL 19 1983

TO : The Managing Director

DATE: July 19, 1983

FROM : George P. Nicoletopoulos *G.P.N.*

SUBJECT : Iran

*I asked Mr. Doherty to take care of it
July 20, 1983*

I have had several talks with Mr. Manavi-Rad, representative of the Bank Markazi-Iran, regarding the contents of the reply that we are proposing to send to the letter of the law firm Wald, Harkrader & Ross. Attached is a draft that reflects my efforts to meet Mr. Manavi-Rad's points. After consulting with his authorities, however, Mr. Manavi-Rad has presented me this afternoon with a request for further changes in paragraph 2 of the draft reply which describes briefly the meaning of Article XIV, Section 2 in general terms. His authorities would like to take out of the proposed reply any reference to the rule that a member that has eliminated restrictions cannot reintroduce such restrictions under Article XIV. He claims that this is not a direct answer to the questions raised by the law firm. My position is that the letter from the law firm does refer to the "reimposition" of exchange restrictions under Article XIV and it is necessary to explain that under Article XIV a member may "adapt" restrictions but may not reintroduce restrictions that it has eliminated.

Before returning to Iran, Mr. Manavi-Rad would like to see you, and I would expect that he would make another effort to eliminate the essence of this paragraph referred to above. I strongly believe that this simple reference to what the provisions state should be retained and that its elimination would mislead the Tribunal.

cc: The Deputy Managing Director
Mr. Finch
Mr. El Selehdar
Mr. Carter

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, if introduced consistently with Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be determined after an examination of the particular measure in question and its application.

2. Under Article XIV, Section 2 a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. Once a member has eliminated a restrictive measure maintained under Article XIV, the measure cannot be reintroduced under that Article. Any such reintroduction or reapplication of the restrictive measure is regarded as a new introduction, subject to approval by the Fund in accordance with Article VIII.

3. Iran has not sought or received approval from the Fund pursuant to Article VIII since 1974 for the imposition or reimposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question. In view of the circumstances of Iran since 1978, it has not yet been possible to make this determination in respect of that member.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as on the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

5. In this connection, I wish to express our displeasure and regret that an earlier informal inquiry by a lawyer with your firm along the same lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff. While the statements were accurate, this is an unprecedented procedure and the affidavit does not constitute an authoritative

statement of the Fund's position on the questioned concerned. The appropriate course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 - 19th Street, N.W.
Washington, D.C. 20036



Office Memorandum

File
Mr. Carter

JUL 15 1983

TO : The Managing Director

FROM : George P. Nicoletopoulos *G.P.N.*

SUBJECT : Iran - Meeting with Mr. Manavi-Rad

DATE: July 15, 1983

The following notes may be useful in connection with this afternoon's meeting with the Iranian representative.

1. As you know, the Iranian position is that the restrictive measures maintained by Iran are "adaptations to changing circumstances" of restrictions on current payments that were in effect previously and that, therefore, they are covered by Article XIV and do not require approval under Article VIII. They point out that, while Iran abolished in fact by 1978 its exchange restrictions, it did not abrogate the relevant legal provisions on exchange control. Our position is that, under the law and practice of the Fund, the power to "adapt" exchange restrictions under Article XIV exists only in relation to actual restrictions and not the legislation or regulations of a stand-by character under which restrictions could be introduced. This understanding of the legal position has been adopted by the Fund since the early days of its existence and has been followed consistently ever since. Therefore, to the extent that the post-1978 Iranian measures are found to involve restrictions on current payments or multiple currency practices, are subject to approval under Article VIII and, in the absence of such approval by the Executive Board, they are maintained inconsistently with the Fund's Articles. The determination that such restrictive measures are subject to Fund approval is made, in the first instance, by the staff and, in the final analysis, by the Board.

2. Among the topics that are likely to be discussed this afternoon is the telex of May 31 from the Governor of Iran's Central Bank which has not been answered as yet. In that telex, the Governor asserted that he had not received an answer to the questions he had raised earlier regarding the disclosure of information on Iranian restrictions to the law firm of Wald, Hardraker and Ross. He takes the view that such information is confidential information which, pursuant to Rule N-6 of the Fund's Rules, cannot be disclosed except with the Managing Director's express authorization. Accordingly, he requests that, if the information was released without your express authorization and without knowledge that it would be incorporated in an affidavit to be used in a legal proceeding, you should communicate this fact to the Iranian-U.S. Claims Tribunal, asking the Tribunal to ignore the law firm's affidavit containing the information. Our proposed reply is set forth in the draft telex in the Attachment to this memorandum.

3. Another issue is the proposed response to the letter from the law firm, which requests a statement of the Fund's position on the same questions as those that were previously raised with, and answered informally by, the staff. The contents of the proposed reply have been made known to Mr. Salehkhon, although he has not been given a copy. The proposed reply does not take a position concerning the consistency of the Iranian restrictive measures with the Fund's Articles--indeed, it makes clear that "Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the particular measure in question and its application." What the proposed reply does is to answer in a formal way the questions that were answered by the staff informally, namely that:

(a) "Iran has not sought or received approval from the Fund since 1974 for the imposition or reimposition of any exchange measures that are subject to Fund approval", and

(b) "Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions."

The reply also explains that "the power of a member to maintain and adapt restrictions relates to the actual application in practice of restrictions. Legislation or regulations of a stand-by character under which restrictions are not applied are not regarded as restrictions for this purpose."

4. Our practice has been to submit to the Executive Board for its approval requests for a certification regarding the consistency of particular exchange measures with the Fund's Articles if the certification is to be used in connection with a court proceeding. The intention is to follow the same procedure in connection with the above-mentioned reply to the law firm, even though that reply would not deal with the consistency of the Iranian measures with the Fund's Articles. This course of action is not required by our practice in such a case, and alternative ways of dealing with it could be considered.

cc: The Deputy Managing Director
Mr. Finch
Mr. El Selehdar
Mr. N. Carter

23 GOVERNOR M. NOURBAKHS

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17 WISH TO THANK YOU FOR CALLING OUR ATTENTION TO THE FACT
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15 NOT HAVE A TRANSMISSION DATE. OUR COMMUNICATIONS DIVISION
14 IS LOOKING INTO THIS TECHNICAL OMISSION.

13 2. IN RESPONSE TO YOUR QUESTIONS LABELLED 1 AND 2, THE
12 ANSWER IS THAT THE PROVISION OF THE INFORMATION IN
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10 MANAGING DIRECTOR OR BY ANY OTHER SENIOR OFFICIAL OF THE
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TELEX NO.: CABLE ADDRESS:

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EXT.: 73004 DEPT.: OMD DATE: 6/29/83

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4. AS INDICATED IN MY EARLIER TELEX TO YOU, A FORMAL WRITTEN REQUEST TO RESPOND TO CERTAIN LIMITED QUESTIONS ON THE MATTER HAS BEEN RECEIVED ON MARCH 24, 1983 FROM THE LAW FIRM IN QUESTION, NAMELY, WALD, HARKRADER AND ROSS. A STAFF MEMORANDUM ON THE QUESTIONS, INCLUDING A DRAFT OF THE PROPOSED RESPONSE TO THEM, ARE SOON TO BE CIRCULATED TO THE EXECUTIVE BOARD. WE REGRET THE UNPRECEDENTED PROCEDURE FOLLOWED BY THE LAW FIRM IN SUBMITTING THIS AFFIDAVIT FORMALLY TO THE TRIBUNAL. WHILE THE STATEMENTS

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INTERNATIONAL MONETARY FUND
WASHINGTON, D. C. 20431

File

JUL 15 1983

DEPUTY MANAGING DIRECTOR

CABLE ADDRESS
INTERFUND

July 15, 1983

MEMORANDUM

To: The Managing Director
From: William B. Dale *WBD*
Subject: Iran--Restrictions

There is comparatively little I can say on this topic. Attached are:

1. A copy, dated June 29, 1983, of a draft telex for response to Governor Nourbakhsh in response to his telex of May 31, 1983;
2. A copy, dated June 13, of a draft paper for the Board, in versions that show changes and a clean copy.

Neither of these drafts has as yet been used because of requests by Mr. Salehkhon for more time to look into the issues. I feel that it would not be appropriate to send the telex, as well as the Board paper, since they both are part of the substantive whole until Mr. Salehkhon has had every chance to make any representations or arguments he might wish to.

The first and last paragraph of the telex will now need to be changed.

I think that fully adequate time has now been given to the Iranians and we should proceed (I have recently been approached by both Erb and Dallara to express the hope that we will now move on the matter).

I am assured by Mr. Nicoletopoulos that the reply to the law firm need not be approved by the Board. Indeed, that procedure would be in accordance with normal practice, under which factual questions are responded to by the staff and reference is made to the Board only when a legal conclusion is drawn as to whether a practice is or is not consistent with the Articles.

Attachments

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FOR IMMEDIATE ATTENTION

EBD/83/170

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June 13, 1983

DRAFT 6/13/83 JGE

issue June 14
8:30 AM.

To: Members of the Executive Board
From: The Secretary
Subject: The Islamic Republic of Iran:- Inquiry under Article VIII,
Section 2(b)

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by the close of business, Thursday, June 16, 1983. In the absence of such a request, the proposed decision will be deemed approved by the Executive Board, and will be so recorded in the minutes of the next meeting thereafter.

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PREPARATION

Mr. Dale
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INTERNATIONAL MONETARY FUND

(6/10/83)

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

June 13, 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

The entire letter is set out as Attachment A. The "relevant pages of the Bank Markazi's memorial" and the affidavit by Mary Duffy Becker referred to in the second and third paragraphs of this letter have not been reproduced, but are available for perusal in the office of the Secretary.

to the specific and limited questions posed

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

"2. Iran has not sought or received approval from the Fund since 1974 for the imposition ^{or reimposition} of any exchange measures that are subject to Fund approval. As noted above, whether or not

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any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, Section 2, a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has

determined by Executive Board decisions taken in January, 1949, ^{after long and intense debate}

(see The International Monetary Fund 1945-1965, Volume I:

Chronicle, pages 248-250), that this power of a member ^{to maintain and adapt restrictions} relates to

^{the application in practice of} actual restrictions. Legislation or regulations of a stand-by character under which restrictions are not ^{applied} enforced are not

regarded as restrictions for this purpose. In accordance with the

decisions referred to above, the ^{application} enforcement of such legislation

or regulations would constitute the introduction of new

restrictions. Thus, once a member has ^{in practice} eliminated or ceased to

apply a measure, the measure cannot be reintroduced or reapplied

under Article XIV. Any such reintroduction or reapplication of

the measure ^{regarded as a new introduction,} is subject to approval by the Fund in accordance with

Article VIII.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report

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on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as ^{on} the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved."

It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/___/."

- 4 -

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the

- 5 -

Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, as long as these controls do not restrict payments for current transactions or unduly delay transfers of funds to settle commitments, as provided by Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the ^{particular} measure in question ^{and} ~~its~~ application.

2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, a member may maintain and adapt to

changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined by Executive Board decisions taken in January, 1949 (see The International Monetary Fund 1945-1965, Volume I: Chronicle, pages 248-250) that this power of a member relates to actual restrictions. Legislation or regulations of a stand-by character under which restrictions are not enforced are not regarded as restrictions for this purpose. In accordance with the decisions referred to above, the enforcement of such legislation or regulations would constitute the introduction of new restrictions. Thus, once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as ^{on} the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

5. In this connection, I ^{wish to} ~~should~~ express our displeasure ^{and regret} that an earlier informal inquiry by a lawyer with your firm along the same lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff. While the statements were accurate, this is an ^{unprecedented} ~~unusual~~ procedure. The ^{appropriate} ~~normal~~ course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036

*and the affidavit
does not constitute
an authoritative statement
of the Fund's position
on the questions concerned.*

WJL

ZBD/83/170

June 13, 1983

To: Members of the Executive Board .
From: The Secretary
Subject: The Islamic Republic of Iran - Inquiry Under Article VIII, Section 2(b)

It is not proposed to bring ~~the~~ attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by the close of business, Thursday, June 16, 1983. In the absence of such a request, the proposed decision will be deemed approved by the Executive Board, and will be so recorded in the minutes of the next meeting thereafter.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

June 13, 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

The entire letter is set out as Attachment A. The "relevant pages of the Bank Markazi's memorial" and the affidavit by Mary Duffy Becker referred to in the second and third paragraphs of this letter have not been reproduced, but are available for perusal in the office of the Secretary.

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses to the specific and limited questions posed are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

2. Iran has not sought or received approval from the Fund since 1974 for the imposition or reimposition of any exchange measures that are subject to Fund approval. As noted above,

whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, Section 2, a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined by Executive Board decisions taken in January, 1949, after long and intensive debate (see The International Monetary Fund 1945-1965, Volume I: Chronicle, pages 248-250), that this power of a member to maintain and adapt restrictions relates to the actual application in practice of restrictions. Legislation or regulations of a stand-by character under which restrictions are not applied are not regarded as restrictions for this purpose. In accordance with the decisions referred to above, the application of such legislation or regulations would constitute the introduction of new restrictions. Thus, once a member has in practice eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is regarded as a new introduction, subject to approval by the Fund in accordance with Article VIII.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as on the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/____."

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

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Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, as long as these controls do not restrict payments for current transactions or unduly delay transfers of funds to settle commitments, as provided by Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the particular measure in question and its application.

2. Iran has not sought or received approval from the Fund since 1974 for the imposition or reimposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, Section 2 a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined by Executive Board decisions taken in January, 1949, after long and intensive debate (see The International Monetary Fund 1945-1965, Volume I: Chronicle, pages 248-250), that this power of a member to maintain and adapt restrictions relates to the actual application in practice of restrictions. Legislation or regulations of a stand-by character under which restrictions are not applied are not regarded as restrictions for this purpose. In accordance with the decisions referred to above, the application of such legislation or regulations would constitute the introduction of new restrictions. Thus, once a member has in practice eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is regarded as a new introduction, subject to approval by the Fund in accordance with Article VIII.

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restrictive system, as well as on the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

5. In this connection, I wish to express our displeasure and regret that an earlier informal inquiry by a lawyer with your firm along the same lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff. While the statements were accurate, this is an unprecedented procedure and the affidavit does not constitute an authoritative statement of the Fund's position on the questions concerned. The appropriate course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036



Mr Dale
to reflect on
this

FILE
IRAN

IMF OFFICIAL CABLE

RECEIVED

1983 JUL -6 AM 8:41

CABLE ROOM

545610

RCV: @IIM/1.01947 LINE: 1

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440385 FUND UI

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213966 MZBK IR

JULY, 6, 1983

ORIG: MED
CC: MD
DMD
MR. SALEH-KHOU
ETRD
EXR
FAD
LEG
RES
SEC
MR. N. CARTER

H. E. J. DELAROSIERE
MANAGING DIRECTOR
INTERNATIONAL MONETARY FUND
WASHINGTON D.C.

I WISH TO INFORM YOU THAT MR. A. MANAVI-RAD

Chief of Foreign Exchange matters
etc. at Central
Bank

OUR REPRESENTATIVE WILL BE IN WASHINGTON NEXT WEEK TO DISCUSS MATTERS OF MUTUAL INTEREST WITH YOU AND MEMBERS OF THE FUND'S STAFF. I WOULD VERY MUCH APPRECIATE IT IF YOU COULD ALLOW TIME TO SEE HIM AND IF THE FUND'S STAFF CAN COOPERATE WITH HIM FOR AMICABLE RESOLUTION OF THE EXISTING ISSUES.

BEST REGARDS, M. NOORBAKSH, GOVERNOR, BANK MARKAZI IRAN.



Office Memorandum

Mr. de Larosière

JUL 8 1983

TO : The Acting Managing Director

DATE: July 8, 1983

FROM : C. David Finch *CD*

SUBJECT : Iranian Restrictions

Mr. Agah of Mr. Salehkhoh's office had earlier requested and, with your approval, been provided with staff responses to a sample of 14 other inquiries regarding the position of members' exchange controls under the Fund's Article VIII. Mr. Agah has now requested copies of the original inquiries, to ascertain the "substance" of those in relation to the present inquiry in question concerning Iran. With your approval, the attached material will be provided to him.

Attachments

cc: The Managing Director (on return) ✓
Mr. Nicoletopoulos
Mr. Shaalan
Mr. Carter



Office Memorandum

TO : Mr. Agah

DATE: July , 1983 .

FROM : Peter J. Quirk

SUBJECT : Inquiries Regarding the Position of Members' Exchange Controls Under the Fund's Article VIII

In response to your telephoned request, I am attaching documentation of the inquiries which led to the responses by the staff attached to my memorandum of June 2, 1983. Please note that the inquiry regarding the United States to which Mr. Van Houtven's January 16, 1980 telex was addressed was received by telephone.

Attachments

BANQUE DE FRANCE
Foreign Department
Foreign Relations
GLG/nv

Paris, April 30, 1970

Dear Sir:

In a letter dated April 27, 1970, a copy of which is enclosed herewith, the Director of Public Prosecution at the Paris Court of Appeals asked us for some specific information concerning Algeria's accession to the International Monetary Fund and the implications with regard to the exchange controls set up by that country.

As we believe that we are not qualified to answer these questions, we should be very grateful if you would be kind enough to pass this matter on to the Fund's Legal Adviser, and to provide us with the background information for an answer to the inquiry submitted to us.

Thanking you in anticipation,

Very truly yours,

The Director

/s/
P. BARRE

Mr. G. Plescoff
Executive Director
International Monetary Fund
Washington, D.C. 20431

PUBLIC PROSECUTOR'S OFFICE
PARIS COURT OF APPEALS
Civil Division

Paris, April 27, 1970

No. 619/70

The Director of Public Prosecution
at the Paris Court of Appeals
to

The Governor of the Banque de France
Foreign Department
Paris

Subject: Algeria's accession to the IMF

Ref.: Appeal No. 108130. MAIRE v. ARNAUD--Twenty-second Chamber
of the Court--Department of the Public Prosecutor

In connection with the case MAIRE v. ARNAUD, now before the Twenty-second Chamber of the Court, and involving the concept of public policy inasmuch as it concerns a capital transfer considered unlawful under international conventions, I should appreciate it if you would provide me with the following information:

(1) Is it correct that, as has been alleged during the hearing, the Republic of Algeria is a member of the IMF, having signed the Bretton Woods Agreements?

(2) If so, on what date did Algeria accede, and on what date did its accession become effective?

(3) Did Algeria's accession involve any reservations or restrictions whatsoever and, in particular, can the exchange control regulations decreed by Algeria be considered as having been approved by the Fund, in which case Article VIII, Section 2 of the Bretton Woods Agreements might be applicable, subject to the Court's final interpretation?

I should also appreciate your sending me, if possible, a copy of the documents concerning Algeria's accession to the IMF.

I think I should advise you that these proceedings will be reopened before the Court on May 29, 1970.

The Director of Public Prosecution

/s/
(illegible)

DAWSON WALDRON

SOLICITORS

60 Martin Place, Sydney, Australia, 2000
Telephone: (02) 236 5365
International: +61 2 236 5365
Facsimile (FX 4300): (02) 221 2389
Telex: 22867; Cables: Travinto
DX: 355 Sydney

Canberra Office:
16 National Circuit, Barton.
ACT. 2600.
Telephone (062) 73 2514
Telex: 61684
DX: 5680 Canberra

R A STEPHENS
R D SOMERVILLE
D G BARR
J R ARMITAGE
A E VRIKARIS
A W D MCINTYRE
N R CARSON
J P MCCARRA
D R MAGAREY
D M SCOTT
J W HASLEM
I G BETTS
J D DOBERT
A J STAMMERS
S H W KALJ
M D H KELLER

RODON KING
C P BLAKLAND
PETER JOHNSTONE
P SIMONS
D R SOMERVILLE
A G H MORRIS
ALAN CAMERON
MICHAEL EYERS
W D M CANNON
JOHN ATANASKOVIC
MICHAEL SHARWOOD
W C CONLEY
T I COOK
K B REEDE
J G DAVIS

CONSULTANTS:

R L SELMAN

ALAN RENOUF

SENIOR ASSOCIATES:

B H CARROLL
I E CRIBB
A BISITS
MARY-LYNNE TAYLOR
I P CRAWFORD
C J GORDON
C A GREYER
R M SMITH
R A BUNTING
D C FRECKER

J G KENCH
G H PIKE
S B ROTH
MATTHEW WALTON
PAUL WATTS
J R G BELL
J H CARMEL
JOHN H GREEN
J V O'HALLORAN

Your reference

Our reference

JMG

12th October, 1982.

re: 10/25/82

Mr. J. Gold,
General Counsel,
Legal Department,
International Monetary Fund,
Washington, D.C. 20431,
U.S.A.

Dear Sir,

AUSTRALIA AND I.M.F.

Would you please inform us whether at any time the International Monetary Fund:

- (i) has made any declaration under Article VII, Section 3(a) in respect of the currency of Australia; and
- (ii) has approved the imposition by Australia of any restrictions on the making of payments and transfers for current international transactions (other than remittances to Rhodesia).

Further, would you forward us a bibliography of current I.M.F. publications.

Yours faithfully,

Alan Renouf

THOMAS DONALD STUART MACFARLANE
PETER GWYN MORGAN
ROSS GILLIES JOHNSTONE
GEOFFREY KEITH DEAR
DAVID MALCOLM WELLESLEY PAIN

SOLICITORS
GUARDIAN ASSURANCE BUILDING
34 HUNTER STREET
SYDNEY

TELEPHONE: 28 0621
TELEGRAMS & CABLES:
MORGANS, SYDNEY
G.P.O. BOX 427, SYDNEY
C.D.E. 254

OUR REFERENCE

GKD/MI

October 4, 1973 .

Joseph Gold Esq.,
General Counsel and Director,
Legal Department,
International Monetary Fund,
19th and H. Streets, N.W.,
WASHINGTON DC20431...USA

Dear Sir,

We request for the purpose of litigation pending in Australia the following information in relation to the Australian Banking (Foreign Exchange) Regulations:-

- (1) Are the following provisions of the Banking (Foreign Exchange) Regulations maintained or imposed consistently with the Bretton Woods Agreement within the meaning of Article VIII Section 2 (b);

Regulation 5
Regulation 6
Regulation 7
Regulation 8
Regulation 9
Regulation 33
Regulation 34.

In relation to Regulation 34 we also refer you to the definition of foreign security included in Regulation 4. We draw your attention to the amendment made the 11th September, 1970 to Regulation 4 by Statutory Rules 1970 No. 130.

- (2) Has the fund determined whether payments of premiums of life insurance policies are current transactions or capital transactions within the meaning of the Articles of Agreement and, if so, what has been its determination in relation thereto.
- (3) Has the fund made any determination under Article XVIII (a) of the meaning of Article VIII 2 (b) and, if so, what has been its determination.

The relevant dates for present purposes are all dates between 21st September, 1960 and 15th February, 1971.

For your information we enclose a copy of the Banking (Foreign Exchange) Regulations as in force on 15th February, 1971.

This is the document marked "A" as amended by Statutory Rules 1970 No. 130 (Document "B"). Between 21st September 1960 and 15th February 1971 there were only two amendments to the relevant Regulations, being those made by Statutory Rules 1965 No. 168 and 1967 No. 70 (Documents "C" and "D"). So that you can see the form in which the relevant Regulations were prior to the amendments made by "C" and "D" we enclose the relevant part of the Regulations in the form they took in 1955 (Document "E") and the amendment thereto made on 14th January, 1960 (Document "F").

Yours faithfully,

Joseph Gold

Encl.

DAF/INV/71/11

- 6 -

April 28, 1971

D/3, Life assurance: full reservation on paragraph 2(b) of Part I of the Insurance Annex

12. For the purpose of Australian exchange control, life assurance is regarded as being in the nature of an investment and premium payments are treated as capital rather than current transfers. Consistent with policy relating to portfolio investment abroad, foreign exchange would not normally be provided to enable an Australian resident to take out personal life assurance with an overseas insurer. Australian residents are, nevertheless allowed to remit funds to cover premium payments on policies entered into during a period in which they were not classified as Australian residents.

13. Australia therefore wishes to lodge a reservation in respect of paragraph 2(b) of Part I of the Insurance Annex to the Current Invisibles Code which liberalises transactions and transfers between proposers and insurers resident in different Member countries. Seventeen Member countries have reservations on this paragraph.

D/6, Insurance business operations abroad: full reservation

14. Present regulations governing the business operations in Australia of insurers from Member countries might make it necessary for her to lodge reservations on certain paragraphs in Part III of the Insurance Annex, especially those relating to guarantees and to controlled investments and deposits.

15. However, the regulations governing non-life insurance are at present under review and new legislation is in the course of preparation. On 8th September, 1970 the Prime Minister said that the Australian Government "regards the subject as one of urgency and ... will press ahead with all possible speed". He added however that "the preparation of a comprehensive legislation scheme will be a large and complex operation" and that he was unable to "indicate a likely timetable for the introduction of legislation".(1)

16. Since the scope of this legislation is still open and no advance commitment can be entered into with regard to the ultimate decisions of Parliament, it would seem appropriate if, for the time being, Australia lodged a global reservation on all provisions of Parts III and IV. It is understood, nevertheless, that in the course of the current review due consideration will be given to those provisions in order to limit as much as possible the scope of any reservations which might ultimately have to be maintained.

(1) Statement for the Press, P.M. No. 86/1970.

17. In this context it is recalled that Australia has practically no restrictions on international direct insurance or re-insurance operations and accepts international competition. Except for life assurance, Australian residents are quite free to take out insurance with foreign insurers.

E/1, Printed films: limited reservation on paragraph 9 of the Films Annex

18. Under the item Printed films Australia maintains two kinds of restrictions only in respect of television, liberalisation of which is dealt with in paragraph 9 of the Films Annex to the Current Invisibles Code. As a rule only advertisements recorded and processed by Australians may be shown on Australian television and there are regulations designed to ensure that a specified percentage of Australian television programmes is of Australian origin and that during popular viewing times not less than a specified minimum of Australian programmes will be televised.

19. This is part of the Government's policy to promote the steady development of the Australian television industry. It is considered essential to the proper training of the country's resources of writers, producers, directors, actors and technical staff in the industry.

20. Details of the regulations will be found in Annex II to the present document.

21. The restrictions on foreign-produced advertising and the television screen quota requirements favouring programmes of Australian origin make it necessary for Australia to lodge a limited reservation on paragraph 9 of the Films Annex.

Financial assistance to production of cinema films

22. Australia has recently set up a Film Development Corporation designed to provide financial assistance to producers of Australian films.

23. It is not possible, at this time, to be specific about the extent to which the Corporation will be subsidising the production of Australian films. Nevertheless, it will certainly not do so to an extent likely to conflict with the present provisions of paragraph 2 of the Films Annex which lays down that subsidies to the production of full-length feature films or other aid having a similar effect should be abolished to the extent that they significantly distort international competition in export markets. No would there be conflict with any amendments to these provisions that are about to be considered by the Invisibles Committee. Details concerning the functions and powers of the Corporation will be found in Annex III to the present document.

LIFE ASSURANCE

1. Banks are authorised to sell to residents of Australia the appropriate foreign currency to cover payment to overseas insurers of renewal premiums on life and endowment assurance policies provided -

- (a) each transaction is in accord with past practice (i.e. same amount involved and payment has previously been approved from Australia), and
- (b) the renewal premium notice or other documentary evidence of the amount due is produced.

2. The authority in paragraph 1 hereof does not include payment of initial or increased premiums on life and endowment policies or the purchase of annuities. Any applications for the payment of such premiums or any other premiums not covered by the above authority should be referred to Exchange Control for determination, accompanied where a premium on an existing policy is involved, by the following information:-

- (a) when and where the policy was taken out;
- (b) the residential status of the assured at that time;
- (c) from what funds premiums have previously been paid.

3. Any applications for foreign currency to cover payment of assurance claims (except where E.C. Memorandum CR - "Distributions from Deceased Estates" - would apply), surrender proceeds, loans or advances against policies, or transfers of reserve values of policies, should also be referred to Exchange Control for determination.

755742
T W Magney & Co
Solicitors
5th Floor
181 Elizabeth Street
Sydney NSW
Telephone 26 1606
Telegrams & Cables
Tadcar Sydney
CDE 284
Postal Address
PO Box E132
St James NSW 2000

20th September, 1973

Your Reference *
Our Reference TWM: CON

Thomas W Magney
Clive H C Craven
David J Rohr

Mr Joseph Gold,
General Counsel and Director
of Legal Department,
International Monetary Fund,
WASHINGTON, 25 D.C.

Orig: LEG
cc: Mr. L. Brand

Dear Sir,

We refer to your letter to this firm dated June 7th, 1973 in answer to our letter of May 11th, 1973 to the Executive Directors of the International Monetary Fund.

We enclose a copy of the Australian Banking (Foreign Exchange) Regulations as in force in 1972. These comply with the consolidated Regulations published in 1968 and the Amendment thereto contained in Statutory Rule No. 130 of 1970.

We refer to paragraph (b) of your letter of June 7th, 1973. Would you please inform us whether in the view of the Fund the following provisions of the Australian Banking (Foreign Exchange) Regulations are maintained or imposed consistently with the Articles of the Fund Agreement, that is to say Regulations 5, 8, 9, 34 and 41.

Yours faithfully,
T. W. MAGNEY & CO.

Per: *e.o'h*

Encl.

RECEIVED
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OCT 2 3 35 PM '73

COMMUNICATIONS
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WILMER, CUTLER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

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January 11, 1977

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CAROL DRESCHER WEISMAN
ALAN S. WEITZ
ALEXANDER F. WILES
ANN O. WILLIAMS
ROBERT G. WILSON
ROGER M. WITTEN

EZEKIEL G. STODDARD
ARTHUR Z. GARDINER, JR.
COUNSEL

Joseph Gold, General Counsel
General Counsel's Office
International Monetary Fund
Washington, D.C. 20431

Dear Mr. Gold:

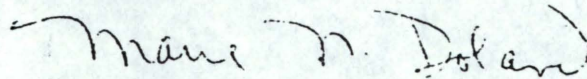
I spoke with Mr. Surr of your office this morning with respect to certain questions in connection with rates of exchange maintained by Ghana. Mr. Surr was extremely helpful and suggested that I make this formal request for information from your office.

The IMF Annual Report for 1976 indicates at pages 71 and 73 that the country of Ghana maintains a multiple currency practice and/or a dual exchange market. I would appreciate it if you would supply me with descriptions of the terms "multiple currency practice" and "dual exchange market" and an explanation of how these terms differ.

Secondly, I would like to have a brief history and description of any multiple currency practice and/or dual exchange market maintained by Ghana since 1971. Mr. Surr has indicated that Ghana's current multiple currency practice arises out of the official rate of exchange, an export bonus program, and a travel tax. Specifically I would like to know when each of these measures was instituted and what the variations in effective exchange rates have been since 1971.

Thank you very much for your kind attention to this matter. Should you have any questions with regard to the above, please do not hesitate to call me at 872-6289.

Sincerely,

A handwritten signature in cursive script that reads "Marie N. Doland". The signature is written in dark ink and is positioned above the typed name.

Marie N. Doland

COOPERSMITH & COOPERSMITH

COUNSELLORS AT LAW

217 BROADWAY

NEW YORK, N. Y. 10007

IRVING COOPERSMITH
RICHARD D. COOPERSMITH

Digby 9-0050

August 9, 1982

re reply 8/16/82

George Nicoletopoulos, Esq.
Director of Legal Dept.
International Monetary Fund
Washington, D. C. 20431

Dear Mr. Nicoletopoulos:

At the suggestion of Bob Effros, I am requesting whatever assistance you can furnish me in connection with a matter which I have before the Iran-United States Claims Tribunal.

In January, 1979, my client, an American citizen, acquired two (2) bank checks in Iran, each dated January 15, 1979 drawn by International Bank of Iran on the Chase Manhattan Bank NA New York, New York, payable in United States Dollars to my client's account at Chemical Bank, New York, New York. These checks were not paid by reason of "insufficient funds".

On behalf of our client we filed a claim with the Iran-United States Claims Tribunal and this matter is scheduled for trial the first week in September. The Respondents, International Bank of Iran and the Islamic Republic of Iran, have raised a defense that the "binding circulars of Bank Markazi Iran" make payment of these checks unauthorized and illegal.

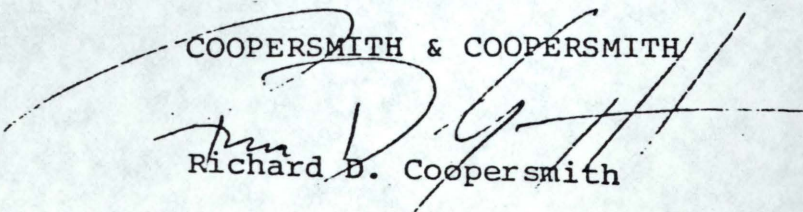
We have been unable to obtain the circulars of Bank Markazi Iran and all our conversations with Iranian lawyers and former residents indicate either that (a) foreign exchange transactions were quite common place and in fact rates of exchange were published daily in the newspaper and/or (b) if there were such regulations prohibiting transactions such as this, the prohibition would be upon the bank issuing the check and would not effect right of the payee or subsequent holder to payment.

We would appreciate any information you may be able to furnish to us with respect to Bank Markazi circulars, together with any other rules or regulations regarding foreign exchange in Iran in the months of January, February and March, 1979.

We thank you in advance for the courtesy of a prompt reply.

Very truly yours,

COOPERSMITH & COOPERSMITH


Richard D. Coopersmith

RDC:EK

Dr. Stephan Leibfried

FUB - Fachbereich 9, 1 Berlin 33, Van't-Hoff-Str. 8

International Monetary Fund
Washington, D.C.
USA

Concerns: Art. VIII 2 (b) 1 of the Articles of Agreement on the International Monetary Fund and exchange control regulations of the Fund member Israel

Dear Sirs,

For a pending legal decision we need immediate informational help pertaining to exchange control regulations of your member Israel. Could you

- a) furnish us with the Regulation of March 6, 1960, which you mention in your 12th Ann. Rep. on Exchange Restrictions on p. 199.
- b) furnish with those norms you refer to there as a rule from which these exemptions are granted; i.e. there must be a norm stating that all currency has to be surrendered.
- c) furnish us with such Israel exchange law which controls the free exchange of Israel money back into foreign currency, since only if such is the case the "new immigrant law" will have to be judged to be a "control" regulation.

If possible furnish us with hebrew and english versions, but hebrew versions will suffice, if that is the only form available.

Please inform us also as to whether the norms sub a) are still in force. In case they are not, we would need the norms presently in force.

I would be grateful for immediate reply as the case will have to be decided in some weeks

Thank you very much for your help

Stephan Leibfried

Stephan Leibfried

STUDIO LEGALE PELLEGRINI-CISLAGHI 66265

20122 MILANO - VIA LAMARMORA, 40 - TEL. (02) 5463693-588312

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lis

G. PELLEGRINI-CISLAGHI
J. S. BREBNER
R. DE FALCO
S. FRIGERIO

International Monetary Fund
Board of Executive Directors
700, 19th Street N.W.
Washington - D.C. 20431

Our ref.: prot.6828/rg/005
Milan , February 6th, 1980
By air mail

U. S. A.

Orig: ETR - *replied by Legal Dept*
cc: MR. DINI
EUR
MR. MCLENAGHAN

Dear Sirs,

re: Italian Exchange Control Regulations

According to your declaration given on the 19th of June 1949, we would like to ask for your assistance in connection with problems which have arisen in relation to the application of Article VIII, section 2 (b) of the agreement of the International Monetary Fund.

Being an international law firm, we are often confronted with problems in giving advice to our clients in connection with the application of the Italian Exchange Control Regulations. These regulations must be applied by non - Italian jurisdictions of different European Countries where exchange controls do not exist, for example: Switzerland and the Federal Republic of Germany.

We find it difficult to find accurate advice on this question without knowing whether Italy has imposed or maintained its Exchange Control Regulations consistently with the agreement of the International Monetary Fund.

In your declaration given on the 19th of June 1949 you offered your assistance in connection with such questions and consequently we ask you kindly to give us your valued opinion on the following questions :

1. Did Italy notify the Fund of its intention to avail itself of the transitional arrangements in section 2 of Article XIV in accordance with section 1 relating to the Italian Exchange Control Regulations existing when Italy entered into the agreement ?

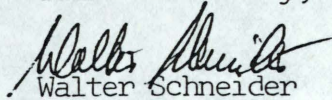
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DIVISION

. / .

2. Did and does Italy consult the Fund each year in connection with the maintenance of its Exchange Control Regulations ?
3. Are the amendments introduced to extend the scope of the Exchange Control Regulations issued after Italy's entrance in to the agreement covered by the provisions of Article XIV, sections 2 and 3 or are they regulated by the provisions of Article VII, section 3 ?
4. Should the above mentioned amendments fall under Article VII of the agreement: did the Fund formally declare the Italian currency scarce and did Italy introduce these amendments based on this formal declaration of scarcity ?
5. If Italy did not fulfil these requirements: did the Fund give its approval to the Italian Exchange Control Regulations according to Article VIII, section 2 a ?
6. And in general: does the Fund hold that the Italian Exchange Regulations are in accordance with the Agreement ?

As we have to provide urgent advice pending on this issue, we would greatly appreciate your kind attention to our queries at your earliest convenience.

Yours faithfully,


Walter Schneider

Rechtsanwalt
Studio Legale Pellegrini-Cislaghi

452713

COUDERT BROTHERS

ATTORNEYS AND COUNSELLORS AT LAW

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SINGAPORE 1
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TANAKA & TAKAHASHI
SHUWA DAINI TORANOMON BLDG.
21-19, TORANOMON 1-CHOME
MINATO-KU, TOKYO 105
RIO DE JANEIRO
ULHÔA CANTO, REZENDE,
NEVIANI E GUERRA
AV. ALMIRANTE BARROSO, 81
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TELEX
INTL: RCA 224373
ITT 424736
WUI 666764
DOMESTIC: 148439
TELECOPIER
212 973-8329

orig: ETR

September 8, 1978

International Monetary Fund
Washington, D.C. 20431

Re: Italian Exchange Controls

Gentlemen:

I am a member of the American Bar Association Committee on Foreign Investment in United States Real Estate. The Committee has asked me to investigate the reach of Law No. 159 of April 30, 1976, which is discussed briefly in your 28th Annual Report on Exchange Restrictions 1977.

The only other reference in English which I can discover to this Law is the 2-sentence paragraph (¶25,671) in the Commerce Clearing House Common Market Reporter. The Representative Office in the USA of the Ufficio Italiano Dei Cambi was good enough to send me the Italian text of Law No. 159, together with the Italian text of Law No. 689 by which UIDC specified the methods and procedures to be followed for repatriation of illegal foreign assets, but was not able to provide me with either an English language translation or an English language summary of the Law.

I write in the hope that IMF has had occasion

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International Monetary Fund
September 8, 1978
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COUDERT BROTHERS

to make an English translation of these Laws and would be willing to forward copies to me for use by the Committee in its reports to members of the American Bar Association. Naturally, mention will be made of the IMF's Annual Reports and assistance in this regard.

Sincerely,

David Alan Richards

David Alan Richards

DAR:sw

Paris, le 4 Juillet 1973

Reply 7/18/73

Monsieur JOSEPH GOLD
Conseiller Général du
FONDS MONÉTAIRE INTERNATIONAL
Washington DC

Aff. ZAVICHA BLAGOJEVIC c/ LA BANQUE DU JAPON

Monsieur le Conseiller Général,

J'ai l'honneur de vous informer qu'il résulte d'une nouvelle analyse juridique de vos déclarations des 5 Février et 13 Mars 1973, que les résidents des Etats Membres du Fonds Monétaire International ne pouvaient et ne peuvent invoquer devant les tribunaux l'application de l'Article VIII, Section 2 (b) dès lors que la juridiction des Statuts du Fonds ne couvre pas la procédure des approbations des contrats de changes - transactions courantes internationales.

En effet, ou bien la procédure de l'approbation des contrats de changes - transactions courantes internationales - tombe sous la juridiction des Statuts du Fonds Monétaire International et dans ce cas les actes de refus d'approbation tombent également sous une telle juridiction, ont valeur juridique devant les Tribunaux et permettent l'application, lorsqu'il est invoqué, de l'Article VIII Section 2 (b) à l'encontre de tels contrats de changes, ou bien la procédure de l'approbation de tels contrats ne tombe pas sous la juridiction des Statuts du Fonds et dans ce cas il ne saurait y avoir application par les tribunaux de l'article VIII, Section 2 (b) ; l'une exclut donc formellement l'autre.

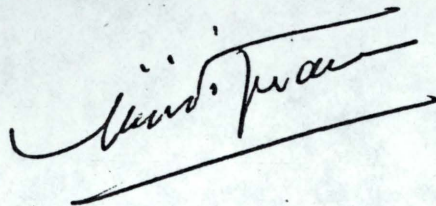
Par vos déclarations précitées, l'efficacité des Statuts du Fonds est gravement mise en cause mais la situation pourrait devenir normale si le Fonds, qui prétend ne pas pouvoir revenir sur une telle décision, adoptait une position juridique logique en confirmant que la procédure de l'approbation des contrats de changes - transactions courantes internationales - ne tombant pas sous la juridiction des Statuts du Fonds, nul ne peut juridiquement invoquer devant les Tribunaux l'application de l'article 8, Section 2 (b) à l'encontre de tels contrats de changes, étant donné que l'acte de refus d'approbation ne tombe pas sous la juridiction des Statuts du Fonds.

... /

Je précise que si votre réponse allait à l'encontre du Droit Privé International, elle sera aussitôt transmise au Doyen LOUSSOUARN qui préside actuellement le Jury à l'Académie de Droit International de la Haye.

En ce qui concerne l'affaire ZAVICHA BLAGOJEVIC c/ LA BANQUE DU JAPON vous connaîtrez prochainement la décision des juridictions françaises. Mais je peux, d'ores et déjà, vous informer que la Cour de Tokyo a elle-même condamné, par arrêt, le Gouvernement du Japon pour avoir utilisé une telle pratique. Je ne vois pas dans ces conditions, comment LA BANQUE DU JAPON pourrait échapper aux Juridictions Françaises

Dans l'attente d'une prompte réponse, et en vous remerciant par avance, je vous prie d'agréer, Monsieur le Conseiller Général, l'expression de ma haute et déférente considération.



à Monsieur le Gouverneur de LA BANQUE DE FRANCE pour Monsieur VIENOT
P.J. Un Certificat de Coutume signé par les 2 plus éminents juristes du Japon

CERTIFICATE

We the undersigned:

Yoshio KANAZAWA, former Professor of the Faculty of Law, University of Tokyo; Professor of the Faculty of Law, Seikei University, Tokyo; Dean of the same Faculty of Law; and Chairman of Japanese Association of Economic Law,

Sueo IKEHARA, Professor of Private International Law at the Faculty of Law, University of Tokyo; and Acting Chairman of Japanese Association of Private International Law, and

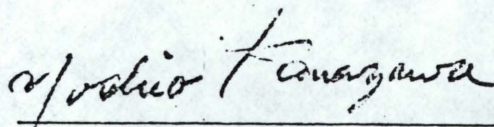

Isao TAKAHASHI, Attorney, hereby jointly certify the following:

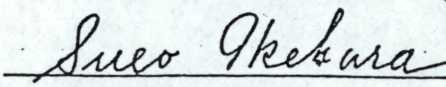

- I. That, according to the general practice imposed by THE BANK OF JAPAN, in 1966 and 1967, applications for required approval of agreements concerning current or non-current international transactions or payments thereunder were de facto unreceivable by the Japanese foreign exchange authorities, especially by THE BANK OF JAPAN, unless the applicants submitted themselves to oral contacts, various preliminary sessions and discussions prior to making applications for the approvals.
- II. That such practice of preliminary oral contacts, sessions and various discussions being not provided by any law or cabinet or ministerial ordinance of Japan, any conditional or unconditional refusal of such required approval issued by THE BANK OF JAPAN through such informal procedure, is illicit.
- III. That, according to the foreign exchange control laws of Japan, in 1966 and 1967, each payment under an international service contract, the amount of which payment was not fixed at the time of filing an application for the required approval, required individual approval of such payment when the amount became fixed and the payment was made; global approval of such payments before the amounts were fixed would not have been issued even if the applicant had applied for such global approval.

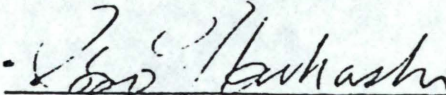

IV. That, under foreign exchange control laws and cabinet ordinances of Japan, in 1966 and 1967, THE BANK OF JAPAN had no right to refuse acceptance of application for required approval of an agreement concerning current or non-current international transactions or payments thereunder even if it was not clear whether the agreement was a service agreement or an agreement to establish an overseas branch office for a Japanese corporation.

V. That THE BANK OF JAPAN cannot juridically invoke the jurisdiction immunity in a Japanese court on an act that it accomplished in violation of the foreign exchange control laws or cabinet ordinances of Japan prescribing the procedure for the applications of the approval of contracts or the payments, the contracts constituting international transactions.

On this 21st day of February, 1973, in Tokyo.


Yoshio Kanazawa 


Sueo Ikehara 


Isao Takahashi 

SAGE GRAY TODD & SIMS

TWO WORLD TRADE CENTER
100TH FLOOR
NEW YORK, NEW YORK 10048

(212) 839-9150

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RICHARD M. SIEGEL
LEO SILVERSTEIN
RALPH K. SMITH, JR.
HERSCHEL E. SPARKS, JR.
EDWARD H. SPENCER
DEAN A. STIFFLE
JERRY J. STROCHLIC
JOHN F. WALSH
ABRAHAM L. ZYLBERBERG

*NOT ADMITTED IN N.Y.

JAYNE M. KURZMAN
SPECIAL COUNSEL

MELBER CHAMBERS
WILLIAM V. KEENAN
COUNSEL

FLAGSHIP CENTER
777 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TELEPHONE: (305) 358-1666
TELEX: 51-8785

December 9, 1982,

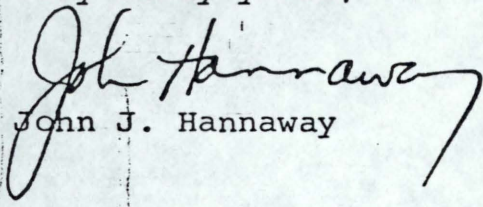
Legal Department
International Monetary Fund
700 19th Street, N.W.
Washington, D.C. 20006

Re: 1982 Mexican Currency Control
and Bank Decrees

Gentlemen:

Would you please advise us if Mexico has given notice of the referenced decrees to the International Monetary Fund pursuant to Article XIV, Section 2, of the Articles of Agreement of the International Monetary Fund and otherwise complied with the Agreement in connection with those decrees.

Very truly yours,


John J. Hannaway

JJH:am



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

OFFICE OF THE GENERAL COUNSEL

May 10, 1982

George P. Nicoletopoulos, Esq.
Director, Legal Department
International Monetary Fund
Washington, D.C. 20431

Re: The Chase Manhattan Bank, N.A.
v. Vishipco Line, et al., No. 81-1591

Dear Mr. Nicoletopoulos:

This is to request an opinion from the International Monetary Fund concerning the exchange control regulations that were in effect in South Vietnam on April 24, 1975. This request is made on behalf of the Board of Governors of the Federal Reserve System as part of its efforts to furnish its views to the Department of Justice in connection with the above-captioned case.

Chase Manhattan Bank, N.A. ("Chase") has filed a petition for a writ of certiorari in this case. The petition, filed February 26, 1982, seeks review of a decision of the United States Court of Appeals for the Second Circuit, 660 F.2d 854 (1981), holding, inter alia, that the act of state doctrine does not bar recovery by certain Vietnamese nationals against Chase's home office for payment of foreign currency deposits held by, and payable only at, Chase's branch office in Saigon, South Vietnam, notwithstanding the fact that the Saigon branch has been expropriated by the government of the Democratic Republic of Vietnam.

On April 19, 1982, the Supreme Court invited the United States to file a brief amicus curiae expressing its views in this case. In order to properly express our views, we would appreciate it if you could provide us with the text of any exchange control regulations in effect in South Vietnam on April 24, 1975, and, if so, whether within the meaning of Article VIII, Section 2(b) of the Articles of Agreement of the International

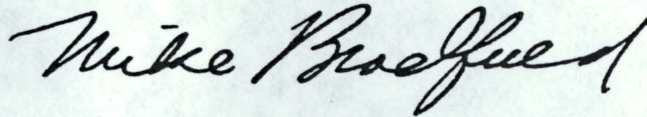
George P. . Nimitzopoulos, Esq.

-2-

Monetary Fund, those regulations were maintained or imposed consistently with that Agreement.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike Bradfield". The signature is written in dark ink and is positioned above the typed name.

Michael Bradfield
General Counsel



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

OFFICE OF THE GENERAL COUNSEL

May 18, 1982

George P. Nicoletopoulos, Esq.
Director, Legal Department
International Monetary Fund
Washington, D.C. 20431

Re: The Chase Manhattan Bank, N.A. v. Vishipco
Line, et al., No. 81-1591.

Dear George:

This is in response to the telephone request of May 13, 1982, by John Surr of your staff for additional information concerning our request of May 10, 1982, concerning the existence of exchange control regulations in South Vietnam.

We are specifically interested in whether any exchange control regulations were in effect in South Vietnam on November 27, 1974, April 24, 1975 and April 30, 1975 that would have (1) prohibited Vietnamese individuals and corporations from holding U.S. dollars, (2) would have restricted such persons from taking piastres out of South Vietnam or (3) would have prohibited a bank operating in South Vietnam from paying a deposit denominated in piastres in U.S. dollars.

Mr. Surr indicated that this additional information is necessary in order for the IMF to provide a certification whether within the meaning of Article VIII, section 2(b) of the Articles of Agreement of the International Monetary Fund, any such regulations were maintained or imposed consistently with that agreement.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike Bradfield".

Michael Bradfield
General Counsel

526
10/22

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551



OFFICE OF THE GENERAL COUNSEL

October 20, 1982

George P. Nicoletopoulos, Esq.
Director, Legal Department
International Monetary Fund
Washington, D.C. 20431

Re: The Chase Manhattan Bank, N.A. v. Vishipco, et al., No. 81-1591

Dear George:

This is to request a certification from the International Monetary Fund concerning certain foreign exchange control regulations that were in effect in South Vietnam. This request is made on behalf of the Board of Governors of the Federal Reserve System as part of its continuing interest in the above-captioned case.

We specifically request certification as to whether any exchange control regulations were in effect in South Vietnam:

- (1) On November 27, 1974, April 24, 1975, and April 30, 1975, that would have prohibited a bank in Saigon from paying a time deposit denominated in piastres to an individual Vietnamese national in United States dollars, except to travellers in the amount of \$5,000.
- (2) On April 24, 1975, and April 30, 1975, that have prohibited a bank in Saigon from paying a piastre denominated demand deposit in U.S. dollars to a corporation organized under the laws of South Vietnam and headquartered in Saigon that was engaged in the merchant shipping business.

In addition, we request a certification whether within the meaning of Article VIII, section 2(b) of the Articles of Agreement of the International Monetary Fund, any such regulations were maintained or imposed consistently

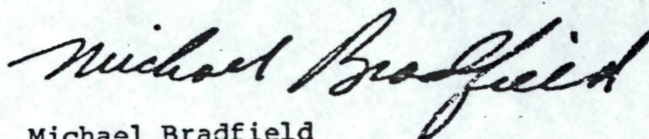
George P. Nicoletopoulos, Esq.

-2-

with that agreement. It my understanding that Robert Effros of your department has received a cable from Vietnam which stated that exchange control regulations were in effect in Vietnam from 1963 and such regulations have been in effect without change.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bradfield". The signature is written in dark ink and is positioned above the typed name and title.

Michael Bradfield
General Counsel



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

OFFICE OF THE GENERAL COUNSEL

December 21, 1982

George P. Nicoletopoulos
Director, Legal Department
International Monetary Fund
Washington, D.C. 20551

Dear George:

Thank you for your letter of November 24[✓] providing certifications with respect to certain exchange control regulations that were in effect in Vietnam.

I am forwarding the certifications to Chase Manhattan Bank for their use in any further proceedings in the Vishipco case. Although the Supreme Court recently denied "cert" in this matter, the certification may prove helpful to Chase in the District Court, where I expect that there will be a determination as to damages.

I very much appreciate your help in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Bradfield".

Michael Bradfield
General Counsel

Mr. Moskowitz

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045

AREA CODE 212 791-5022

ERNEST T. PATRIKIS
DEPUTY GENERAL COUNSEL

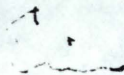
April 2, 1982

Robert C. Effros, Esq.
Assistant General Counsel
International Monetary Fund
Washington, D.C. 20431

Dear Bob:

Enclosed is a copy of our motion and brief in the Vishipco case. We are still interested in learning whether Vietnamese exchange control restrictions were in place during the relevant periods.

Yours sincerely,



Ernest T. Patrikis

Enclosure

KIRKWOOD, KAPLAN, RUSSIN & VECCHI

LAW OFFICES

1218 SIXTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

TELEPHONE: (202) 638-0060

CABLE: KIRKWOOD, WASHINGTON

TELEX: 248413 RCA

261689
Mitsui
Am. Sav.

CHARLES W. KIRKWOOD
JULIUS KAPLAN
JONATHAN RUSSIN
SESTO E. VECCHI
ALBERT T. CHANDLER
ADMAN BUYUNG NASUTION*
JAMES F. SAMS
MATTANIAH EYTAN
JAMES W. SCHROEDER
CHRISTOPHER J. KING*
JAYAVADH BUNHAG*
SURAPAN THIMKRAJANG*

ALFREDO ALDANA PINILLA*
CRAIG R. ARNDT*
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JOHN W. HANCOCK*
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DENNIS JAMES, JR.*
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REECHA RATANODOM*
RAPHAEL ROBLES-INOCENCIO*
ROBERTO SALADIN-SELIN*
VICTOR D. SIBARAN*
HERNAN SILVA-REBOLLEDO*
MINANG WARMAN SOFIAN*
E. T. HUNT TALMAGE, III
BAMRUNG TANCHITTIVATANA*
SUVAARN VALAISATHIEN*

*NOT MEMBER DISTRICT OF COLUMBIA BAR

BANGKOK, THAILAND
SOUTHEAST INSURANCE BUILDING
315 SILOM ROAD
TELEPHONE: 31380
CABLE: KIRKWOOD BANGKOK
TELEX: BK 2644

BEIRUT, LEBANON
ASSEELY BUILDING, HAMRA STREET NO. 701
P. O. BOX 7765
TELEPHONE: 346-190
CABLE: KIRKWOODSAM BEIRUT

BOGOTA, COLOMBIA
CALLE 14 NO. 8-22 PISO 8
APARTADO AEREO: 20986
TELEPHONE: 424633, 423385
CABLE: KIRKWOOD BOGOTA

DJAKARTA, INDONESIA
P. F. BUILDING, DJL M. H. THAMRIN 57
P. O. BOX 2394
TELEPHONE: 47889, 54081
TELEX: DKT 0114122

AND
DJL IR. H. DJUANDA III/31-1
TELEPHONE: 43736
CABLE: KIRKWOOD DJAKARTA

SAIGON, VIET-NAM
9 PLACE LAM SON, 3RD FLOOR
P. O. BOX 255
TELEPHONE: PTT 23101, 98715
CABLE: KIRKWOOD SAIGON
TELEX: SG 243

SANTO DOMINGO, DOMINICAN REPUBLIC
SUITE 806, EDIFICIO LA CUMBRE
AVENIDA TIRADENTES
APARTADO POSTAL 425
TELEPHONE: 566-5101
CABLE: KIRKWOOD SANTO DOMINGO
TELEX: RCA 4199 & ITT 3460217

SINGAPORE, REPUBLIC OF SINGAPORE
426 INDUSTRIAL AND COMMERCIAL BANK BUILDING
2 SHENTON WAY, SINGAPORE 1
TELEPHONE: 915085
CABLE: KIRKAP SINGAPORE

January 31, 1974

Joseph Gold, Esq.
General Counsel
International Monetary Fund
700-19th Street N.W.
Washington, D.C. 20431

Re: Opinion from the IMF Concerning the Application
of Article VIII to Viet-Nam Decree Law 017.

Dear Mr. Gold:

This firm has had discussions with Mr. James F. Evans of your office concerning an oral request to the fund put forward in behalf of our clients, for a formal or informal opinion or for a letter expression of views covering the application of Article VIII(2)(b) of the Articles of the Fund to Article 16 of Viet-Nam Decree Law No. 017, promulgated on September 3, 1966.^{1/}

Our clients are Vietnamese contractors who have been denied price adjustment payments by the United States pursuant

^{1/} The U.S. Army translation into English reads as follows:
"Unless they are duly authorized by the Finance Commissioner,
any persons permanently residing in Vietnam, or Vietnamese
(continued)

to price adjustment clauses in contracts which these contractors concluded in Viet-Nam with United States agencies. It has been the consistent position of the United States since 1967 that the contract clauses in question are illegal under Vietnamese law and that pursuant to Article VIII(2)(b) of the Bretton Woods Treaty the United States may not honor its own contractual obligations to these Vietnamese firms.

We have asked Mr. Evans if the Fund would state its view whether Article VIII(2)(b) has any application to a decree law of a member country which states, as does Article 16 of the Vietnamese decree, that citizens of that country must (in the absence of special permission to the contrary) contract only in the currency of that country. Your writings on the subject^{2/} indicate that such clauses are really not contemplated at all by the Article VIII prohibition and represent what you call coercive provisions rather than exchange contracts. Mr. Evans has orally and informally agreed with this position but has stated that it is your view that a request for a Fund opinion should come from a member country, in our case from the Government of the United States through the Treasury Department, and that the Fund should not reply to a private inquiry. With respect to this aspect of the matter we should like to persuade you to the contrary by means of the following two arguments:

(1) Our clients have been in litigation with the United States over this IMF matter for the past five years. The matter has proceeded through administrative adjudication before the Armed Services Board of Contract Appeals and is now before the United States Court of Claims. The Department of Justice represents the United States before the Court of Claims. In this capacity and for all litigational purposes, the Department exercises absolute control over all United States agencies. It is simply not possible for us to circumvent the Department and to approach Treasury or State directly. Opposing counsel in the Department of Justice has shown no inclination whatever to have the matter referred through bureaucratic channels to

(fn 1 continued)

and alien corporate bodies established in Vietnam, are not authorized to make any agreement involving a currency other than the Vietnamese piaster." We understand that the French text, filed with the Fund, produces a similar but not an identical reading.

^{2/} "The Cuban Insurance Cases and the Articles of the Fund", 1966, at p. 36.

the Fund. The Department of Justice and the United States military are perfectly satisfied to keep using (or, in our opinion, to keep misusing) Article VIII(2)(b) for their own purposes. Thus, your suggestion is simply not open to us to bypass the Department of Justice and to make a direct approach to the Department of Treasury.

(2) We think that the Fund is not aware to what outrageous ends the United States has been misusing Article VIII(2)(b). You will note from the enclosure accompanying this letter that the United States has reinstated the use of the very same price adjustment clause which is at issue in the litigation now before the Court of Claims. The United States has done so despite the fact that it has for these past seven years proclaimed that payment may not be made under the clause because of the IMF Article VIII prohibition.

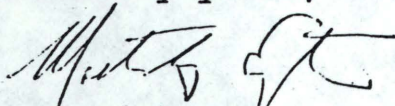
This is a patent misuse by a member nation of the Fund of Article VIII, and it is a misuse in such a cynical fashion that we cannot believe that the Fund can (or would wish to) sit passively by without at least furnishing for the benefit of the bar and the courts an informal and unbiased statement as to the proper scope of a key provision in its own Articles. Surely the Fund has an interest--and an important one--in preventing what can only be described as a conscious distortion of the basic charter of the Fund by one member nation to secure short-term monetary benefit at the expense of numerous small businesses and unsophisticated firms of another member nation.

In these circumstances we urge you to respond directly to our inquiry in order to promote uniformity of meaning and clarity in the interpretation and application of Article VIII(2)(b) and to avoid the promotion of ends clearly not contemplated by the Articles to the detriment of the nationals of another member state.

The Fund has already corresponded with us on other points at issue in this litigation. The Fund also issued in 1949 an announcement that it would grant advisory opinions on Article VIII(2)(b) questions. The formal precedents therefore exist for granting our request.

We hope that you provide us with the assistance we request.

Sincerely yours,


Mattaniah Eytan

ME/jl

Enclosure

DISPOSITION FORM

Form of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

File

REFERENCE OR OFFICE SYMBOL

SUBJECT

AOSSS-PM

Contract Performance Under DOD In-Country Procurement

TO SEE DISTRIBUTION

FROM AOSSS-PM

DATE 8 Apr 73

CMT. 1

Mr Curley/kg/4727

1. Reference: MAG 032229Z SEC DEF Wash DC Apr 73 (U)
2. Effective 4 April 1973 DOD authorization has been granted to award contracts to local Vietnamese contractors denominated in dollars with payment to be made in piasters at the official rate of exchange existing at the time payment is made to contractors. This is at the time the actual disbursement is made regardless of date of submission of invoice. This authority includes supply, service, construction and all other DOD contracts awarded to Vietnamese contractors in RVN and is effective for all component services. Solicitations REPs or RFQ should be awarded (and extended if necessary) to change the denomination to dollars. The intent is to change the unit price schedule and total award amount to dollars without reference to the rate of exchange in existence at the time of award since payment will be made in piasters at the "current rate of exchange at the time payment is made to the contractor."
3. Attached is copy of authorization. Further clarification if required may be obtained from this office 923-3122, 3228, 4727 or 3252. Request all procurement activities be advised immediately.

1 Incl
as

W. J. Curley

WILFRED J. CURLEY
Chief, Procurement Mgt Office

DISTRIBUTION:

Army Div

Navy Div

AF

C/5

Support Div

Comptroller

2496

REPLACES DD FORM 55, EXISTING SUPPLIES OF WHICH WILL BE ISSUED AND USED UNTIL 1 FEB 63 UNLESS SOONER EXHAUSTED.

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TO RHHSMVA/USDAO SAIGON-VIETNAM

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DDAAA/SEONAV WASH DC

DDHQA/OSAF WASH DC

DDO ZEN/JOS WASH DC

DDND/OSA WASH DC

DDAAA/CNO WASH DC

DDHQA/OSAF WASH DC

DDHQA/CINCPAC CAMP H H SMITH HI

DDHQA/CINCPAC FORT SHAFTER HI

CLASS: 0457

FOR ADDITIONAL INFO PASS TO USACADV SAIGON

CONTRACT PERFORMANCE UNDER 1000 TRAINING PROGRAM

PROGRAM (U)

REF A: USACADV 000500Z MAR 73; REF B: SECDEF 000000Z MAR 73

REF C: COMUSMACV 170545Z MAR 73

(U) REF A ADVISED OF CRITICAL FINANCIAL PROBLEMS FACED BY

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AOSDC	AOSMS	ACSAF	AOSSD	AOSCE	AOSSS
AOSSP	AOSSE-C	ACSES-M	AOSSE-PM	AOSSE-L	AOSSE-IO
LC		ACSSD-COM			

CLASSIFICATION:

22111 W/O: G DTG: 02

PAGE 2 RUEKJCS 0031 UNCLAS

VIETNAMESE CONTRACTORS PARTICIPATING IN THE DOD IN-COUNTRY PROCUREMENT PROGRAM DUE TO RAPID DEVALUATION OF THE PIASTER AND REQUESTED AUTHORIZATION TO CONVERT SUCH CONTRACTS TO DOLLARS AT THE RATE OF EXCHANGE EXISTING AT TIME OF CONVERSION.

2. (U) REF B SUGGESTED FOUR ALTERNATIVE SOLUTIONS AND REQUESTED FURTHER INFORMATION.

3. (U) REF C RESPONDED TO REF B AND INTER ALIA CLARIFIED THAT THE REQUEST OF REF A WAS FOR AUTHORITY TO CONVERT CURRENT CONTRACTS FROM PIASTER DENOMINATION TO DOLLAR DENOMINATION AT THE RATE OF EXCHANGE EXISTING AT THE TIME OF CONVERSION WITH PAYMENT TO CONTRACTORS IN PIASTERS.

4. (U) THE IN-COUNTRY PROCUREMENT PROGRAM HAS ASSUMED THE UTMOST IMPORTANCE AS A MECHANISM FOR PROVIDING ECONOMIC ASSISTANCE TO VIETNAM. THE EFFORTS OF EACH ADDRESSEE TOWARD ASSURING THE PROGRESS THAT THE PROGRAM HAS MADE TO DATE IS ACKNOWLEDGED. IN ORDER TO PROVIDE RELIEF FROM FUTURE DEVALUATIONS, AUTHORITY IS GRANTED TO DENOMINATE IN DOLLARS (WITH PAYMENT IN PIASTERS) CONTRACTS AWARDED TO LOCAL VIETNAMESE CONTRACTORS SUBSEQUENT TO THIS DATE, WITHOUT JUSTIFICATION BEYOND THAT PROVIDED IN REF A AND C, HOWEVER, LEGAL CONSIDERATIONS PRECLUDE FAVORABLE ACTION ON THE REQUEST TO CONVERT

PAGE 3 RUEKJCS 0031 UNCLAS

CONTRACTS CURRENTLY IN FORCE

7/5/83

INTERNATIONAL MONETARY FUND

Managing Director

TO : Mr. ~~Carter~~

IRAN

FROM: ~~WFF~~

The matter on Iran is on dead center. This is because Mr. Salehkhon asked me several weeks ago for adequate time to marshal his facts and arguments, vis-a-vis the MD.

On my desk is a copy, paper clipped together, of 2 memo and telex, both dated June 29, Mrs. Letts can find it. These have not yet been used with Mr. Salehkhon, but can be now.

I think we should now move ahead - Mr. Salehkhon has, I feel, had fully adequate time,

INTERNATIONAL MONETARY FUND

TO :

n

FROM:

I met with Manavi-Rad at 7PM Wednesday and again yesterday afternoon. The letter to the law firm has now been sent.

I think he felt well and fairly treated.



INTERNATIONAL MONETARY FUND
WASHINGTON, D. C. 20431

DEPUTY MANAGING DIRECTOR

Mr. Dale
As I told you it may be
some time for him to see it
BB and I discussed
and I will
write the letter
I told him
that I would
see him after
I come back
July 5, 83
[Signature]

CABLE ADDRESS
INTERFUND

June 29, 1983

MEMORANDUM

To: Mr. Salehkhoh
From: William B. Dale *[Signature]*
Subject: Attached Letter from U.S. Law Firm,
Wald, Harkrader and Ross

As I informed you orally in our discussion on Thursday, June 9, 1983, and again in our brief oral exchange on Friday, June 17, I would have no difficulty in your communicating officially to your Iranian authorities the text of the attached letter to the Fund dated March 24, 1983.

You will note that the precise and limited questions to which the letter requests an authoritative response from the Fund, are as follows:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

The questions posed in the letter under reference are concerned with matters of fact, rather than with legal conclusions as such. I would like to indicate to you two elements of the Fund's practice that have been well and firmly established for many years.

1. Questions of fact, such as those posed by the attached letter, have been responded to by the staff without reference to the Executive Board. It has only been when the question is whether a particular exchange practice is or is not consistent with the obligations under the Articles of Agreement (which is a legal, as opposed to a factual, conclusion) that the response has been placed before the Executive Board.

2. The view and practice of the staff since very early in the Fund has been that information concerning the facts pertaining to the legal status of the exchange restrictions of member countries is inherently public information that is not confidential. This view and practice has not been challenged in, or by, the Executive Board. Accordingly, factual information on these matters is so routinely provided by the relevant staff members that detailed records on oral contacts on these matters are not systematically recorded. That is why the documentation sought by your office has not been fully satisfactory to you.

As to point 1. above, it is our intention to place the draft response to the attached letter before the Executive Board. That is a substantial departure from established practice in such cases.

As to point 2. above, we are not in a position to provide documentation on the point, for the reason cited, but the provision of factual information orally, by telephone or in person, is in fact quite common. In relation to the present instance, you may be interested that I had a personal discussion on this matter with Mr. Hans Flickenschild on Friday, June 10. Mr. Flickenschild informed me that, contrary to what I had earlier supposed, the affidavit of Mary Duffy Becker was based on, not only an initial telephone call from her to him, but more particularly on a subsequent visit by her to his office.

Attachment

cc: Managing Director
Mr. Finch
Mr. Shaalan
Mr. Nicoletopoulos
Mr. Van Houtven

*Do we
need to go
to the Board*

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicolatopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicolatopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the

Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

START ADDRESS IN THE BOX

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22 BANK MARKAZI IRAN
21 TEHERAN, ISLAMIC REPUBLIC OF IRAN
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DISTRIBUTION

START TEXT HERE

18 1. WE HAVE RECEIVED YOUR TELEX OF MAY 31, 1983, AND I
17 WISH TO THANK YOU FOR CALLING OUR ATTENTION TO THE FACT
16 THAT OUR TELEX OF MAY 17, 1983, AS RECEIVED BY YOU, DID
15 NOT HAVE A TRANSMISSION DATE. OUR COMMUNICATIONS DIVISION
14 IS LOOKING INTO THIS TECHNICAL OMISSION.

MD
DMD
N MR. SALEHKHOU
ETR
O LEG
T MED

13 2. IN RESPONSE TO YOUR QUESTIONS LABELLED 1 AND 2, THE
12 ANSWER IS THAT THE PROVISION OF THE INFORMATION IN
11 QUESTION WAS NOT, REPEAT NOT, EXPRESSLY AUTHORIZED BY THE
10 MANAGING DIRECTOR OR BY ANY OTHER SENIOR OFFICIAL OF THE
9 FUND, BECAUSE AS INDICATED IN THE TELEX OF MAY 17, 1983,
8 TO WHICH YOU RESPOND, EXECUTIVE BOARD DECISION NO. 446-4
7 OF JUNE 10, 1949, PROVIDES THE REQUISITE APPROVAL AND
6 PRIOR AUTHORIZATION FOR THE PROVISION OF SUCH INFORMATION.
5 ACCORDINGLY, RULE N-6 DOES NOT APPLY SO AS TO LIMIT OR
4 INHIBIT THE PROVISION BY THE STAFF OF SUCH INFORMATION
3 UPON REQUEST, AS YOU ARGUE. ON THE CONTRARY, INFORMATION
2 CONCERNING THE LEGAL STATUS OF EXCHANGE RESTRICTIONS HAS
1 ALWAYS BEEN REGARDED AS INHERENTLY PUBLIC, RATHER THAN
SPECIAL INSTRUCTIONS TEXT MUST END HERE

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TELEX NO.: CABLE ADDRESS:

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EXT: 73004 DEPT: OMD DATE: 6/29/83

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18 CONFIDENTIAL.

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17 3. IN RESPONSE TO YOUR POINT 3, THE FIRST ASPECT IS
16 ANSWERED ABOVE. AS TO THE SECOND ASPECT, I REPEAT THE
15 INDICATION CONTAINED IN MY PREVIOUS TELEX TO YOU THAT THE
14 CONVERSATION IN QUESTION WAS REFLECTED IN AN AFFIDAVIT
13 WITHOUT OUR KNOWLEDGE AND THE LEGAL DEPARTMENT HAS ORALLY
12 INFORMED THE LAW FIRM IN QUESTION THAT THIS UNPRECEDENTED
11 PROCEDURE ON THEIR PART HAS CAUSED EMBARRASSMENT TO THE
10 FUND.

9 4. AS INDICATED IN MY EARLIER TELEX TO YOU, A FORMAL
8 WRITTEN REQUEST TO RESPOND TO CERTAIN LIMITED QUESTIONS ON
7 THE MATTER HAS BEEN RECEIVED ON MARCH 24, 1983 FROM THE
6 LAW FIRM IN QUESTION, NAMELY, WALD, HARKRADER AND ROSS.
5 A STAFF MEMORANDUM ON THE QUESTIONS, INCLUDING A DRAFT OF
4 THE PROPOSED RESPONSE TO THEM, ARE SOON TO BE CIRCULATED
3 TO THE EXECUTIVE BOARD. WE REGRET THE UNPRECEDENTED
2 PROCEDURE FOLLOWED BY THE LAW FIRM IN SUBMITTING THIS
1 AFFIDAVIT FORMALLY TO THE TRIBUNAL. WHILE THE STATEMENTS

SPECIAL INSTRUCTIONS TEXT MUST END HERE

IF REQUIRED INITIAL BELOW

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E AUTHORIZED BY NAME (TYPE): AUTHORIZED BY NAME (TYPE):

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11-18-82

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DISTRIBUTION

WERE ACCURATE, THE AFFIDAVIT IS NOT AN AUTHORITATIVE
STATEMENT OF THE FUND'S POSITION ON THE QUESTIONS
CONCERNED. THE FUND'S POSITION WILL BE STATED IN THE
FUND'S REPLY TO THE LAW FIRM. THE STAFF DOCUMENT ON THIS
MATTER WILL BE PLACED ON A CONVENIENT AGENDA OF THE
EXECUTIVE BOARD, WHERE OF COURSE MR. SALEHKHOU, OR A
REPRESENTATIVE OF IRAN DESIGNATED UNDER ARTICLE XII,
SECTION 3(J) OF THE ARTICLES OF AGREEMENT AND SECTION 19
OF THE BY LAWS, WILL HAVE FULL OPPORTUNITY TO EXPRESS
VIEWS.
REGARDS,
DE LAROSIERE
MANAGING DIRECTOR
INTERFUND

IF
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SPECIAL INSTRUCTIONS

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→ N. Nicoletopoulos

*Noted by MD
MC 6/1/82*

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MAY. 31, 1983

DMD
MR. SALEH-KHOU
LEG
MED
MR. N. CARTER

TO: H.E.J. DE LAROSIERE
MANAGING DIRECTOR, INTERNATIONAL MONETARY FUND,
WASHINGTON D.C.

WE HAVE RECEIVED YOUR UNDATED TELEX IN REPLY TO OURS OF MAY 10, 1983 AND WE THANK YOU FOR IT. WE ARE, HOWEVER, SORRY TO HAVE TO SAY THAT IN THESE COMMUNICATIONS WE SEEM TO KEEP RECEIVING MANY ANSWERS TO QUESTIONS WE HAVE NOT ASKED AND NONE TO THOSE WE HAVE.

IT IS NOW MORE THAN TWO AND HALF MONTH SINCE WE FIRST RAISED THE POINTS WITH YOU AND THIS WE CONSIDER AS AN UNNECESSARILY LONG PERIOD FOR RESPONDING TO SUCH QUERIES. WE, THEREFORE, HEREBY REPEAT THE POINTS WE ALREADY MADE ABSOLUTLY CLEAR IN OUR PREVIOUS TELEXES IN THE HOPE THAT YOU WILL LET US HAVE YOUR CLEAR RESPONSE TO THEM AT YOUR EARLIEST:

1- IN THE AFFIDAVIT OF MARY DUFFY BECKER OF WALD, HARKRADER AND ROSS IT IS SAID THAT MR. H.M. FLICKENSCHILD OF YOUR ETR DEPARTMENT HAD CHECKED " THE RELEVANT RECORDS OF THE INTERNATIONAL MONETARY FUND AND FOUND THAT IRAN HAS NEITHER SOUGHT OR RECEIVED APPROVAL FROM THE FUND TO IMPOSE OR REIMPOSE EXCHANGE CONTROLS OR CURRENCY RESTRICTIONS SINCE JANUARY 1978." WE ARE OF THE OPINION THAT THE FUND'S RECORDS ON THE COMMUNICATIONS OF THE MEMBERS WITH THE FUND INCLUDING INFORMATION CONCERNING WHETHER OR NOT IRAN HAS SOUGHT OR RECEIVED APPROVAL OF THE FUND FOR IMPOSING ANY CURRENCY CONTROLS, ARE UNPUBLISHED INFORMATION FALLING UNDER THE CONFIDENTIALITY REQUIREMENTS OF THE BOARD'S RESOLUTION DATED SEPTEMBER 25, 1946 AND AMENDED ON JUNE 22, 1979. ACCORDINGLY WE ASK YOU ONCE AGAIN WHETHER OR NOT THE RELEASE OF THE SAID INFORMATION WAS BASED UPON YOUR EXPRESS AUTHORIZATION.

2- IF THE SAID INFORMATION WAS RELEASED UPON YOUR EXPRESS AUTHORIZATION, WE REQUEST EXPLANATION AS TO WHY SAID DISCLOSURE OF CONFIDENTIAL INFORMATION WAS AUTHORIZED AND FOR WHAT REASON WE HAVE NOT BEEN INFORMED BY THE FUND OF SUCH AUTHORIZATION AND DISCLOSURE.

3- IN CASE THE INFORMATION WAS RELEASED WITHOUT YOUR EXPRESS AUTHORIZATION AND WITHOUT KNOWLEDGE OR ANY INDICATION THAT IT WOULD BE INCORPORATED IN AN AFFIDAVIT TO BE USED IN A LEGAL PROCEEDING, WE CONSIDER IT APPROPRIATE THAT YOU SHOULD REFLECT THIS FACT TO THE IRAN-UNITED STATES CLAIMS TRIBUNAL ASKING THE TRIBUNAL TO IGNORE MARY DUFFY BECKER'S AFFIDAVIT AS A DOCUMENT WHICH MAY BE USED BY THE TRIBUNAL IN ADAPTING A DECISION.

I THANK YOU IN ADVANCE FOR YOUR COOPERATION.

*MD's comment:
" We should inform the Tribunal that the information was released without express authorization."*



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HEAD REPLYING: N. NIJKBAKISH, GOVERNOR, BANK MARKAZI IRAN.
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REPLY VIA ITT

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23 GOVERNOR M. NOURBAKHS
22 BANK MARKAZI IRAN
21 TEHERAN, ISLAMIC REPUBLIC OF IRAN
20
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18 1. WE HAVE RECEIVED YOUR TELEX OF MAY 31, 1983, AND I
17 WISH TO THANK YOU FOR CALLING OUR ATTENTION TO THE FACT
16 THAT OUR TELEX OF MAY 17, 1983, AS RECEIVED BY YOU, DID
15 NOT HAVE A TRANSMISSION DATE. OUR COMMUNICATIONS DIVISION
14 IS LOOKING INTO THIS TECHNICAL OMISSION.
13 2. IN RESPONSE TO YOUR QUESTIONS LABELLED 1 AND 2, THE
12 ANSWER IS THAT THE PROVISION OF THE INFORMATION IN
11 QUESTION WAS NOT, REPEAT NOT, EXPRESSLY AUTHORIZED BY THE
10 MANAGING DIRECTOR OR BY ANY OTHER SENIOR OFFICIAL OF THE
9 FUND, BECAUSE AS INDICATED IN THE TELEX OF MAY 17, 1983,
8 TO WHICH YOU RESPOND, EXECUTIVE BOARD DECISION NO. 446-4
7 OF JUNE 10, 1949, PROVIDES THE REQUISITE APPROVAL AND
6 PRIOR AUTHORIZATION FOR THE PROVISION OF SUCH INFORMATION.
5 ACCORDINGLY, RULE N-6 DOES NOT APPLY SO AS TO LIMIT OR
4 INHIBIT THE PROVISION BY THE STAFF OF SUCH INFORMATION
3 UPON REQUEST, AS YOU ARGUE. ON THE CONTRARY, INFORMATION
2 CONCERNING THE LEGAL STATUS OF EXCHANGE RESTRICTIONS HAS
1 ALWAYS BEEN REGARDED AS INHERENTLY PUBLIC, RATHER THAN

MD
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18 CONFIDENTIAL.

17 3. IN RESPONSE TO YOUR POINT 3, THE FIRST ASPECT IS
16 ANSWERED ABOVE. AS TO THE SECOND ASPECT, I REPEAT THE
15 INDICATION CONTAINED IN MY PREVIOUS TELEX TO YOU THAT THE
14 CONVERSATION IN QUESTION WAS REFLECTED IN AN AFFIDAVIT
13 WITHOUT OUR KNOWLEDGE AND THE LEGAL DEPARTMENT HAS ORALLY
12 INFORMED THE LAW FIRM IN QUESTION THAT THIS UNPRECEDENTED
11 PROCEDURE ON THEIR PART HAS CAUSED EMBARRASSMENT TO THE
10 FUND.

9 4. AS INDICATED IN MY EARLIER TELEX TO YOU, A FORMAL
8 WRITTEN REQUEST TO RESPOND TO CERTAIN LIMITED QUESTIONS ON
7 THE MATTER HAS BEEN RECEIVED ON MARCH 24, 1983 FROM THE
6 LAW FIRM IN QUESTION, NAMELY, WALD, HARKRADER AND ROSS.
5 A STAFF MEMORANDUM ON THE QUESTIONS, INCLUDING A DRAFT OF
4 THE PROPOSED RESPONSE TO THEM, ARE SOON TO BE CIRCULATED
3 TO THE EXECUTIVE BOARD. WE REGRET THE UNPRECEDENTED
2 PROCEDURE FOLLOWED BY THE LAW FIRM IN SUBMITTING THIS
1 AFFIDAVIT FORMALLY TO THE TRIBUNAL. WHILE THE STATEMENTS

IF REQUIRED INITIAL BELOW

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E AUTHORIZED BY NAME (TYPE): _____ AUTHORIZED BY NAME (TYPE): _____

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18 WERE ACCURATE, THE AFFIDAVIT IS NOT AN AUTHORITATIVE
 17 STATEMENT OF THE FUND'S POSITION ON THE QUESTIONS
 16 CONCERNED. THE FUND'S POSITION WILL BE STATED IN THE
 15 FUND'S REPLY TO THE LAW FIRM. THE STAFF DOCUMENT ON THIS
 14 MATTER WILL BE PLACED ON A CONVENIENT AGENDA OF THE
 13 EXECUTIVE BOARD, WHERE OF COURSE MR. SALEHKHOU, OR A
 12 REPRESENTATIVE OF IRAN DESIGNATED UNDER ARTICLE XII,
 11 SECTION 3(J) OF THE ARTICLES OF AGREEMENT AND SECTION 19
 10 OF THE BY LAWS, WILL HAVE FULL OPPORTUNITY TO EXPRESS
 9 VIEWS.
 8 REGARDS,
 7 DE LAROSIERE
 6 MANAGING DIRECTOR
 5 INTERFUND

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Office Memorandum

File: IRAN

JUN 29 1983

TO : Mr. Dale
FROM : A. F. Mohammed
SUBJECT : Persian Gulf

DATE: June 28, 1983

I am attaching a memorandum responding to Mr. Salehkhon's of April 20 (copy attached). The response has been cleared with Messrs. Nicoletopoulos, Shaalan and Van Houtven. There is a question in my mind whether I should stop at the end of the first paragraph although I am encouraged by my colleagues to take Mr. Salehkhon to the substance of the matter as well.

Attachment

I would counsel going further and not only including the second para, but also a clear indication (if it is true, as I understand it to be) that the omission of the adjective "Persian" from the title of this body of water is an increasingly accepted practice outside the Fund, and that, seemingly, only Iran objects.

The idea that the Fund is forever stuck with what a department head wrote 10 1/2 years ago is preposterous.

possibly one option for "Morning Press" would be to put quotation marks around whichever form is used as an indication of the usage in the indicated source.



Office Memorandum

cc: Mr. Amour

TO : Mr. A. F. Mohammed

DATE: April 20, 1983

FROM : Ghassem Salehkhoul *AS*

SUBJECT: Incomplete Use of the Name of the Persian Gulf

Pursuant to my Advisor's objection to the Editor of the Morning Press for the incomplete use of the name "Persian Gulf" in its April 11, 1983 issue, to which this office is yet to be provided with a satisfactory explanation, I am forwarding this memorandum on behalf of my authorities in the Islamic Republic of Iran, to call for necessary correction, and, most importantly for avoidance of its repetition in the future.

Application of incomplete or fictitious names for the "Persian Gulf" by the Fund is especially puzzling when I noted that the former Head of the Middle Eastern Department, Mr. John W. Gunter, had explicitly pronounced in his January 15, 1973 memorandum that, "It is, of course, well established that the proper name for the body of water in question is the Persian Gulf."

I would like to see, however, that we, here in the International Monetary Fund, as one of the affiliates and specialized agencies of the United Nations, respect geographical, historical and territorial facts concerning member countries, as the mother organization does (see, e.g., the attached copy of "Weekly News Summary", WS/1122, April 8, 1983 published by the Department of Public Information, Press Section of the United Nations) and numerous other UN documents. Thus, I strongly urge the staff of the Fund to remain independent and free of any association with all politically motivated issues and controversies, especially those publicized by some controlled media.

cc. Governor Nourbakhsh

Attachment



Mr. Salehkhou

June , 1983

A. F. Mohammed

Use of the Term "Persian Gulf"

This is in response to your note dated April 20, 1983 objecting to the use of the incomplete name of the Persian Gulf in the Morning Press. First, I should like to emphasize that the Morning Press is a summary of the news that is designed to give the flavor of the world's press as it affects the work of the Fund. Since the purpose of this daily news summary is to transmit as rapidly as possible the tone and color of the original news item, no attempt is made to carry out a comprehensive editing for either form or substance. The Morning Press is, therefore, not a guide to the formal usage of the Fund in such matters; it is not regarded as a publication and its circulation is carefully controlled.

As an international organization the Fund is acutely aware of national sensitivities and tries to find neutral terminology. Hence, the word "Gulf" has increasingly been used in Fund documents, including Staff Memoranda. It is also the Fund's practice, at least in publications, to try to avoid this word altogether and where possible to refer to the countries around the Persian Gulf by their proper names.

JUN 15 1983



Office Memorandum

TO : The Managing Director
The Deputy Managing Director

DATE: June 15, 1983

FROM : C. David Finch *CD*

SUBJECT : Iranian Restrictions

In response to the questions Mr. Dale asked concerning my memorandum of June 6, 1983 to him on this subject, we have examined the exchanges of correspondence written to and by Fund staff regarding outside inquiries of members' exchange practices.

See attached copy

With regard to the first question, there is no remaining record of an instance in which information was provided by the staff on the telephone in advance of the written response. In three instances out of the 13 inquiries cited in the list attached to my June 6 memorandum an Executive Director is known to have been informed on the ongoing inquiry (Algeria, Australia in 1973, and Mr. Erb was advised of the Vishipco case involving Viet Nam). There are two instances in which the records state that the cases indeed reached the court. But, from the files, it is not possible to determine whether or not the information provided by the Fund staff was used in court proceedings.

Mr. Agah of Mr. Salehkhkou's office has requested copies of the communications cited in the list of precedents. With your approval, these will be provided. As a courtesy to those making the inquiries we would suggest that references to their identities be deleted from the copies before transmittal to Mr. Agah, but this would not be essential.

Attachments

cc: Mr. Nicoletopoulos
Mr. El Selehdar
Mr. Carter



Office Memorandum

1220

TO : The Acting Managing Director

DATE: June 6, 1983

FROM : C. David Finch *DF*

SUBJECT : Iranian Restrictions

Mr. Salehkhon's office had some time ago contacted us seeking precedents involving the provision of information to interested outside parties regarding the position under the Fund's Articles of exchange controls maintained by a member. Mr. Agah of that office was provided copies of several Executive Board papers and a related telex with specific responses. Mr. Agah replied with a request for further precedents "as similar as possible to the case in question" (the Wald, Harkrader and Ross inquiry).

In response to this latter inquiry, we have searched the files and have compiled the attached sample listing of past instances in which the staff replied directly to such factual inquiries, without further Executive Board authorization beyond that provided by the 1949 decision. The May 17 telex of the Managing Director to Governor Nourbakhsh noted that the information is freely provided to all who ask, and a response to Mr. Agah's request is now timely. If you approve, the attached memorandum will be sent to Mr. Agah.

Attachment

cc: The Managing Director (on return)
Mr. Evans
Mr. El Sehdar
Mr. Carter

Approved, It would be interesting also to know whether in one or the other of these examples:

- 1. Information was informally provided by telephone in advance of the staff communications referenced;*
- 2. The ED concerned was informed—*
 - a. of any such informal telephone inquiries.*
 - b. of the staff communication.*
- 3. The information was used in court proceedings.*

1220



Office Memorandum

JUN 6 1983

TO : The Acting Managing Director

FROM : C. David Finch *DF* ←

SUBJECT : Iranian Restrictions

DATE: June 6, 1983

Mr. Salehkhon's office had some time ago contacted us seeking precedents involving the provision of information to interested outside parties regarding the position under the Fund's Articles of exchange controls maintained by a member. Mr. Agah of that office was provided copies of several Executive Board papers and a related telex with specific responses. Mr. Agah replied with a request for further precedents "as similar as possible to the case in question" (the Wald, Harkrader and Ross inquiry).

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Attachment

cc: The Managing Director (on return)
Mr. Evans
Mr. El Selehdar
✓ Mr. Carter

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June 14-83*



Office Memorandum

TO : Mr. Agah

DATE: June 6, 1983

FROM : Peter J. Quirk

SUBJECT : Inquiries Regarding the Position of Members Exchange
Controls Under the Fund's Article VIII

In response to your request, the attachment lists precedents additional to those provided to you on April 1 and April 4, 1983. These precedents relate to instances in which, as authorized by Executive Board Decision No. 446-4, adopted June 10, 1949, the staff provided to outside parties information regarding a members' exchange arrangements, and the status of these arrangements under the Fund's Articles.

Attachment

ATTACHMENT

Instances of Responses by the Fund Staff to Outside
Inquiries Regarding Members' Exchange Practices 1/

Algeria (May 18, 1970)

Letter from the staff to the Bank of France setting forth Algeria's membership status and its general obligations regarding the exchange system under the Articles of Agreement

Australia (October 25, 1982)

Letter from the staff to a law firm (i) setting forth Australia's membership status and its general obligations regarding the exchange system under the Articles of Agreement and (ii) stating that, with one particular exception, Australia has at no time imposed exchange restrictions subject to Article VIII, Section 2(a).

Australia (November 21, 1973)

Two letters from the staff to a law firm advising, inter alia, that a particular measure is not an exchange measure.

Ghana (January 24, 1978)

Letter from the staff to a law firm (i) outlining the Fund's policies with regard to its approval jurisdiction over multiple currency practices and (ii) describing such practices maintained by Ghana since 1971.

Iran (August 16, 1982)

Letter from the staff to a law firm with references to the description of Iran's exchange and trade system in the 1980 AREAER.

Israel (January 16, 1974)

Transmittal to a law professor of certain Israeli exchange control regulations.

Italy (March 6, 1980)

Letter from the staff to a law firm (i) setting forth Italy's membership status and its general obligations regarding the exchange system under the Articles of Agreement and (ii) stating that only one exchange measure maintained by Italy was subject to approval under Article VIII at the time and that that measure had been given temporary approval.

1/ Listed alphabetically by countries whose exchange systems were the subject of inquiries.

Italy (September 22, 1978)

Transmittal of translations of Italian legislation to a law firm on an unofficial basis.

Japan (August 1, 1973)

Letter from the staff to a law firm setting forth Japan's membership status and general obligations regarding the exchange system under the Articles of Agreement.

Mexico (December 29, 1982)

Letter from the staff affirming the temporary approval by the Fund under Article VIII of certain multiple currency practices and exchange restrictions.

United States (January 16 and 20, 1980)

Two telexes sent by the staff in reply to inquiries from a law firm stating (i) that the U.S. had sought approval under Decision No. 144-(52/51) for certain restrictions on the making of payments and transfers by persons subject to its jurisdiction which involve the Government of Iran, its instrumentalities or controlled agencies and (ii) that such approval had been given to the extent that those restrictions fell within the scope of Article VIII, Section 2(a).

Viet Nam (June 25, 1982)

Letter from the staff to the Federal Reserve Bank of New York transmitting a copy of foreign exchange regulations and expressing the opinion, informally, that such regulations remained in effect at the same time of writing.

Viet Nam (April 10, 1974)

Letter from the staff to a law firm expressing informally the opinion that a certain exchange control provision does not constitute an exchange restriction within the meaning of Article VIII, Section 2(b).

Managing Director



Office Memorandum

MAY 25 1983

TO : The Acting Managing Director

DATE: May 25, 1983

FROM : James G. Evans, Jr.

SUBJECT : Iran-U.S. Claims Tribunal

Mr. Bengt Nilsson, Legal Assistant to the President of the Iran-U.S. Claims Tribunal, called from The Hague to pose questions concerning Article VIII and Article XIV. He stated that the Tribunal was considering the application, under Article VIII, Section 2(b), of certain Iranian measures to exchange contracts calling for the conversion and transfer of rials to U.S. dollars in the United States.

He asked first whether Iran still had not accepted the obligations of Article VIII. I confirmed that Iran still availed itself of the transitional arrangements under Article XIV, but explained the relationship of Article VIII and Article XIV, in particular, with respect to the difference between the introduction of restrictions under Article VIII and the maintenance and adaptation of measures for balance of payments reasons under Article XIV.

The second question was whether Article VIII, Section 2(b) applied even if Iran had not accepted Article VIII. I responded that Article VIII, Section 2(b) applied regardless of whether Iran had availed itself of Article XIV or not.

The third question was whether certain measures imposed by Iran in 1978 were maintained consistently with the Articles of Agreement. My response was that to be able to answer this type of question, we usually needed to have the measures in question identified. In any event, that while the staff was prepared to assist interested parties on an informal basis, if the information was to be used in litigation, we expected that a formal written question be put to the Fund so that the issue could be placed before the Executive Board. I informed him that a similar question had been formally asked of the Fund by a law firm representing one of the claimants before the Tribunal and that we expected a response would be sent within a few weeks. He said that this was a useful piece of information and did not press the question. Mr. Nilsson did not know whether the Tribunal would decide to make a formal request to the Fund for a response to his question regarding the 1978 measures.

cc: Managing Director (on return) ✓

Mr. Finch

Mr. Ray

Mr. Carter



→ Date The Managing Director would like you to speak to Mr. Selahkhan + Mr. Erb before this memorandum, as amended, is released to the Board please

Office Memorandum

MAY 19 1983

NC 5/20/83

TO : Mr. Nigel Carter NC 5/19/83 DATE: May 19, 1983

FROM : George P. Nicoletopoulos S.P.N.

SUBJECT : Memorandum to the Executive Board on Iranian Restrictions

We have amplified paragraph 3 in the proposed reply and the relevant paragraph in the covering memorandum in response to the Managing Director's enquiry regarding the basis for the view that a member may not reintroduce restrictions under Article XIV. The basis for that view is the text of Article XIV, Section 2 as understood and applied by the Fund throughout its history.

↓
and embedded in Fund law according to the Executive Board vote on the South African Case.

South Africa Case

in Fall 1948

Relating to restrictions which were imposed for the first time since S.A. joined Fund in 1945, altho' when SA joined they had the legislation under which they could operate these restriction.

Exec. Bd. Decision Jan 10 1948 :-

The recent action of S. Africa respecting exchange restriction of which S.A. informed the Fund (EB Doc 371, Mar 5, 1948) is deemed to be an introduction of exchange restriction subject to approval of the Fund under Art. VIII, 2(a) [ie. not a continuation under Art XIV, (c)]

Note : SM/59/73 ; Nov 18 1959
" Legal Aspects of Article VIII and Article XIV "
no 2-5

INTERNATIONAL MONETARY FUND

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

May 19, 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

The entire letter is set out as Attachment A. The "relevant pages of the Bank Markazi's memorial" and the affidavit by Mary Duffy Becker referred to in the second and third paragraphs of this letter have not been reproduced, but are available for perusal in the office of the Secretary.

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

"2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not

any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

Section 2

3. Under Article XIV, a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined ^(by Executive Board decision of January 19, 1949) that this power of a member relates to actual restrictions. Legislation or regulations of a stand-by character under which restrictions are not enforced are not regarded as restrictions for this purpose. ^{In accordance with the above decision} The enforcement of such legislation or regulations would constitute the introduction of ^{new} restrictions. Thus, once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

Check date

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as the member's exchange arrangements. This information

is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved."

It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/___/."

- 4 -

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1930] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the

- 5 -

Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, as long as these controls do not restrict payments for current transactions or unduly delay transfers of funds to settle commitments, as provided by Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the measure in question.

2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, ^{Section 2} a member may maintain and adapt to

changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined that this power of a member relates to actual restrictions. Legislation or regulations of a stand-by character under which restrictions are not enforced are not regarded as restrictions for this purpose. The enforcement of such legislation or regulations would constitute the introduction of ^{new} restrictions. Thus, once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

Check
date

(by Executive Board decision of January 13, 1949)

In accordance with the above decision

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

5. In this connection, I should express our displeasure that an earlier informal inquiry by a lawyer with your firm along the same

lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff. While the statements were accurate, this is an unusual procedure. The normal course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036

INTERNATIONAL MONETARY FUND

Mr Nicoletopoulos/

- 1) Please do not release paper yet.
- 2) Please see the proposed

amendments in paragraph 3 of the letter.

3) The top copy of the paper has been sent to Mr Dale whom the Managing Director has requested to speak to Mr Salehkhon and Mr Erb before anything is done about releasing the paper to the Board.

Nigel Carter

NC 5/29/83.

INTERNATIONAL MONETARY FUND

May 20, 1983

~~Mr. Carter:~~

→ FILE

The attached paper has been
amended as discussed.

cc: Deputy Managing Director

James G. Evans, Jr.

Mr. Carter
IRAN

INTERNATIONAL MONETARY FUND

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

May , 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

The entire letter is set out as Attachment A. The "relevant pages of the Bank Markazi's memorial" and the affidavit by Mary Duffy Becker referred to in the second and third paragraphs of this letter have not been reproduced, but are available for perusal in the office of the Secretary.

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

"2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not

any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, Section 2, a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. The Fund has determined by Executive Board decisions taken in January, 1949 (see The International Monetary Fund 1945-1965, Volume I: Chronicle, pages 248-250) that this power of a member relates to actual restrictions. Legislation or regulations of a stand-by character under which restrictions are not enforced are not regarded as restrictions for this purpose. In accordance with the decisions referred to above, the enforcement of such legislation or regulations would constitute the introduction of new restrictions. Thus, once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

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on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved."

It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/___/."

- 4 -

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the

- 5 -

Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

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Sincerely yours,

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Enclosures

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- 8 -

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Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036

IMF OFFICIAL MESSAGE
WASHINGTON, D. C. 20431

IRAN
DO NOT SOFT ROLL EXCEPT
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1983 MAY 10 PM 1:10

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23 GOVERNOR M. NOURBAKHSH
22 BANK MARKAZI, TEHERAN
21 ISLAMIC REPUBLIC OF IRAN
20
19

18 IN RESPONSE TO YOUR TELEX OF MAY 10, 1983, I AM GLAD
17 THAT WE CAN NOW AGREE THAT INFORMATION CONCERNING A
16 MEMBER'S EXCHANGE SYSTEM IS NOT AND CANNOT BE CONSIDERED
15 CONFIDENTIAL INFORMATION UNDER THE ARTICLES OF AGREEMENT.
14 INFORMATION CONCERNING ANY MEMBER'S EXCHANGE SYSTEM AND
13 WHETHER THAT SYSTEM IS BEING MAINTAINED CONSISTENTLY WITH
12 THE ARTICLES HAS BEEN PROVIDED FOR OVER THIRTY YEARS TO
11 ALL WHO ASK, IN ACCORDANCE WITH EXECUTIVE BOARD DECISION
10 NO. 446-4 OF JUNE 10, 1949, WHICH GIVES THE REQUISITE
9 APPROVAL AND PRIOR AUTHORIZATION FOR THE TRANSMITTAL OF
8 THE FACTS OF EVERY MEMBER'S EXCHANGE SYSTEM, INCLUDING
7 WHETHER OR NOT ASPECTS OF A MEMBER'S EXCHANGE SYSTEM
6 REQUIRE APPROVAL UNDER ARTICLE VIII AND WHETHER THIS
5 APPROVAL HAS BEEN GIVEN.
4 AFTER YOUR MARCH 17 TELEX CONCERNING THE AFFIDAVIT
3 FILED WITH THE U.S.-IRAN TRIBUNAL BY A WASHINGTON LAW
2 FIRM, WE INQUIRED INTO THE MATTER BY TELEPHONE AND IN
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T Mr. Shaalan
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IMF OFFICIAL MESSAGE

WASHINGTON, D. C. 20431

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19 PAGE 2 OF 2

18 THE CONVERSATION THE LAW FIRM WAS INFORMED THAT THE
17 PROCEDURE IT HAD FOLLOWED WAS NOT THE NORMAL ONE EXPECTED
16 TO BE USED TO ELICIT INFORMATION FOR SUBMISSION IN
15 LITIGATION AND THE USE OF THIS PROCEDURE WITHOUT OUR
14 KNOWLEDGE HAD CAUSED THE FUND EMBARRASSMENT. THERE IS
13 AS YET NO WRITTEN COMMUNICATION FROM THE FUND TO THE
12 LAW FIRM WHICH SUBMITTED THE AFFIDAVIT, AS THE WRITTEN
11 RESPONSE TO THEIR REQUEST FOR ANSWERS TO SPECIFIC
10 QUESTIONS WILL BE SUBMITTED TO THE EXECUTIVE BOARD.
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Office Memorandum

MAY 17 1983

File

TO : Mr. N. Carter *WC 5/17/83*
FROM : George P. Nicoletopoulos *GPN*
SUBJECT : Telex to Iran

DATE: May 17, 1983

Attached is the telex to the Governor of the Bank Markazi Iran incorporating the change made by the Managing Director in the draft that he has already approved. May I take it that he has also agreed to the circulation to the Executive Board of the draft memorandum that we sent to him on the proposed reply to the law firm (subject, of course, to the changes that he has made in the draft text)?

No; not until the paper covers the point raised in the comment or Mr. Evans memo 4 May 12.

cc: The Deputy Managing Director
Mr. Finch
Mr. Shaalan

IRAN

11702
INTERNATIONAL MONETARY FUND

MAY 13 1983

MD

I find the
attached draft
telex and Board
paper suitable.
I recommend
your approval.



William B. Dale



Office Memorandum

See [unclear] [unclear] [unclear]
discuss the [unclear] of [unclear]
document, that
rests on [unclear]
be reviewed [unclear]
that same [unclear] [unclear]
subject [unclear]
is this [unclear]
was [unclear]

May 12, 1983

TO: The Acting Managing Director

FROM: James G. Evans, Jr. *[Signature]*

SUBJECT: Islamic Republic of Iran: Request for Information on Exchange System

Attached are documents on two matters relating to the subject. The first is a draft telex to the Governor of the Bank Markazi, Iran, responding to his telex of May 10, 1983. While in the May 10 telex, the Governor initially concedes that information regarding a member's exchange arrangements and their status under the Articles is not confidential, he asserts this applies only if the information has not been "published". The basis for this assertion is "the confidentiality requirements of resolution dated September 25, 1946 as amended on June 22, 1979", and that the staff member concerned had to check the relevant records of the Fund to ascertain whether Iran had sought or been given approval "to impose or reimpose exchange controls or currency restrictions since 1978."

The "resolution of September 25, 1946 as amended on June 22, 1979" is assumed to be a reference to Rule N-6, which reads:

Persons on the staff of the Fund, and persons formerly on the staff of the Fund, shall not, at any time, without the express authorization of the Managing Director: (i) reveal any unpublished information known to them by reason of their service with the Fund to a person not authorized by the Fund to receive the information; or (ii) use, or allow the use of, unpublished information known to them by reason of their service with the Fund for private advantage, directly or indirectly, or for any interest contrary to that of the Fund as determined by the Managing Director.

The proper response to the assertion that Rule N-6 applies is that by Executive Board Decision No. 446-4, adopted June 10, 1949, the Fund has authorized the information in question to be made available to those who ask for assistance and advice as to whether exchange control regulations are being maintained or imposed consistently with the Fund Agreement. And this is the response proposed in the draft telex.

Also of pressing importance is the second item, a draft paper for the Executive Board transmitting the request by the law firm of Wald, Harkrader & Ross for written answers to the questions that were the subject of the earlier affidavit filed by that firm with the Iran-U.S. Claims Tribunal. The litigation and letter were the subjects of a more

M 15.83
OK for
me [unclear]
an answer

recent letter dated May 11, 1983 from Ms. Lucy F. Reed, which, with an attachment, was sent to you and distributed to interested departments yesterday. The paper and the draft proposed response are, I hope, self-explanatory.

Attachments

cc: The Managing Director (on return)
Mr. Ray
Mr. Mookerjee
Mr. Quirk
Mr. Carter ✓

GOVERNOR M. NOURBAKHS
BANK MARKAZI
ISLAMIC REPUBLIC OF IRAN

IN RESPONSE TO YOUR TELEX OF MAY 10, 1983, I AM GLAD THAT WE CAN NOW AGREE THAT INFORMATION CONCERNING A MEMBER'S EXCHANGE SYSTEM IS NOT AND CANNOT BE CONSIDERED CONFIDENTIAL INFORMATION UNDER THE ARTICLES OF AGREEMENT. INFORMATION CONCERNING ANY MEMBER'S EXCHANGE SYSTEM AND WHETHER THAT SYSTEM IS BEING MAINTAINED CONSISTENTLY WITH THE ARTICLES HAS BEEN PROVIDED FOR OVER THIRTY YEARS TO ALL WHO ASK, IN ACCORDANCE WITH EXECUTIVE BOARD DECISION NO. 446-4 OF JUNE 10, 1949, WHICH GIVES THE REQUISITE APPROVAL AND PRIOR AUTHORIZATION FOR THE TRANSMITTAL OF THE FACTS OF EVERY MEMBER'S EXCHANGE SYSTEM, INCLUDING WHETHER OR NOT ASPECTS OF A MEMBER'S EXCHANGE SYSTEM REQUIRE APPROVAL UNDER ARTICLE VIII AND WHETHER THIS APPROVAL HAS BEEN GIVEN.

AFTER YOUR MARCH 17 TELEX CONCERNING THE AFFIDAVIT FILED WITH THE U.S.-IRAN TRIBUNAL BY A WASHINGTON LAW FIRM, WE INQUIRED INTO THE MATTER BY TELEPHONE AND IN

THE CONVERSATION THE LAW FIRM WAS INFORMED THAT THE
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QUESTIONS ^{will be} ~~IS NOW~~ BEING SUBMITTED TO THE EXECUTIVE BOARD.

REGARDS.

DE LAROSIERE

INTERFUND



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IRAN
214255 ?ZBK IRGOOD DAY SIR
THIS IS BANK MARKAZI IRAN CALLIN

WE SENT YOU A MESSAGE FEW MINUTES AGO NOW WE REPEAT IT
AGAIN

WE SEND YOU A CORRECT TELES
PLS AVOID DUPLICATION

+++++

ORIG: ETR

CC : MD

DMD

MR. SALEH-KHOU

LEG

MED

MR. FLICKENSCHILD

MR. N. CARTER

MAY, 10, 1983

TO: M.E.J. DELAROSIERE
MANAGING DIRECTOR
INTERNATIONAL MONETARY FUND
WASHINGTON D.C.

I AM IN RECEIPT OF YOUR TELEX DATED MAY 6, 1983 IN
REPLY TO OURS OF MARCH 17 AND MAY 3, 1983 AND I WISH TO THANK YOU
FOR THE PERSONAL ATTENTION YOU HAVE PAID TO THE POINTS RAISED
IN OUR TELEXES.

I CONSIDER IT NECESSARY, HOWEVER, TO BRING SOME FURTHER
POINTS TO YOUR ATTENTION IN ORDER TO CLARIFY THE ISSUES
DISCUSSED, IN PARTICULAR, IN OUR TELEX OF MAY 3, 1983 AND ASK
FOR YOUR FURTHER CONSIDERATION OF THE MATTER.

1- WE CONCUR WITH YOUR POINT THAT INFORMATION REGARDING
A MEMBER'S EXCHANGE ARRANGEMENTS AND THEIR STATUS UNDER
THE FUND'S ARTICLES OF AGREEMENT ARE NOT CONFIDENTIAL. BUT IN
OUR OPINION THIS APPLIES TO SUCH INFORMATION IN SO FAR
AS THEY HAVE BEEN PUBLISHED, THE UNPUBLISHED INFORMATION FALLING
UNDER THE CONFIDENTIALITY REQUIREMENTS OF RESOLUTION DATED
SEPTEMBER 25, 1946 AS AMENDED ON JUNE 22, 1979.

MOREOVER, WE WOULD LIKE TO POINT OUT THAT IN THIS PARTICULAR
CASE THE OFFICER CONCERNED IS SAID, IN THE OFFWDOVIT OF
MARY DUFFY BECKER, TO HAVE CHECKED " THE RELEVANT RECORDS OF
THE INTERNATIONAL MONETARY FUND AND FOUND THAT IRAN HAS
NEITHER SOUGHT NOR RECEIVED APPROVAL FROM THE INTERNATIONAL
MONETARY FUND TO IMPOSE OR REIMPOSA EXCHANGES CONTROLS OR
CURRENCY RESTRICTIONS SINCE JANUARY 1978".

AS EMPHESISED IN OUR TELEX OF MAY 3, 1983, THIS IS EXACTLY THE
ACT WHICH WE CONSIDER A BREACH OF THE PRINCIPLES OF CONFIDENTIA-
LITY UNDER THE ABOVE REFERED RESOLUTION OF SEPTEMBER 25, 1946
AS AMENDED ON JUNE 22, 1979.

IN OUR OPINION THE FUND'S RECORDS ON THE COMMUNICATIONS OF THE
MEMBERS WITH THE FUND, INCLUDING INFORMATION CONCERNING WHETHER
OR NOT IRAN HAS SOUGHT OR OBTAINED THE APPROVAL OF THE
FUND FOR IMPOSINS ANY CURRENCY CONTROLS, MAY NOT BE RELEASED
TO THIRD PARTIES, EVEN ON AN INFORMAL BASIS, WITHOUT THE
PRIOR AUTHORIZATION OF THE FUND.



IMF OFFICIAL CABLE

ACCORDINGLY, WE ASK AGAIN WHETHER OR NOT THE RELEASE OF SAID INFORMATION WAS BASED UPON YOUR EXPRESS AUTHORIZATION.

2- IN CASE THE INFORMATION WAS GIVEN TO THE RELEVANT LAW FIRM WITHOUT YOUR EXPRESS AUTHORIZATION AND, AS YOU HAVE STATED IN YOUR TELEX, WITHOUT THE KNOWLEDGE OR ANY INDICATION THAT IT WOULD BE INCORPORATED IN AN OFFIDAVIT TO BEE USED IN A LIGAL PROCEEDING, WE CONSIDER IT APPROPRIATE THAT YOU SHOULF REFLECT THIS FACTS TO THE IRAN-UNITED STATES CLAIMS TRIBUNAL ASKING THE TRIBUNAL TO IGNORE MARY DUFFY BACKER'S AFFIDAVIT AS A DOCUMENT WHICH MAY BE USED BY THE TRIBUNAL IN ADOPTING A DECISION.

3- WE WOULD ALSO APPROCIATE IT IF YOU COULD ARRANGE FOR SENDING US A COPY OF YOUR COMMUNICATIONS WITH THE RELEVANT LAW FIRM COMPLAINING ABOUT THEIR IRREGULAR PROCEDURE FOR THE USE OF THE SAID INFORMATION GIVEN TO THEIR LAYEEEEE LAWYER.

4- WE ALSO APPRECIATE VERY MUCH YOUR STATEMENT THAT PROPER PROCEDURE WOULD BE FOLLOWED IN RESPONDING TO THE ENQUIRES FOR INFORMATION REGARDING THE CONSISTANCY OF PARTICULAR EXCHANGE CONTROL REGULATIONS MAINTAINED BY MY COUNTRY.

WE HOPE THAT YOUR RESPONSE WILL BE SUCH REFLECTION OF THE FACTS THAT IT WOULD, HOPEFULLY, MITIGATE THE DAMAGE CAUSED BY INDISCRETENESS OF ONE OF THE MEMBERS OF THE FUND'S STAFF.

BEST REGARDS M.NOURBAKSH, GOVERNOR, BANK MARKAZI IRAN.
214255 MZBK IR
440040 FUND UI

REPLY VIA ITT

?

TIME: 05:02 05/10/83 ???
CONNECT TIME : 804 SECONDS

INTERNATIONAL MONETARY FUND

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

May , 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

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not been reproduced, but are available for perusal in the office of the Secretary.

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

"2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

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"Practice or
Legal
"must" ?

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It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/___/."

- 4 -

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W, Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative

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was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to

- 6 -

engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, as long as these controls do not restrict payments for current transactions or unduly delay transfers of funds to settle commitments, as provided by Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the measure in question.

2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, a member may maintain and adapt to

changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. Once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved.

5. In this connection, I should express our displeasure that an earlier informal inquiry by a lawyer with your firm along the same lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff.

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While the statements were accurate, this is an unusual procedure. The normal course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036



Office Memorandum

IRAN

Mr. Carter

MAY 11 1983

TO : The Acting Managing Director

FROM : James G. Evans, Jr. *JGE*

SUBJECT : Iran

DATE: May 11, 1983

I assume Ms. Reed will be quite anxious to receive a response to the request made by Mr. Griffin, of the Wald, Harkrader & Ross law firm, sent to us on March 24.

Attachment

cc: Mr. Palmer
Mr. Ray
Mr. Quirk
Mr. N. Carter ✓

MURKIN 5/11

LAW OFFICES
WALD, HARKRADER & ROSS
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LUCY F. REED

DIRECT DIAL
(202) 828-1577

May 11, 1983

BY HAND

Mr. James Evans
Legal Department
International Monetary Fund
700 19th Street, N.W.
Washington, D.C. 20431

Dear Mr. Evans,

Enclosed please find a copy of an Affidavit which we received today from the Iran-U.S. Claims Tribunal, in which Al Manavi Rad (Director in Charge of the International Department of Bank Markazi) disputes our interpretation of the IMF Articles and challenges the validity of the Mary Duffy Becker Affidavit filed by us with the Tribunal.

While we have had to file our Posthearing Memorial today without the benefit of your response to our letter of March 24 requesting confirmation of the information in the Becker Affidavit (which Messrs. Flickenschild and Quirk assured Ms. Becker was not confidential), this new -- and apparently baseless -- Affidavit from Bank Markazi increases the importance of a prompt response to our March 24 letter.

We hope to be able to discuss this matter with you this afternoon.

Sincerely yours,

Lucy F. Reed

Lucy F. Reed

LFR:rm

Enclosure



EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN
Agent Bureau
The Hague

No. 6236
Date. 6.5.83
Encl.

IN THE NAME OF GOD, MOST COMPASSIONATE, MOST MERCIFUL

Honourable Judge N. Mangard
Chairman
Chamber Three
Iran-United States Claims Tribunal
Parkweg 13
The Hague.

جناب قاضی منگارد
رئیس
شعبه ۳
دادگاه داری و اعوای ایران و ایالات متحده
پارک و خ ۱۳
لا هه

Re: Case No. 38

موضوع: پرونده شماره ۳۸

Sir,

عالیجناب ،

Attached please find affidavit of Mr. Ali Manavi-Rad a member of the Exchange Control Commission in Iran concerning relationship of Bank Markazi (Central Bank of Iran) and International Monetary Fund, which rebuts allegations brought up by Claimant in the above-mentioned case.

به پیوست شهادتنامه آقای علی معنوی راد عضو کمیسیون نظارت ارز در ایران در خصوص روابط بانک مرکزی با صندوق بین المللی پول در دادگاه های خواهان پرونده کلاسه ۳۸ تقدیم میگردد .

Also attached hereto is a copy of the said Bank's telex No. 37220846 dated 17.3.83 to the President of IMF.

همینطور به ضمیمه کپی تلکس بانک مذکور عنوان رئیس صندوق یاد شده ایفاد میشود .

Your kind attention is drawn to the text and purport of the referred exhibits.

نظر آن مقام را به محتوا و مندرجات پیوست های نام برده معطوف میدارد .

Yours sincerely,

با احترام

Mohammad. K. Eshragh
Deputy Agent of the
Islamic Republic of Iran
to the Iran-United States
Claims Tribunal.

محمد کریم اشراق
قائم مقام نمایند مرا بطن دولت جمهوری
اسلامی ایران در دادگاه داری و اعوای
ایران و ایالات متحده .

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری و اعوای ایران - ایالات متحده
ثبت شد - FILED	
Date ۱۳۶۲ / ۲ / ۱۵	تاریخ
5 MAY 1983	
No. 38	شماره ۳۸

DATE RECEIVED
OFFICE U.S. AGENT
6 MEI 1983

IN THE NAME OF ALLAH

بِسْمِ تَعَالَى

Iran-United States Claims Tribunal
The Hague, The Netherlands

دیوان دآوری ایران و ایالات متحده
لاسه - هلند

Schering Corporation,
Claimant, Claim No. 38
V. Chamber No. 3
The Islamic Republic of Iran
Respondent.

شرکت شرینگ
خواهان
علیه
جمهوری اسلامی ایران
خوانده

Affidavit of Ali Manavi-Rad

سوگندنامه علی مموی راد

I, Ali Manavi-Rad of No. 80, Farrakhi Yazdi, Pasdaran Ave. Tehran Iran make oath and say as follows:

من، علی مموی راد، شناسایی شماره ۸۰ خیابان
فرخی یزدی، خیابان پاسداران - تهران، ایران، سوگند یاد
کرده مراعات ذیل را اعلام می‌نمایم:

1- The facts and matters to which I depose in this Affidavit are true and are within my own knowledge unless I state otherwise.

۱- حقایق و مراعاتی که در این سوگندنامه ذکر میگردد
صحت داشته و اسباب، جز در مواردی که خلاف آنرا ذکر
نمایم مستند آنها وقوف و آگاهی دارم.

2- I am a banker and have been employed by Bank Markazi Iran (the Central Bank of Iran) since 1966. In March 1979, I became Director General in charge of International and Exchange Control matters. In about May 1981 my title changed to that of Director in charge of the International Department. From March 1979 I have been and remain a member of the Exchange Control Commission in Iran, the ruling body in matters of Exchange Control.

۲- حرفه من بانکداری است و ارسال ۱۹۶۶ به بعد در
استخدام بانک مرکزی ایران بوده‌ام. در ماه مارس ۱۹۷۹
سمت مدیریت امور بین المللی و نظارت ارز منصوب شدم.
در حدود ماه مه ۱۹۸۱ سمت من تسهیرو ریاست اداره
بین المللی منصوب شدم. از ماه مارس ۱۹۷۹ به بعد عضو
کمیسیون نظارت ارز در ایران که مرجع تصمیم‌گیری در
مسائل کنترل ارز می‌باشد بوده و در این سمت خود باقی
می‌مانم.

3- Bank Markazi Iran is, in accordance with the laws of Iran, the authority encharged with the power to regulate the exchange control regulations of Iran.

۳- بانک مرکزی ایران، طبق قوانین ایران
مرحمی است که اختیارات تعیین مقررات مربوط به کنترل
ارز را در ایران دارد.

4- For over 10 years I have acted as Bank Markazi Iran correspondent with the International Monetary Fund (the Fund) and been in charge of the relations between said Bank and the Fund.

۴- سمدتی بیشتر از ۱۰ سال من بعنوان رابط بانک
مرکزی ایران با صندوق بین المللی پول (صندوق) عمل
کرده مسئول روابط بانک مرکزی ایران با صندوق
بوده‌ام.

5- I have read a copy of the Affidavit of Mary Duffy Becker sworn in these proceedings and I make this Affidavit primarily to answer Mary Duffy Bocker's statements with regards to Iranian Exchange Control regulations in relation to the relationships with the International Monetary Fund.

6- In accordance with the Articles of Agreement of the Fund to which Iran is also a signatory, the member countries of the Fund have been granted the option (Articles VIII and XIV) either to bind themselves to the imposition of no exchange controls or currency restrictions in accordance with Article VIII or to avail themselves of the transitional arrangements of Section 2 of Article XIV to maintain and adopt to changing circumstances the restrictions on payments and transfers for current international transactions.

7- In accordance with Section 1 of Article XIV of the Articles of Agreement of the International Monetary Fund each member is required to notify the Fund of its choice of Article VIII or Article XIV and Iran has as a founding member of the Fund chosen, by notification to the Fund, to avail itself of the transitional arrangements of Section 2 of said Article XIV.

8- Subsequent to the above referred notification Iran has never notified the Fund that it is prepared to accept the obligations of Article VIII. This fact is also reflected in the 1982 Annual Report of the Fund regarding Exchange Arrangements and Exchange Restrictions, in the Table of Summary Features and Exchange and Trade Systems in Member Countries, page 498.

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۵- من نسخه‌ای از سوگندنامه ماری دافی بکر در ارتباط با دعوی مزبور را مطالعه کرده‌ام و منظور اصلی من از تسلیم این سوگندنامه پاسخگویی به مراتب مذکور در سوگندنامه ماری دافی بکر در ارتباط با مقررات کنترل ارز ایران در خصوص روابط با صندوق بین‌المللی پول می‌باشد.

۶- طبق اساسنامه صندوق که به امضای ایران نیز رسیده است، به کشورهای عضو صندوق اختیار داده شده است (مواد ۸ و ۱۴) که با طبق ماده ۸ اساسنامه خود را متعهد به عدم اعمال کنترل یا محدودیت‌های ارزی نمایند و با استفاده از ترتیبات موقت موضوع سند ۲ ماده ۱۴ اساسنامه محدودیت‌های وضع شده در مورد برداشتها و انتقالات بابت معاملات جاری بین‌المللی را حفظ و آنها را با توجه به اقتضای تحولات شرایط مربوطه تعدیل کنند.

۷- طبق سند ۱ ماده ۱۴ اساسنامه صندوق هر یک از اعضا مکلف است انتخاب خود در مورد ماده ۸ و با ۱۴ را به اطلاع صندوق برساند و ایران بعنوان یکی از اعضای مؤسس صندوق استفاده از ترتیبات موقت موضوع سند ۲ ماده ۱۴ را اختیار و مراتب را به صندوق اعلام نموده است.

۸- متعاقب اعلام انتخاب خود شرح صندوق ایران هرگز به صندوق اطلاع نداده است که آماده پذیرش تعهدات موضوع ماده ۸ می‌باشد. این امر در گزارش سال ۱۹۸۲ صندوق در موضوع "ترتیب‌ات و محدودیت‌های ارزی" نیز در جدول خلاصه ترتیبات و سیستم‌های ارزی و تجاری در کشورهای عضو "صفحه ۴۹۸" منعکس است.

9- In accordance with the Articles of Agreement of the Fund the imposition of exchange controls and currency restrictions for countries acting under Article XIV does not require the approval or authorization of the Fund such approval or authorization being required only for countries which have bound themselves to the provisions of Article VIII.

10- Iran has in compliance with the requirements of Article XIV, submitted annual reports to the Fund specifying the current exchange control and currency restrictions which have been in turn included in the annual reports of the Fund.

11- The only authority that the Fund, in accordance with Section 3 of Article XIV, has over countries acting under said Article is that the Fund may, if it deems such action necessary in exceptional circumstances, make representations to a member that conditions are favorable for the withdrawal of such restrictions.

The Fund has not, up to this date, made any representations to this effect to Iran.

12- Furthermore, up to the date hereof no notification implying any failure by Iran in its compliance with any of the provisions of the Articles of Agreement of the Fund has been made by the Fund to Iran.

13- In accordance with the resolution of the Fund adopted on September 25, 1946 and amended on June 22, 1979, persons on the staff of the Fund shall not at any time reveal to third parties the unpublished contents of the files of the member countries which have come to their knowledge by reason of their service with the Fund.

۹- طبق اساسنامه صندوق اعمال کنترل ها و محدودیتهای ارزی در کشورهای موضوع ماده ۱۴ محتاج تمویب یا تجویز صندوق نبوده و چنین تمویب یا تجویزی فقط در مورد کشورهای ضرورت دارد که خود را به تمهیدات موضوع ماده ۸ متعهد کرده اند.

۱۰- ایران در رعایت مقررات ماده ۱۴، گزارشات سالانه خود در خصوص کنترل ها و محدودیتهای ارزی جاری را به صندوق تسلیم کرده و مراتب در گزارشات سالانه صندوق منعکس شده است.

۱۱- تنها اختیاری که صندوق طبق بند ۳ ماده ۱۴ نسبت به کشورهای موضوع ماده مزبور دارد این است که صندوق میتواند در صورتیکه در موارد استثنائی لازم تشخیص دهد به عموماً اعلام نماید که شرایط برای رفع محدودیتهای مزبور مساعد میباشد.

صندوق، تا این تاریخ، هیچگونه اعلامی به این منظور به ایران ننموده است.

۱۲- علاوه بر مراتب فوق، صندوق تا این تاریخ هیچگونه اعلامیه‌ای که متضمن تخلفی از سوی ایران در رعایت مقررات اساسنامه صندوق باشد به ایران تسلیم ننموده است.

۱۳- طبق نمونه مورخ ۲۵ سپتامبر ۱۹۴۶ صندوق و اصلاحیه مورخ ۲۲ ژوئن ۱۹۷۹ آن، کارمندان صندوق نباید در هیچ زمان محتویات منتشر نشده پرونده‌های کشورهای عضو صندوق را که مناسبت کار خود در صندوق به آنها و قوف می‌باشد در اختیار اشخاص ثالث قرار دهند.

Accordingly, the release of the information forming the base of the Affidavit of said Mary Duffy Becker by Mr. Hans M. Flickenschild, a member of the staff of the Fund, is, regardless of the incorrectness of the information so released, a breach of the confidentiality requirements of said resolution thus invalidating the Affidavit of said Mary Duffy Becker as a document which may be used by the Tribunal in adopting a decision.

نظریه مراتب مزبور، افشاء اطلاعاتی که منافی سوگندنامه ماری دافی بکسر میسازد توسط آقای هانس م. فلیکنشیلد یکی از کارمندان صندوق صرف نظر از عدم صحت اطلاعات مزبور، نقض مصوبه فوق الذکر در خصوص محرمانه تلقی کردن اطلاعات بوده و موجب اعتبار شدن سوگندنامه ماری دافی بکسر نمیتوان مدرکی مگردد که دیوان داوری ممکن است از آن در اتخاذ تصمیم استفاده نماید.

Ali Manavi Rad

[Handwritten signature]

Director in charge of
The International Department
Bank Markazi Iran

علی منافی راد

[Handwritten signature]

رئیس اداره بین المللی
بانک مرکزی ایران

EMBASSY OF SWITZERLAND
INTERESTS OF THE UNITED
STATES OF AMERICA

Seen for authentication of the seal of
the Iranian Ministry of Foreign Affairs

THIS AUTHENTICATION

CONCERNS ONLY THE SEAL

AND NOT THE CONTENTS

OF THE DOCUMENT 4211

Nr
Fees SPR. 18 = Rls. 850,-

Teheran, 12 Nov. 1983
The Ambassador of Switzerland
by o.

Certified No. 6758
The authenticity of the seal is certified
without consideration to the contents
Date



11 APR 1983



[Handwritten signature]
R. Rollier
Attache



Seen at the Royal Netherlands Embassy for legalization of the signature of Mr. Ahmad Fahim-Danesh, officer of the Ministry of Foreign Affairs of the Islamic Republic of Iran.

Tehran, 13th April 1983

J.C. van Vliet,
Chancellor



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INTERNET

MARCH, 17, 1983

THE MANAGING DIRECTOR, HIS EXCELLENCY J. DE LAROSIERE
INTERNATIONAL MONETARY FUND

CC: MR. GHASSEM SALEHKHOO

DEAR MR. DELAROSIERE,



WE HAVE LEARNED THROUGH AN AFFIDAVIT FILED WITH THE
IRAN UNITED STATES CLAIMS TRIBUNAL BY MARY DUFFY BECKER OF THE
LAW FIRM OF WALD, HACKRADER AND ROSS ACTING AS LAWYERS
TO THE PLAINTIFF IN CASE NO 38 NOW PENDING IN SAID
TRIBUNAL THAT A CERTAIN MR. HANS M. FLICKENSCHILD,
ASSISTANT DIVISION CHIEF OF THE EXCHANGE CONTROL DIVISION OF THE
INTERNATIONAL MONETARY FUND HAS SUPPLIED CERTAIN INFORMATION
REGARDING MATTERS PERTAINING TO THE EXCHANGE CONTROL
REGULATIONS IN IRAN TO SAID ATTORNEY WHO HAS IN TURN USED
SAID INFORMATION AGAINST THE ISLAMIC REPUBLIC OF IRAN IN THE
PROCEEDINGS HELD IN THE MATTER OF THE ABOVE REFECCED CASE.

REGARDLESS OF THE INCORRECTNESS OF SAID INFORMATION WHICH
WILL BE BROUGHT TO THE ATTENTION OF THE TRIBUNAL IN THE
PEPITY OF THE ISLAMIC REPUBLIC OF IRAN TO THE ABOVE

AFFIDAVIT, WE CONSIDER THE ABOVE ACT OF YOUR ABOVE MENTIONED OFFICIAL AS A BREACH OF THE PRINCIPLES OF CONFIDENTIALITY IN A MATTER THAT BY NATURE REQUIRES TO BE HELD CONFIDENTIAL.

ACCORDINGLY, WHILE HEREBY RECORDING OUR STRONG OBJECTIONS TO THE ABOVE DESCRIBED CONDUCT OF YOUR ABOVE REFERRED OFFICIAL, WE REQUIRE YOUR EXPLANATION AS TO WHETHER OR NOT THE RELEASE OF SUCH CONFIDENTIAL INFORMATION TO THIRD PARTIES HAS BEEN AUTHORIZED BY THE FUND.

IN CASE SAID MR. FLICKERSCHILD HAS NOT BEEN AUTHORIZED BY THE FUND TO RELEASE SAID INFORMATION, WE WOULD REQUIRE AN OFFICIAL LETTER TO BE SENT BY THE INTERNATIONAL MONETARY FUND TO THE IRAN, UNITED STATES CLAIMS TRIBUNAL INFORMING THE TRIBUNAL OF THE SAME.

SHOULD, HOWEVER, THE ABOVE DESCRIBED CONDUCT OF SAID MR. FLICKERSCHILD BE BASED UPON THE AUTHORIZATION OF THE FUND, WE REQUIRE YOUR EXPLANATION AS TO WHY SAID DISCLOSURE OF CONFIDENTIAL INFORMATION HAS BEEN AUTHORIZED AND FOR WHAT REASON THE ISLAMIC REPUBLIC OF IRAN HAS NOT BEEN INFORMED BY THE FUND OF SUCH AUTHORIZATION AND DISCLOSURE.

TRULY YOURS MOHSEN NOURBAKHSI GOVERNOR BANK MARKAZI IRAN.

213065 MZBK IR

440040 FUND UI

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2 MD 5/13/83

Office Memorandum

Mr. de Larosiere

MAY 12 1983

TO: The Acting Managing Director

FROM: James G. Evans, Jr. *[Signature]*

SUBJECT: Islamic Republic of Iran: Request for Information on Exchange System

May 12, 1983

Attached are documents on two matters relating to the subject. The first is a draft telex to the Governor of the Bank Markazi, Iran, responding to his telex of May 10, 1983. While in the May 10 telex, the Governor initially concedes that information regarding a member's exchange arrangements and their status under the Articles is not confidential, he asserts this applies only if the information has not been "published". The basis for this assertion is "the confidentiality requirements of resolution dated September 25, 1946 as amended on June 22, 1979", and that the staff member concerned had to check the relevant records of the Fund to ascertain whether Iran had sought or been given approval "to impose or reimpose exchange controls or currency restrictions since 1978."

The "resolution of September 25, 1946 as amended on June 22, 1979" is assumed to be a reference to Rule N-6, which reads:

Persons on the staff of the Fund, and persons formerly on the staff of the Fund, shall not, at any time, without the express authorization of the Managing Director: (i) reveal any unpublished information known to them by reason of their service with the Fund to a person not authorized by the Fund to receive the information; or (ii) use, or allow the use of, unpublished information known to them by reason of their service with the Fund for private advantage, directly or indirectly, or for any interest contrary to that of the Fund as determined by the Managing Director.

The proper response to the assertion that Rule N-6 applies is that by Executive Board Decision No. 446-4, adopted June 10, 1949, the Fund has authorized the information in question to be made available to those who ask for assistance and advice as to whether exchange control regulations are being maintained or imposed consistently with the Fund Agreement. And this is the response proposed in the draft telex.

Also of pressing importance is the second item, a draft paper for the Executive Board transmitting the request by the law firm of Wald, Harkrader & Ross for written answers to the questions that were the subject of the earlier affidavit filed by that firm with the Iran-U.S. Claims Tribunal. The litigation and letter were the subjects of a more

recent letter dated May 11, 1983 from Ms. Lucy F. Reed, which, with an attachment, was sent to you and distributed to interested departments yesterday. The paper and the draft proposed response are, I hope, self-explanatory.

Attachments

cc: The Managing Director (on return) ✓
Mr. Ray
Mr. Mookerjee
Mr. Quirk
Mr. Carter

GOVERNOR M. NOURBAKHSH
BANK MARKAZI
ISLAMIC REPUBLIC OF IRAN

IN RESPONSE TO YOUR TELEX OF MAY 10, 1983, I AM GLAD THAT WE CAN NOW AGREE THAT INFORMATION CONCERNING A MEMBER'S EXCHANGE SYSTEM IS NOT AND CANNOT BE CONSIDERED CONFIDENTIAL INFORMATION UNDER THE ARTICLES OF AGREEMENT. INFORMATION CONCERNING ANY MEMBER'S EXCHANGE SYSTEM AND WHETHER THAT SYSTEM IS BEING MAINTAINED CONSISTENTLY WITH THE ARTICLES HAS BEEN PROVIDED FOR OVER THIRTY YEARS TO ALL WHO ASK, IN ACCORDANCE WITH EXECUTIVE BOARD DECISION NO. 446-4 OF JUNE 10, 1949, WHICH GIVES THE REQUISITE APPROVAL AND PRIOR AUTHORIZATION FOR THE TRANSMITTAL OF THE FACTS OF EVERY MEMBER'S EXCHANGE SYSTEM, INCLUDING WHETHER OR NOT ASPECTS OF A MEMBER'S EXCHANGE SYSTEM REQUIRE APPROVAL UNDER ARTICLE VIII AND WHETHER THIS APPROVAL HAS BEEN GIVEN.

AFTER YOUR MARCH 17 TELEX CONCERNING THE AFFIDAVIT FILED WITH THE U.S.-IRAN TRIBUNAL BY A WASHINGTON LAW FIRM, WE INQUIRED INTO THE MATTER BY TELEPHONE AND IN

THE CONVERSATION THE LAW FIRM WAS INFORMED THAT THE
PROCEDURE IT HAD FOLLOWED WAS NOT THE NORMAL ONE EXPECTED
TO BE USED TO ELICIT INFORMATION FOR SUBMISSION IN
LITIGATION AND THE USE OF THIS PROCEDURE WITHOUT OUR
KNOWLEDGE HAD CAUSED THE FUND EMBARRASSMENT. THERE IS
AS YET NO WRITTEN COMMUNICATION FROM THE FUND TO THE
LAW FIRM WHICH SUBMITTED THE AFFIDAVIT, AS THE WRITTEN
RESPONSE TO THEIR REQUEST FOR ANSWERS TO SPECIFIC
QUESTIONS IS NOW BEING SUBMITTED TO THE EXECUTIVE BOARD.
REGARDS.

DE LAROSIERE

INTERFUND



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214255 ?ZBK IRGOOD DAY SIR
THIS IS BANK MARKAZI IRAN CALLIN

WE SENT YOU A MESSAGE FEW MINUTES AGO NOW WE REPEAT IT
AGAIN

WE SEND YOU A CORRECT TELES
PLS AVOID DUPLICATION

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ORIG: ETR

CC : MD

DMD

MR. SALEH-KHOU

LEG

MED

MR. FLICKENSCHILD

MR. N. CARTER

MAY, 10, 1983

TO: M.E.J. DELAROSIERE
MANAGING DIRECTOR
INTERNATIONAL MONETARY FUND
WASHINGTON D.C.

I AM IN RECEIPT OF YOUR TELEX DATED MAY 6, 1983 IN
REPLY TO OURS OF MARCH 17 AND MAY 3, 1983 AND I WISH TO THANK YOU
FOR THE PERSONAL ATTENTION YOU HAVE PAID TO THE POINTS RAISED
IN OUR TELEXES.

I CONSIDER IT NECESSARY, HOWEVER, TO BRING SOME FURTHER
POINTS TO YOUR ATTENTION IN ORDER TO CLARIFY THE ISSUES
DISCUSSED, IN PARTICULAR, IN OUR TELEX OF MAY 3, 1983 AND ASK
FOR YOUR FURTHER CONSIDERATION OF THE MATTER.

1- WE CONCUR WITH YOUR POINT THAT INFORMATION REGARDING
A MEMBER'S EXCHANGE ARRANGEMENTS AND THEIR STATUS UNDER
THE FUND'S ARTICLES OF AGREEMENT ARE NOT CONFIDENTIAL. BUT IN
OUR OPINION THIS APPLIES TO SUCH INFORMATION IN SO FAR
AS THEY HAVE BEEN PUBLISHED, THE UNPUBLISHED INFORMATION FALLING
UNDER THE CONFIDENTIALITY REQUIREMENTS OF RESOLUTION DATED
SEPTEMBER 25, 1946 AS AMENDED ON JUNE 22, 1979.

MOREOVER, WE WOULD LIKE TO POINT OUT THAT IN THIS PARTICULAR
CASE THE OFFICER CONCERNED IS SAID, IN THE OFFWDOVIT OF
MARY DUFFY BECKER, TO HAVE CHECKED " THE RELEVANT RECORDS OF
THE INTERNATIONAL MONETARY FUND AND FOUND THAT IRAN HAS
NEITHER SOUGHT NOR RECEIVED APPROVAL FROM THE INTERNATIONAL
MONETARY FUND TO IMPOSE OR REIMPOSE EXCHANGES CONTROLS OR
CURRENCY RESTRICTIONS SINCE JANUARY 1978".

AS EMPHESISED IN OUR TELEX OF MAY 3, 1983, THIS IS EXACTLY THE
ACT WHICH WE CONSIDER A BREACH OF THE PRINCIPLES OF CONFIDENTIA-
LITY UNDER THE ABOVE REFERED RESOLUTION OF SEPTEMBER 25, 1946
AS AMENDED ON JUNE 22, 1979.

IN OUR OPINION THE FUND'S RECORDS ON THE COMMUNICATIONS OF THE
MEMBERS WITH THE FUND, INCLUDING INFORMATION CONCERNING WHETHER
OR NOT IRAN HAS SOUGHT OR OBTAINED THE APPROVAL OF THE
FUND FOR IMPOSING ANY CURRENCY CONTROLS, MAY NOT BE RELEASED
TO THIRD PARTIES, EVEN ON AN INFORMAL BASIS, WITHOUT THE
PRIOR AUTHORIZATION OF THE FUND.



IMF OFFICIAL CABLE

ACCORDINGLY, WE ASK AGAIN WHETHER OR NOT THE RELEASE OF SAID INFORMATION WAS BASED UPON YOUR EXPRESS AUTHORIZATION.

2- IN CASE THE INFORMATION WAS GIVEN TO THE RELEVANT LAW FIRM WITHOUT YOUR EXPRESS AUTHORIZATION AND, AS YOU HAVE STATED IN YOUR TELEX, WITHOUT THE KNOWLEDGE OR ANY INDICATION THAT IT WOULD BE INCORPORATED IN AN OFFIDAVIT TO BEE USED IN A LIGAL PROCEEDING, WE CONSIDER IT APPROPRIATE THAT YOU SHOULF REFLECT THIS FACTS TO THE IRAN-UNITED STATES CLAIMS TRIBUNAL ASKING THE TRIBUNAL TO IGNORE MARY DUFFY BACKER'S AFFIDAVIT AS A DOCUMENT WHICH MAY BE USED BY THE TRIBUNAL IN ADOPTING A DECISION.

3- WE WOULD ALSO APPROCIATE IT IF YOU COULD ARRANGE FOR SENDING US A COPY OF YOUR COMMUNICATIONS WITH THE RELEVANT LAW FIRM COMPLAINING ABOUT THEIR IRREGULAR PROCEDURE FOR THE USE OF THE SAID INFORMATION GIVEN TO THEIR LAYEEEEEE LAWYER.

4- WE ALSO APPRECIATE VERY MUCH YOUR STATEMENT THAT PROPER PROCEDURE WOULD BE FOLLOWED IN RESPONDING TO THE ENQUIRES FOR INFORMATION REGARDING THE CONSISTANCY OF PARTICULAR EXCHANGE CONTROL REGULATIONS MAINTAINED BY MY COUNTRY.

WE HOPE THAT YOUR RESPONSE WILL BE SUCH REFLECTION OF THE FACTS THAT IT WOULD, HOPEFULLY, MITIGATE THE DAMAGE CAUSED BY INDISCRETENESS OF ONE OF THE MEMBERS OF THE FUND'S STAFF.

BEST REGARDS M.NOURBAKSH, GOVERNOR, BANK MARKAZI IRAN.
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REPLY VIA ITT

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INTERNATIONAL MONETARY FUND

Islamic Republic of Iran: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations
and Middle Eastern Departments)

Approved by George P. Nicoletopoulos

May , 1983

A law firm has made certain inquiries with respect to the exchange system maintained by Iran; in particular, a written response has been requested to the following questions:

"First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?"

The entire letter is set out as Attachment A. The "relevant pages of the Bank Markazi's memorial" and the affidavit by Mary Duffy Becker referred to in the second and third paragraphs of this letter have

not been reproduced, but are available for perusal in the office of the Secretary.

To comply with this request, it is proposed that the draft response from the Director of the Legal Department, which is set forth as Attachment B, be sent to the requesting law firm. The proposed responses are set forth in paragraphs 2, 3, and 4 of the proposed letter, as follows:

"2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, a member may maintain and adapt to changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. Once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

4. Publication of information regarding a member's exchange controls or exchange restrictions in the Fund's Annual Report does not constitute or indicate Fund approval of such controls or restrictions. The Annual Report on Exchange Arrangements and Exchange Restrictions, which was entitled Annual Report

on Exchange Restrictions until 1978, contains information on the trade and payments aspects of a member's restrictive system, as well as the member's exchange arrangements. This information is published without reference to whether or not any particular measure, if subject to Article VIII, has or has not been approved."

It is recommended that the Fund respond in accordance with Attachment B, and the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to transmit the letter which is set forth as Attachment B to EBD/83/___/."

- 4 -

WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1697

March 24, 1983

George P. Nicoletopoulos, Esq.
Director of the Legal Department
International Monetary Fund
700 19th Street, N.W., Room 8-320
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

This law firm represents a United States corporation with a claim against the Islamic Republic of Iran pending before the Iran-U.S. Claims Tribunal in The Hague. In our Hearing Memorial filed on December 1, 1982, we alleged, in a general manner, that certain Iranian exchange controls and currency restrictions are violative of International Monetary Fund regulations.

In a late filing, served on us less than a week before our February 28, 1983, hearing before the Tribunal, Bank Markazi for the first time claimed that exchange restrictions "[had] been approved by the International Fund and [had] been advertised in the Fund's [1980] Annual Report." We attach relevant pages of Bank Markazi's memorial for your information. Because filings with the Tribunal are not public, we request that you use these Iranian documents only for confidential in-house purposes.

Because we only had four working days to prepare a response, and given that we were in London preparing witnesses, our only alternative

- 5 -

was to have one of our Washington attorneys telephone the Exchange Control Division at the Fund to confirm our understanding that Bank Markazi's arguments were erroneous. Messrs. Hans Flickenschild and Peter Quirk of that Division, who were extremely helpful, informed us that: (1) Iran had not sought or received Fund approval to impose exchange controls or currency restrictions under Article XIII of the Fund's Articles since 1974 (when, to cite the Fund's 1975 Annual Report, "exchange restrictions were abolished in principle by Iran"); (2) Iran had not sought or received Fund approval to reimpose transitional controls or restrictions originally authorized under Article XIV; and (3) publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report does not constitute or indicate approval of such controls or restrictions by the Fund. We submitted this information to the Tribunal in the form of an affidavit by Mary Duffy Becker, the Washington attorney who contacted Messrs. Flickenschild and Quirk. A copy of that affidavit is attached to this letter.

Now that we have returned to Washington, we would like to confirm this information through formal channels. Mr. Quirk recommended that we ask your office for a written response to the following questions: First, since 1974, has Iran sought or received approval from the International Monetary Fund pursuant to Article VIII of the Articles of Agreement of the Fund: 1) to impose exchange controls or currency restrictions on the making of payments for current international transactions, or to engage in or permit any of its fiscal agencies to

- 6 -

engage in any discriminatory currency agreements or multiple currency practices; or 2) to reimpose transitional arrangements of which Iran availed itself under Article XIV? Second, does publication of information regarding a country's exchange controls or currency restrictions in the Fund's Annual Report constitute or indicate Fund approval of such controls or restrictions?

We thank you in advance for your cooperation. Please call if you have any questions (828-1606).

Sincerely yours,

(Signed) Joseph P. Griffin

Enclosures

Dear Mr. Griffin:

This letter is in response to the questions that you have raised in your letter of March 24, 1983.

1. As a preliminary observation to your questions, I should point out that a member needs to seek the approval of the Fund only for those exchange measures that fall within the definition of Article VIII, Sections 2(a) and 3 of the Fund's Articles of Agreement, and the maintenance of which is not otherwise authorized by the Articles. Thus, approval is not required for exchange measures maintained in accordance with the provisions of Article XIV, Section 2, or for exchange controls that are necessary to regulate international capital movements, as long as these controls do not restrict payments for current transactions or unduly delay transfers of funds to settle commitments, as provided by Article VI, Section 3. Whether a particular measure is an exchange measure, and whether it is an exchange measure that would be subject to approval under Article VIII, can only be answered after an examination of the measure in question.

2. Iran has not sought or received approval from the Fund since 1974 for the imposition of any exchange measures that are subject to Fund approval. As noted above, whether or not any particular measure is or is not subject to approval under Article VIII can only be answered with respect to the measure in question.

3. Under Article XIV, a member may maintain and adapt to

changing circumstances those exchange restrictions, including multiple currency practices and discriminatory currency arrangements, that the member had when it joined the Fund. Once a member has eliminated or ceased to apply a measure, the measure cannot be reintroduced or reapplied under Article XIV. Any such reintroduction or reapplication of the measure is subject to approval by the Fund in accordance with Article VIII.

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5. In this connection, I should express our displeasure that an earlier informal inquiry by a lawyer with your firm along the same lines as the present request was used without our knowledge as the basis for an affidavit, submitted by your firm in legal proceedings, that attributed certain statements to a member of the Fund's staff.

- 9 -

While the statements were accurate, this is an unusual procedure. The normal course is for a formal request, such as you are now making, to be made of the Fund if the intention is that the response is to be used in a formal legal proceeding.

Sincerely yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. Joseph P. Griffin
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036



IRAN

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214255 ?ZBK IRGOOD DAY SIR
THIS IS BANK MARKAZI IRAN CALLIN

WE SENT YOU A MESSAGE FEW MINUTES AGO NOW WE REPEAT IT AGAIN

WE SEND YOU A CORRECT TELES
PLS AVOID DUPLICATION

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MR. SALEH-KHOU

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MR. FLICKENSCHILD

MR. N. CARTER

MAY, 10, 1983

TO: M.E.J. DELAROSIERE
MANAGING DIRECTOR
INTERNATIONAL MONETARY FUND
WASHINGTON D.C.

I AM IN RECEIPT OF YOUR TELEX DATED MAY 6, 1983 IN REPLY TO OURS OF MARCH 17 AND MAY 3, 1983 AND I WISH TO THANK YOU FOR THE PERSONAL ATTENTION YOU HAVE PAID TO THE POINTS RAISED IN OUR TELEXES.

I CONSIDER IT NECESSARY, HOWEVER, TO BRING SOME FURTHER POINTS TO YOUR ATTENTION IN ORDER TO CLARIFY THE ISSUES DISCUSSED, IN PARTICULAR, IN OUR TELEX OF MAY 3, 1983 AND ASK FOR YOUR FURTHER CONSIDERATION OF THE MATTER.

1- WE CONCUR WITH YOUR POINT THAT INFORMATION REGARDING A MEMBER'S EXCHANGE ARRANGEMENTS AND THEIR STATUS UNDER THE FUND'S ARTICLES OF AGREEMENT ARE NOT CONFIDENTIAL. BUT IN OUR OPINION THIS APPLIES TO SUCH INFORMATION IN SO FAR AS THEY HAVE BEEN PUBLISHED, THE UNPUBLISHED INFORMATION FALLING UNDER THE CONFIDENTIALITY REQUIREMENTS OF RESOLUTION DATED SEPTEMBER 25, 1946 AS AMENDED ON JUNE 22, 1979.

MOREOVER, WE WOULD LIKE TO POINT OUT THAT IN THIS PARTICULAR CASE THE OFFICER CONCERNED IS SAID, IN THE OFFWDOVIT OF MARY DUFFY BECKER, TO HAVE CHECKED "THE RELEVANT RECORDS OF THE INTERNATIONAL MONETARY FUND AND FOUND THAT IRAN HAS NEITHER SOUGHT NOR RECEIVED APPROVAL FROM THE INTERNATIONAL MONETARY FUND TO IMPOSE OR REIMPOSA EXCHANGES CONTROLS OR CURRENCY RESTRICTIONS SINCE JANUARY 1978".

AS EMPHESISED IN OUR TELEX OF MAY 3, 1983, THIS IS EXACTLY THE ACT WHICH WE CONSIDER A BREACH OF THE PRINCIPLES OF CONFIDENTIALITY UNDER THE ABOVE REFERED RESOLUTION OF SEPTEMBER 25, 1946 AS AMENDED ON JUNE 22, 1979.

IN OUR OPINION THE FUND'S RECORDS ON THE COMMUNICATIONS OF THE MEMBERS WITH THE FUND, INCLUDING INFORMATION CONCERNING WHETHER OR NOT IRAN HAS SOUGHT OR OBTAINED THE APPROVAL OF THE FUND FOR IMPOSING ANY CURRENCY CONTROLS, MAY NOT BE RELEASED TO THIRD PARTIES, EVEN ON AN INFORMAL BASIS, WITHOUT THE PRIOR AUTHORIZATION OF THE FUND.



IMF OFFICIAL CABLE

ACCORDINGLY, WE ASK AGAIN WHETHER OR NOT THE RELEASE OF SAID INFORMATION WAS BASED UPON YOUR EXPRESS AUTHORIZATION.

2- IN CASE THE INFORMATION WAS GIVEN TO THE RELEVANT LAW FIRM WITHOUT YOUR EXPRESS AUTHORIZATION AND, AS YOU HAVE STATED IN YOUR TELEX, WITHOUT THE KNOWLEDGE OR ANY INDICATION THAT IT WOULD BE INCORPORATED IN AN OFFIDAVIT TO BEE USED IN A LIGAL PROCEEDING, WE CONSIDER IT APPROPRIATE THAT YOU SHOULF REFLECT THIS FACTS TO THE IRAN-UNITED STATES CLAIMS TRIBUNAL ASKING THE TRIBUNAL TO IGNORE MARY DUFFY BACKER'S AFFIDAVIT AS A DOCUMENT WHICH MAY BE USED BY THE TRIBUNAL IN ADOPTING A DECISION.

3- WE WOULD ALSO APPROCIATE IT IF YOU COULD ARRANGE FOR SENDING US A COPY OF YOUR COMMUNICATIONS WITH THE RELEVANT LAW FIRM COMPLAINING ABOUT THEIR IRREGULAR PROCEDURE FOR THE USE OF THE SAID INFORMATION GIVEN TO THEIR LAYEEEEEE LAWYER.

4- WE ALSO APPRECIATE VERY MUCH YOUR STATEMENT THAT PROPER PROCEDURE WOULD BE FOLLOWED IN RESPONDING TO THE ENQUIRES FOR INFORMATION REGARDING THE CONSISTANCY OF PARTICULAR EXCHANGE CONTROL REGULATIONS MAINTAINED BY MY COUNTRY.

WE HOPE THAT YOUR RESPONSE WILL BE SUCH REFLECTION OF THE FACTS THAT IT WOULD, HOPEFULLY, MITIGATE THE DAMAGE CAUSED BY INDISCRETENESS OF ONE OF THE MEMBERS OF THE FUND'S STAFF.

BEST REGARDS M.NOURBAKSH, GOVERNOR, BANK MARKAZI IRAN.
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CONNECT TIME : 804 SECONDS



Office Memorandum

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MAY 6 1983

To: The Managing Director May 6, 1983
From: George P. Nicoletopoulos and *S.P.N.*
Subimal Mookerjee *SM*
Subject: Reintroduction of Exchange Practices Originally
Maintained Under Article XIV

A search of our files has revealed several cases in which member countries availing themselves of the transitional arrangements of Article XIV have reintroduced restrictions or multiple currency practices originally maintained under the dispensation provision of Article XIV, Section 2. In all of these cases, the reintroduced exchange practices were declared subject to Article VIII, and approval for their temporary retention was either granted or denied. Specific cases are attached.

Attachment

CYPRUS

Cyprus tightened significantly the exchange allocation for travel abroad that was maintained under Article XIV in August 1974 (SM/75/283, pp. 9-10). As a result of the tightening, the restriction was considered as falling under Article VIII and temporary approval was given in accordance with that Article (SM/75/283, Sup.1).

INDONESIA

With the elimination of advance import and financial guarantee deposits in December 1978 Indonesia's exchange system was free of restrictions (SM/79/193). However, a change in the administration of export taxes led to the emergence of new multiple currency practices which were approved under Article VIII on a temporary basis in early 1983 (Executive Board Decision of January 7, 1983).

MAURITANIA

Mauritania abolished all exchange controls in 1967, and reimposed such controls from May 1968 to October 1968 before reintroducing and tightening exchange controls in November and December 1968 (SM/70/141, p.72). The measures were subject to approval under Article VIII but no approval was given by the Fund (Executive Board Decision of December 30, 1968).

PORTUGAL

Except for one bilateral payments agreement, Portugal eliminated all restrictions maintained under Article XIV by 1971 (SM/71/27, pp. 52-55). Subsequently, restrictions on the availability of foreign exchange for travel abroad and for the remittance of profits and dividends were introduced (SM/76/186, p.11). The measures were subject to approval under Article VIII. Neither restriction was approved by the Fund (SM/76/186, Sup.2).

SOUTH AFRICA

In 1948 South Africa had in effect no exchange restrictions other than very minor procedural rules regarding sterling area payments and had informed the Fund officially that it did not maintain any restriction on making payments for current international transactions (Executive Board Document No. 136). It continued to avail itself of Article XIV. In November 1948 South Africa introduced some restrictions on the making of payments and transfers for current international transactions (Executive Board Document No. 371). It was asserted that, as the procedural and legislative authority for exchange restrictions was still in existence, the actions taken by South Africa constituted an adaptation rather than an introduction of exchange restrictions. At EBM 392 (1/10/49) the Fund determined that the measures were an introduction of new exchange restrictions and approved their introduction under Article VIII. Under the same Article the Fund authorized the member to maintain these restrictions and adapt them to changing circumstances as needed to safeguard the member's external financial position.

SYRIA

Syria maintained multiple currency practices under Article XIV at the time of the first consultation in 1952 (Executive Board Decision No. 164-(52/60). The free exchange market was abolished in February 1961 (SM/63/102, p.11) but reintroduced in June 1962 (SM/62/101, p.11). The new multiple currency practice, which was subject to approval under Article VIII, was not approved by the Fund (Executive Board Meeting No. 63/38 of June 28, 1963).

ZAIRE

Zaire maintained restrictions on the transfer abroad of salaries of foreign nationals in the form of an annual percentage limit that was first described in EBS/63/156 (p.8). This restriction was eliminated in 1968 (SM/70/156, p.64). It was reintroduced in 1971 (SM/73/122, p.14), and approved by the Fund (SM/73/122, Sup.1). Zaire also maintained a prohibition of transfers abroad of investment income that was first described in EBS/63/156, (p.8). It was eliminated in 1969 (SM/70/156, p.63), and was reintroduced in 1973 (SM/75/225, p.51). The measure was subject to approval under Article VIII, but was not approved by the Fund (SM/75/189, Sup.2).

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WASHINGTON, D. C. 20431

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18 I HAVE DELAYED RESPONDING TO YOUR TELEX OF MARCH 17
17 BECAUSE I WISHED TO MAKE A THOROUGH REVIEW OF THE
16 QUESTIONS THAT YOU HAVE RAISED. HAVING COMPLETED THE
15 REVIEW, I CAN NOW RESPOND TO THAT TELEX AND ALSO TO YOUR
14 TELEX OF MAY 3.
13 1. I REGRET THE DIFFICULTIES AND INCONVENIENCE THAT THE
12 TRANSMISSION BY THE STAFF OF THE INFORMATION REFERRED TO
11 IN YOUR TELEXES HAVE CAUSED YOUR GOVERNMENT. THE
10 INFORMATION WAS GIVEN TO THE LAW FIRM OF WALD, HARKRADER,
9 AND ROSS ON AN INFORMAL BASIS AND WITHOUT KNOWLEDGE OR
8 INDICATION THAT IT WOULD BE INCORPORATED IN AN AFFIDAVIT
7 THAT WAS TO BE USED IN A LEGAL PROCEEDING. WE HAVE
6 ALREADY COMPLAINED TO THE LAW FIRM ABOUT THEIR IRREGULAR
5 PROCEDURE FOR THE USE OF THE INFORMATION GIVEN TO THE
4 LAWYER, AND, IN RETROSPECT, IF IT HAD BEEN KNOWN THAT THERE
3 WAS TO BE SUCH USE, WE WOULD CERTAINLY HAVE INFORMED YOUR
2 EXECUTIVE DIRECTOR OF THE ENQUIRY. I CONSIDER THAT HE
1 SHOULD HAVE BEEN INFORMED EVEN SO, AND HAVE INSTRUCTED

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18 THE STAFF TO FOLLOW THIS PRACTICE IN FUTURE IN ALL SUCH
17 CASES.
16 2. ON THE GENERAL QUESTION OF THE CONFIDENTIALITY
15 REFERRED TO IN YOUR TELEXES, I SHOULD LIKE TO BRING TO
14 YOUR ATTENTION THAT INFORMATION REGARDING A MEMBER'S
13 EXCHANGE ARRANGEMENTS AND OTHER EXCHANGE MEASURES, AS WELL
12 AS THEIR STATUS UNDER THE FUND'S ARTICLES OF AGREEMENT,
11 IS NOT CONFIDENTIAL INFORMATION UNDER THE FUND'S WELL-
10 ESTABLISHED LAW AND PRACTICE. UNDER THE FUND'S ARTICLES
9 OF AGREEMENT, EACH MEMBER MUST KEEP THE FUND INFORMED IN
8 DETAIL OF ITS EXCHANGE ARRANGEMENTS AND MEASURES, AND
7 CHANGES IN THEM AS THEY ARE MADE. BECAUSE THESE
6 ARRANGEMENTS AND MEASURES AFFECT OTHER MEMBERS AND HAVE
5 CONSEQUENCES, INCLUDING LEGAL CONSEQUENCES, FOR PERSONS IN
4 THEIR TERRITORIES, THE FUND, IF IT IS TO FULFILL ITS
3 PURPOSES AND TO APPLY ITS ARTICLES OF AGREEMENT, MUST BE
2 ABLE TO INFORM OTHER MEMBERS AND OTHER INTERESTED PARTIES
1 ABOUT THESE ARRANGEMENTS AND MEASURES AND THEIR STATUS

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WASHINGTON, D. C. 20431

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18 UNDER THE ARTICLES. IN THIS CONNECTION, I WOULD DRAW YOUR
17 ATTENTION TO A DECISION OF THE FUND WHICH DECLARED THAT THE
16 FUND STANDS READY TO ADVISE INTERESTED PARTIES REGARDING
15 THE STATUS UNDER THE FUND'S ARTICLES OF AGREEMENT OF A
14 MEMBER'S EXCHANGE CONTROL REGULATIONS. (EXECUTIVE BOARD
13 DECISION NO. 446-4 OF JUNE 10, 1949, PP. 201-202 OF
12 SELECTED DECISIONS, NINTH ISSUE)
11 3. CONSISTENTLY WITH THE PRINCIPLE OF PUBLIC DISCLOSURE
10 OF INFORMATION ON MEMBERS' EXCHANGE SYSTEMS, IT HAS BEEN
9 THE PRACTICE OF THE FUND TO RESPOND INFORMALLY TO REQUESTS
8 FOR INFORMATION CONCERNING A MEMBER'S EXCHANGE SYSTEM. NO
7 MEMBER HAS EXPRESSED CONCERN IN THE PAST ABOUT THE MANNER
6 IN WHICH WE HAVE BEEN DEALING WITH SUCH INFORMATION
5 REQUESTS.
4 4. WITH REGARD TO FORMAL ENQUIRIES FOR INFORMATION
3 REGARDING THE CONSISTENCY OF PARTICULAR EXCHANGE CONTROL
2 REGULATIONS OF MEMBERS WITH THE FUND'S ARTICLES THAT IS TO
1 BE USED IN LITIGATION, THE PRACTICE HAS BEEN TO PROVIDE

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THE INFORMATION AFTER CLEARING THE RESPONSE WITH THE
EXECUTIVE BOARD. I CAN ASSURE YOU THAT THE SAME
PROCEDURE WILL BE FOLLOWED WITH RESPECT TO FORMAL
ENQUIRIES REGARDING THE CONSISTENCY WITH THE FUND'S
ARTICLES OF PARTICULAR EXCHANGE CONTROL REGULATIONS
MAINTAINED BY IRAN.

REGARDS,
J. DE LAROSIERE

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INTERNATIONAL MONETARY FUND

M^r Nicoletopoulos

The Managing Director
had also asked what other
countries were in the same
position as Iran in terms of
Article XIV and appreciate
a list.

Thank you.

NC

Nigel Carter

5/5/83.

INTERNATIONAL MONETARY FUND

MAY 6 1983

May 5, 1983

TO : The Managing Director

FROM: George P. Nicoletopoulos *G.P.N.*

Subject: Iran - Telex to Governor Nourbakhsh

The attached is a proposed draft reply to the telexes from Governor Nourbakhsh of the Bank Markazi Iran. It has been agreed to by Mr. Dale.

cc: Mr. N. Carter

This is absolutely preposterous!

I spent 2 hours with Mr. Nicoletopoulos and Salikhan. And we explained to him that we always call on the interest ED (and eventually check with the bank) before issuing a statement that could be used in a court. And there is not one word of analogy here. Are there no limits to self interest and self righteousness?

G.P.N.
May 5, 83

INTERNATIONAL MONETARY FUND

May 5, 1983

TO : The Deputy Managing Director

FROM: George P. Nicoletopoulos *GP.N.*

Subject: Iran - Telex to Governor Nourbakhsh

I attach a draft of a reply that, subject to your agreement, Messrs. Shaalan, Palmer, and I would recommend that the Managing Director send to the Governor of Bank Markazi Iran.

Agreed.
GP.N.

I saw apu

Draft telex

Governor Mohsen Nourbakhsh
Bank Markazi Iran
Teheran, Iran

I have delayed responding to your telex of March 17 because I wished to make a thorough review of the questions that you have raised. Having completed the review, I can now respond to that telex and also to your telex of May 3.

1. I have not found anything in the conduct of the members of the staff that could be regarded as inconsistent with the rules of the Fund. Information regarding a member's exchange arrangements and other exchange measures, as well as their status under the Fund's Articles of Agreement, is not confidential information. Under the Fund's Articles of Agreement, each member must keep the Fund informed in detail of its exchange arrangements and measures, and changes in them as they are made. Because these arrangements and measures affect other members and have consequences, including legal consequences, for persons in their territories, the Fund, if it is to fulfill its purposes and to apply its Articles of Agreement, must be able to inform other members and other interested parties about these arrangements and measures and their status under the Articles. In this connection, I would draw your attention to a decision of the Fund which declared that the Fund stands ready to advise interested parties regarding the status under the Fund's Articles of Agreement of a member's exchange control regulations. (EB Decision No. 446-4 of June 10, 1949, pp. 201-202 of Selected Decisions, Ninth Issue)

2. Consistently with the principle of public disclosure of information on members' exchange systems, it has been the practice of the Fund to respond informally to all requests for information concerning a member's exchange system and its status under the Fund's Articles. No member has expressed concern in the past about the manner in which we have been dealing with such information requests.

3. With regard to formal enquiries for information regarding the consistency of particular exchange control regulations of members with the Fund's Articles that is to be used in litigation, the practice has been to provide the information after clearing the response with the Executive Board. I can assure you that the same procedure will be followed with respect to formal enquiries regarding the consistency with the Fund's Articles of particular exchange control regulations maintained by Iran.

4. As regards the affidavit prepared by a lawyer from the law firm of Wald, Harkrader, and Ross, I should like to state that it was prepared without the knowledge of anyone in the Fund. I understand that an informal enquiry was made by this lawyer and it appears that she turned that informal enquiry into an affidavit without informing those to whom she talked in the Fund. However, the information given to her is accurate and will be confirmed in response to a formal enquiry from the law firm.

Regards. deLarosiere



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TO: H.E. J. DELAROSIERE
MANAGING DIRECTOR
INTERNATIONAL MONETARY FUND
WASHINGTON D.C.

CC: MR. G. SALEHKHOO, EXECUTIVE DIRECTOR

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MR. SALEH-KHOU

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MR. FLICKENSCHILD

MR. N. CARTER

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I REFER TO OUR TELEX DATED MARCH 17,1983 TO WHICH WE SEEM TO HAVE RECEIVED NO RESPONSE SO FAR. I WISH TO HEREBY RECORD AGAIN OUR OBJECTION TO THE CONDUCTS OF ONE OF YOUR OFFICIALS IN ALLOWING THIRD PARTIES TO HAVE ACCESS TO CERTAIN UNPUBLISHED INFORMATION REGARDING THE RECORDS OF THE INTERNATIONAL MONETARY FUND ON IRAN'S COMMUNICATIONS WITH THE FUND. I CONSIDER THE CONDUCTS OF THE SAID OFFICIAL OF THE FUND A BREACH OF THE PRINCIPLES OF CONFIDENTIALITY AS CONTAINED IN THE REGULATION ADOPTED AS PART OF N-5 ON SEPTEMBER 25,1946 AND AMENDED ON JUNE 22,1979 WHICH PROHIBITS THE PERSON ON THE STAFF OF THE FUND TO REVEAL AT ANY TIME SUCH UNPUBLISHED INFORMATION THAT HAS COME TO THEIR KNOWLEDGE BY REASON OF THEIR SERVICE WITH THE FUND. IN OUR OPINION, REGARDLESS OF THE EXTENT OF THE NECESSITY OF THE APPROVAL BY THE FUND OF ANY EXCHANGE CONTROL REGULATION IMPOSED BY IRAN, ITEMS OF INFORMATION SUCH AS WHETHER OR NOT IRAN HAS SOUGHT OR OBTAINED THE APPROVAL OF THE FUND FOR IMPOSING ANY SUCH CONTROLS SHALL NOT BE RELEASED TO ANY THIRD PARTY WITHOUT PRIOR AUTHORIZATION OF THE FUND. ACCORDINGLY WE HEREBY REPEAT OUR REQUEST THAT (I) IF THE RELEASE OF THE SAID INFORMATION HAS NOT BEEN BASED ON A PRIOR AUTHORIZATION OF THE FUND WE REQUIRE THE FUND TO INFORM THE IRAN-UNITED STATES CLAIMS TRIBUNAL AT THE HAGUE, THE NETHERLANDS, IN WRITING OF THE SAME.

(II) IF THE RELEASE OF THE SAID INFORMATION HAS BEEN AUTHORIZED BY THE FUND WE REQUIRE YOUR

EXPLANATION AS TO WHY SUCH AUTHORIZATION HAS BEEN GIVEN AND FOR WHAT REASON IRAN HAS NOT BEEN INFORMED IN ADVANCE, BY THE FUND, OF SUCH AUTHORIZATION AND RELEASE. BEST REGARDS., M.NOURBAKSH, GOVERNOR FOR ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI IRAN.

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Office Memorandum

MAY 3 1983

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MEMORANDUM

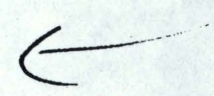
May 2, 1983

To: The Managing Director
From: George P. Nicoletopoulos, Donald K. Palmer, and A. S. Ray
Subject: Iranian Restrictions

G.P.N.

D.K.P.

A.S.R.



The memorandum of April 22, 1983 to you on this subject noted that a more complete description of Iran's exchange system would be submitted to you in a separate memorandum. The attached memorandum contains such a description of Iran's exchange system. A copy of this memorandum is being made available to Mr. Salehkhon in accordance with your promise to provide him with a copy of the memorandum.

Attachment
cc: The Deputy Managing Director
Mr. N. Carter

Iran: Developments in Exchange System, 1974-83

I. Pre-Revolution

1. At least as far back as 1973, Iran maintained a liberal exchange control system. This was noted in the Staff Report for the 1973 Article XIV consultation discussions with Iran, held in June 1973, as follows: "The authorities have increased considerably the exchange allowance for travel purposes. The mission noted that the strength of the balance of payments position permitted the authorities to remove the remaining minor restrictions on invisible payments. The Iranian representatives said that most of the remaining restrictions were not enforced; central bank approval was being maintained for surveillance of capital movements" (SM/73/209, 8/22/73, pp. 10-11). The Executive Board Decision at the conclusion of that consultation noted: "In the recent past, the authorities have relaxed considerably the restrictions on current invisible payments" (SM/73/209, 8/22/73, p. 18).

2. In January 1974, the Central Bank authorized two exchange markets, a commercial (or official rate) market and a noncommercial (or free rate) market. The introduction of this exchange system was notified to the Executive Board on January 25, 1974 (EBD/74/24, 1/25/74). The official rate was applied to foreign exchange proceeds of the public sector (mainly oil revenues) and import payments. Invisibles payments and capital transactions not authorized for the commercial market were effected freely in the noncommercial market. All other transactions were allowed to take place in either market. The exchange system was reviewed by the staff during the 1974 Article XIV consultation discussions (November 1974). The mission

concluded that the exchange system "effectively eliminated all the remaining exchange restrictions on current international payments as customers are permitted unlimited access to the noncommercial market for any purpose" (SM/75/24, 1/29/75, p.11). The Central Bank actively intervened in the noncommercial market so that the exchange rate in this market followed the official rate closely, within a 2 per cent spread. A multiple currency practice, therefore, did not arise. However, the 1974 Article XIV consultation report stated: "In case exchange rates should move beyond the permissible margins and/or spread the Iranian authorities would be obligated to notify the Fund and to seek its approval" (SM/75/24, 1/29/75, p. 12). No such notifications were sent to the Fund. The Executive Board Decision that concluded the 1974 consultation stated: "Iran's strong balance of payments position has permitted the effective elimination of all exchange restrictions" (SM/75/24, 1/29/75, p.14). The 1975 Annual Report on Exchange Restrictions (ARER) stated that "Payments for all current invisibles may be made freely through the noncommercial market. In addition, there are certain allocations at the official rate for travel, study, and medical treatment abroad" (ARER, 1975, p. 242). The analytical appendix to the ARER, 1975 indicated Iran as not having restrictions on payments in respect of current transactions and capital transactions.

Apart from a bilateral payments agreement maintained with Romania, Iran eliminated all restrictions on payments and transfers for current international transactions by 1974.

3. According to the ARERs for 1976, 77, and 78, and Staff Reports and Recent Economic Developments (RED) papers for the 1975, 1977, and 1978 Article XIV consultations, the situation with respect to exchange measures

that might have been subject to Article VIII remained unchanged until November 1978. The ARERs for 1975-78 continued to report under the heading Payments for Invisibles, that "Payments for all current invisibles may be made freely through the noncommercial market. In addition, there are certain allocations at the official rate for travel, study, and medical treatment abroad." Analytical Appendices to these reports indicated Iran as having no restrictions on payments in respect of current and capital transactions.

The RED paper for the 1975 Article XIV consultation, held in November 1975, stated that "Payments for all current invisibles (except those types of insurance that must be taken out in Iran) may be made freely through the free market. In addition, there are certain allocations at the official rate" (SM/76/13, 1/19/76, p.93). The RED paper for the 1977 Article XIV consultation, held in February 1977, stated: "There has been no change in the official exchange rate policy, nor has there been any change in regulations governing current payments" (SM/77/104, 5/10/77, p. 59). The RED paper for the 1978 Article IV consultation, held in July 1978, stated that "Iran's regulations governing current payments are liberal." (SM/78/239, 9/28/78, p.49). The staff report for that consultation stated: "Since the previous discussions no changes have been made in the regulations governing current payments, which continue to be liberal" (SM/78/235, 9/5/78, p. 7). The Executive Board decision also stated: "Iran maintains a liberal policy relating to current payments and transfers" (SM/78/235, 9/5/78, p. 11). In response to a question raised in the Board regarding the reference to a "liberal payments and transfer policy" in this 1978 decision, the Director of the Middle Eastern Department responded: "It was certainly correct to state in the proposed decision that Iran maintained a liberal policy relating to current payments and transfers. In fact, there

were no restrictions on payments and transfers. Iran had increased trade restrictions, but those were not payments restrictions. The tightening of trade restrictions had primarily taken the form of increases in import duties. It had been motivated partly by reasons of protection and partly by the authorities' desire to increase government revenues" (EBM/78/153, 10/6/78, p. 23).

II. Post-Revolution

Iran has not received a Fund mission since 1978 for the purpose of conducting consultations under Articles IV and XIV. The Fund has, therefore, not had an opportunity to assess adequately the developments in Iran's exchange system since that date. Certain summary information relating to the exchange system has been provided from time to time by the Iranian authorities for incorporation in the Fund's Annual Reports on Exchange Arrangements and Exchange Restrictions. A staff team also informally visited Teheran in February 1982, and obtained certain information concerning exchange regulations, in the form of Central Bank circulars. It was not able to ascertain determinatively, within the framework of the meetings held with the Iranian authorities at that time, if the authorization procedures described in the circulars were being implemented restrictively or not. The following descriptions incorporate this available information:

1. The dual exchange market system was modified in November, 1978 (EBS/78/693, 12/19/78). Effective November 14, 1978, the Central Bank ceased to support the exchange rate in the noncommercial market. Effective May 5, 1979, a preferential exchange rate applicable to all export proceeds and to payments for transactions to be approved by the Central Bank on a case-by-case basis was introduced, and this change was notified to the

Fund (EBS/79/367, 6/29/79). It is not clear whether, as a result of the 1979 change, the previous noncommercial market was abolished, and the exchange system consisted of the commercial market and the "preferential" exchange rate market, or the "preferential" exchange rate market represented a third market (EBS/80/121, 5/30/80).

2. Also on November 14, 1978, Iran announced major changes in its exchange system, and the notification to the Fund of these changes was issued to the Executive Board for information (EBS/78/693, 12/19/78). The main changes included the following: (a) certain invisible payments were shifted from the noncommercial to the commercial market; (b) certain foreign exchange transactions that could previously take place in the non-commercial market without limits, and in the commercial market subject to certain limits, were totally shifted to the commercial market and specified limits imposed; (c) a monthly limit on foreign travel and study abroad was established; and (d) sales of all foreign exchange in the commercial market, with some minor exceptions, were subjected to the prior approval of the Central Bank. In noting that the changes in the exchange control measures appeared to be designed to halt capital outflows, EBS/78/693 stated that "the staff will be in touch with the authorities to discuss the restrictions on the making of payments and transfers for current international transactions as well as multiple currency practices that may have arisen as a result of these measures." Since 1979, analytical appendices to the Annual Report on Exchange Arrangements and Exchange Restrictions have indicated that Iran maintains restrictions on payments in respect of current and capital transactions.

3. Restrictions on invisible payments were intensified in 1979. In March, a monthly limit of US\$1,000 for education abroad was established, and sales of foreign exchange for medical treatment abroad were subjected to

the approval of the Central Bank. In April, the amount of foreign exchange that could be remitted in payment for subscriptions to newspapers and periodicals, for membership fees in scientific and cultural institutions, and for miscellaneous expenses abroad without the prior approval of the Central Bank, was set at the equivalent of US\$100. Since June 13, remittances up to the equivalent of US\$500, at the unofficial rate of Rls 105 per US\$1, were permitted for the following purposes: subscriptions to foreign publications, membership fees in scientific, cultural, and international institutions, purchases of books, educational expenses for pupils in elementary schools (on a monthly basis), expenditures incurred in obtaining acceptance at foreign universities, and travel allowances for spouses accompanying a passport holder. Since July 8, persons in need of medical treatment abroad could obtain foreign exchange up to the equivalent of US\$10,000 (divided equally between the official and unofficial rates), provided they deposited Rls 30 against each dollar bought. Iranian nationals traveling abroad as individuals were entitled to buy the equivalent of US\$2,000 at the official rate and US\$2,000 at the unofficial rate. A family traveling abroad accompanying the holder of a valid passport could obtain foreign exchange up to the equivalent of US\$10,000 (divided equally between the official and unofficial rates), provided a deposit of Rls 30 was made against each dollar bought. The deposit could be reclaimed by the traveler on return to Iran. On October 6, the basic annual foreign exchange allowance for an individual traveler was reduced to US\$750 at the official rate and US\$1,500 at the unofficial rate, and the maximum annual allowance for a family (husband, wife, and two children) was set at US\$6,000. The requirement that Rls 30 be deposited for each dollar bought was abolished.

4. In 1980, no changes were made by the Iranian authorities to the restrictions on current payments. In 1981, the basic annual foreign exchange allowance for travel was reduced to the equivalent of US\$1,000 (from US\$2,500), and the maximum limits on sales of foreign exchange to students studying abroad were reduced from the equivalent of US\$1,000 a month (US\$1,500 for married students) to the equivalent of US\$750 a month (with an additional allowance of 35 per cent for married students). The dates of these changes are not known.

