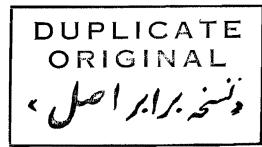
دیوان داوری دعادی ایران - ایالات معنی

ORIGINAL DOCUMENTS IN SAFE

Case No. <u>66</u>	Date of	filing:	31 Ju	n 90
- Date of	Award <u>Award</u> Award <u>31 Jon 90</u> pages in English	23	pages i	n Farsi
** <u>DECISION</u> - Date of			pages i	n Farsi
** CONCURRING OPINION	of			
	pages in English			n Farsi
	pages in English of			n Farsi
- Date	pages in English ocument:		pages i	
	pages in English		pages i	n Farsi

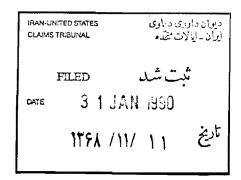
دیوان داوری دعاوی ایران - ایالات متحی



THE STANWICK CORPORATION,
STANWICK INTERNATIONAL, INC.,
Claimants,

and

CASE NO. 66 CHAMBER ONE AWARD NO. 467-66-1



THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI IRAN,
BANK MELLAT,
BANK TEJARAT,

Respondents.

AWARD

Appearances

For the Claimants:

Mr. Robert B. Wallace,

Counsel,

Mr. Andrew Bodnarok,
Mr. Charles P. Revoile,

Representatives.

For the Respondents:

Mr. Ali H. Nobari, Deputy Agent,

Dr. Ali Akbar Riyazi,

Legal Adviser to the Agent,

Mr. Mohammad Asbaghi,

Legal Assistant to the Agent,

Mr. Mohammad Ali Behabadi, Representative of Bank Markazi Jomhouri Islami Iran,

Mr. Hossein Ali Farzad,
Representative of Bank Markazi
Jomhouri Islami Iran, Bank
Tejarat, and Bank Mellat.

Also present: Mr. Michael F. Raboin,
Deputy Agent of the United
States of America.

A. PROCEEDINGS

- On 17 November 1981, the Claimants, THE STANWICK 1. CORPORATION and STANWICK INTERNATIONAL, INC. 1, filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), THE NATIONAL IRANIAN NAVY ("Navy"), THE NATIONAL IRANIAN AIR FORCE ("Air Force"), IRANIAN MINISTRY OF WAR ("Ministry of Defence"), BANK MARKAZI IRAN ("Bank Markazi"), BANK MELLAT (formerly International Bank of Iran), and BANK TEJARAT (formerly Iranians' seeking (1) payment allegedly outstanding under various contracts for management and engineering services entered into with the Navy and the Air Force, (2) the exchange and transfer of funds deposited in bank accounts at Bank Mellat and Bank Tejarat, and (3) reimbursement of costs incurred in maintaining an office in Tehran from 1 March 1979 through 15 December 1979.
- 2. On 3 June 1982 and 11 October 1982, the Navy and the Ministry of Defence, respectively, filed separate Statements of Defence. The Navy's Statement of Defence contained a Counterclaim. Bank Mellat filed its Statement of Defence on 3 June 1982. On 10 August 1982, Bank Markazi filed a Statement of Defence, and Bank Tejarat filed a Statement of Defence and Counterclaim.
- 3. By two Partial Awards on Agreed Terms, Award No. 83-66-1 (4 Nov. 1983), reprinted in 4 Iran-U.S. C.T.R. 20 and Award No. 101-66-1 (11 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 76, all claims and counterclaims between Stanwick and the Ministry of Defence, the Air Force and the Navy were settled. As expressly stated in the Joint Request for an Arbitral Award on Agreed Terms and acknowledged in the Partial Awards on Agreed Terms rendered by the Tribunal,

¹ Hereinafter collectively referred to as
"Stanwick."

Stanwick's claims against other Parties were not affected by the settlement agreements.

- 4. Stanwick maintained its Claims against the Government of the Islamic Republic of Iran, Bank Mellat, Bank Tejarat and Bank Markazi for the exchange and transfer of bank funds and reimbursement of costs incurred in maintaining an office in Tehran. After Stanwick had filed a "Reply to the Statement of Defence of Bank Markazi, Bank Mellat, and Bank Tejarat" on 14 January 1983, Bank Markazi filed a Supplementary Brief on 9 December 1985.
- 5. Following submission of further written pleadings by Stanwick and the Respondent banks, a Hearing in this Case was held on 2 November 1988.
- At the Hearing, Stanwick reduced its Claim for costs allegedly incurred in maintaining an office in Tehran, in view of the two Settlement Agreements reached in this Case, to one third of the amount of \$262,114 initially claimed in this respect.

B. Facts and Contentions

7. Indisputably, Stanwick has deposits totalling 61,240,510 rials with Bank Mellat and Bank Tejarat under the following account numbers:

Bank Mellat Account No.	<u>rials</u>
615-11-09995	
New No. 201/01	42,322,169
615-11-10001	
New No. 202/09	313,589
615-11-10019	
New No. 203/06	100,000
New No. 203/00	100,000
615-11-10027	
New No. 204/003	118,941
	42.854.699
	42,854,699

Bank Tejara	at Account No.	<u>rials</u>
60043-1	(16040525)	18,196,417
60082-2	(16040606)	96,950
60491-7	(16041165)	19,211
60493-3	(16041173)	73,233
		18,385,811

8. Stanwick contends that these funds represent payments under two contracts entered into with the Navy on 21 March 1977 (the "Navy contract") and the Imperial Government of Iran on 22 June 1958 (the "Air Force contract"). Both agreements provided for payment of part of the contract price in United States dollars and part in rials. Stanwick asserts that the rial payments were deposited in Stanwick's bank accounts with Bank Mellat and Bank Tejarat.

See, e.g., Arts. 6.1c-e of the Navy contract:

^{6.1}c Dollar payments will be made to Account No. 01-07162002, Stanwick International Inc., Riggs National Bank, Washington D.C., U.S.A. Rial payments will be made to Account No. 60043, Stanwick International Inc., Iranians' Bank, Tehran, Iran.

^{6.1}d This contract is stated in U.S. dollars. All billing and invoices for services will be stated in U.S. dollars. Any portion of these billings and invoices which are paid in Rials will be converted from dollars to Rials at the official sell rate effective on the last day of each billing cycle. The remainder of such billings and invoices shall be paid in U.S. dollar amounts as so stated therein.

^{6.1}e Payments for services under this contract will be made 75 percent in U.S. dollars and 25 percent in Rials.

9. In early 1979, Stanwick attempted to have its rial funds exchanged to United States dollars and transferred to Riggs National Bank in the United States. Bank Mellat and Bank Tejarat advised Stanwick that under Iranian exchange regulations in effect at the time permission by Bank Markazi's Exchange Commission was required for such an exchange and transfer. After receipt of that advice, Stanwick on 6 July 1979 wrote a letter to Bank Markazi which in pertinent part reads as follows:

Stanwick International Inc. has funds on deposit and certificates of deposit in Iranian's Bank and the International Bank of Iran. These funds are in excess of \$900,000 (63,540,000 rials). These funds represent payments made to Stanwick International by the National Iranian Navy and the National Iranian Air Force for services performed for these departments in accordance with the terms of the Contracts.

Due to the recent change of Iran to an Islamic Republic by a referendum by the Iranian people and further due to the circumstances of this change, Stanwick International has not been paid for services provided in December 1978, January 1979, February 1979, and March 1979. The Stanwick/Navy Contract expired on 20 March 1979 in accordance with the terms of the Contract. Payments currently due Stanwick International in accordance with terms of the Contracts exceed 3 million the dollars (211,800,000 rials). Stanwick is patient and understanding in regard to the settlement of these payments. Further, Stanwick is confident that all payments will be made by the Islamic Republic of Iran as expressed by representatives of the Islamic Republic and by representatives of the National Iranian Navy. Six months have passed since Stanwick International received its last payment.

The financial situation in Stanwick International has become critical due to non payment by the Navy and Stanwick now finds itself in the position to request the transfer of \$825,000 (58,245,000 rials) from its Iranian Bank Accounts to the Riggs National Bank of Washington, D.C. in the U.S.A. The remainder of the funds in Iran will be used to maintain its office and staff until such time as the Islamic Republic of Iran determines whether it desires the continued services of Stanwick Inter-

national. This transfer of funds is necessary for Stanwick International to continue its operation in Tehran and the U.S.A. and for Stanwick to be in the position to assist the Islamic Republic of Iran in any further requirements.

Accordingly, Stanwick respectfully requests that the Exchange Commission approve the transfer of \$825,000 (58,245,000 rials) at the official bank rate. These funds to be transferred by Telex to the Stanwick International Inc. Account No. 01-07162002 at the Riggs National Bank of Washington, D.C. as authorized in its Contracts.

- 10. Attached to this letter was a cover letter dated 7 July 1979.
- 11. The original of the cover letter was returned to Stanwick with an unsigned handwritten note in Persian on it. The note stated:
 - 1. If the money is in your dollars account, you can request it directly from your own bank.
 - 2. If it is in your rials account, then the Navy or Air Force should give their confirmation.
- 12. Stanwick alleges that, although it believed that Bank Markazi's Exchange Commission would seek "permission" from Stanwick's clients, it proceeded on its own initiative by letter to the Navy of 25 July 1979 to request that permission. In a letter of 1 September 1979 to the Navy, Stanwick furnished additional information concerning the source of the funds which it sought to transfer. Allegedly,

The Tribunal considers this the accurate translation from the Persian original. Claimants and Respondents offered slightly different translations of paragraph 2 of the note. The Tribunal would reach the same decision in this Case regardless of which translation is used.

it was impossible at the time to contact the Iranian Air Force. Stanwick received neither a response from the Navy nor any communication from the Air Force.

- 13. By telexes of 8 January 1980, Stanwick informed Banks Mellat and Tejarat that "to date" no authorization had been received from Bank Markazi in response to its request of 7 July 1979.
- 14. By telex to Bank Mellat of 18 March 1980, Stanwick requested confirmation of the current balance of its accounts and, further, stated:
 - . . . PLEASE ACCEPT THIS TELEX AS OUR FORMAL REQUEST THAT YOU TRANSFER, BY TESTED TELEX OR OTHERWISE, THE CURRENT BALANCE OF EACH OF OUR ACCOUNTS IN DOLLARS AT THE CURRENT OFFICIAL EXCHANGE RATE TO . . . RIGGS NATIONAL BANK OF WASHINGTON. . .
- 15. Bank Mellat, by telex of 5 April 1980, confirmed that Stanwick held a total balance of 42,854,699 rials under four different account numbers but explained that it was "unable to remit any funds becouse [sic] of Central Bank of Iran's restractions [sic]."
- 16. Stanwick alleges that it addressed a similar request to Bank Tejarat by telex dated 7 April 1980; Stanwick contends that Bank Tejarat never responded to this telex.
- 17. On 31 March 1982, Stanwick drew a cheque on one of its accounts at Bank Mellat for the amount of 100,000 rials payable to Heshmatollah Khayatzadeh, for payment of services. Stanwick alleges that the cheque was presented to Bank Mellat but was "dishonored for the reason that the account had a zero balance." On the same day it also drew a cheque on an account at Bank Tejarat for the same amount payable to the same person. Allegedly this cheque was likewise

"returned, dishonored, with the reason that there was a 'zero balance'."

- 18. Based on this factual background, Stanwick argues that it made proper demands for the transfer of account funds prior to 19 January 1981 and that these demands were rejected by Bank Mellat and Bank Tejarat. Stanwick argues that, by rejecting these transfer requests, Bank Mellat and Bank Tejarat breached the deposit agreement. Stanwick submits that its bank accounts were in fact confiscated.
- Stanwick takes the position that the exchange 19. restrictions imposed by Bank Markazi are incompatible with the International Monetary Fund Agreement (IMF Agreement), the Treaty of Amity, Economic Relations and Consular Rights of 1955 between Iran and the United States, as well as customary international law. In any event, it argues that the funds at issue in this Case were for payment of "current expenditures," and that Iran had no right to impose any restrictions with respect to current transactions. over, Stanwick maintains that the existing regulations did not require permission from third parties for the exchange and transfer of funds and that Bank Markazi exercised its applying the exchange regulations discretion in unreasonable or discriminatory manner. Stanwick argues that the Respondents are therefore liable for preventing the exchange and transfer of its rial funds.
- 20. Stanwick further alleges that, as a direct and proximate result of the refusal by the parties originally named as Respondents in this Case to settle outstanding debts and to permit the repatriation of its rial funds, it was compelled to maintain an office in Tehran with a small staff even after termination of its contracts with the Army because it needed staff to support its efforts to collect outstanding payments and to arrange for the transfer of its rial funds. Stanwick allegedly incurred total costs of

- \$262,114 for maintaining an office during the period from 1 March 1979 through 15 December 1979. Taking into account the two previous settlement agreements in this Case, it now seeks reimbursement of one third of this amount from the Respondent banks.
- 21. In sum, Stanwick requests that it be awarded the full dollar value of its rial funds with Bank Mellat and Bank Tejarat, converted at the official exchange rate in effect on 6 July 1979, i.e., when Stanwick made its demand upon Bank Markazi; based on an exchange rate of 70.475 rials United States dollar, this Claim against the \$868,967.86. In addition, Stanwick seeks one third of \$262,114, or \$87,371, for maintaining an office in Tehran, plus interest and costs of arbitration.
- The Respondents deny the Tribunal's jurisdiction over the Claims. First, they contest the Claimants' United States nationality. Second, they argue that the Claims do not arise out of debts, contracts, expropriations or other measures affecting property rights as required by Art. II, paragraph 1, of the Claims Settlement Declaration. Third, they take the position that the Claim for the transfer of bank funds was not outstanding on 19 January 1981.
- 23. The Respondents also deny the Claims on the merits. Bank Tejarat particularly denies that it received the telex Stanwick allegedly sent on 7 April 1980. See para. 16, supra. Regarding the cheque Stanwick issued in March 1982, Bank Tejarat explains that it kept the "related amount in the temporary creditor's account," because the cheque was received after the Algiers Declarations had entered into force and Stanwick had filed its claim with the Tribunal.
- 24. Bank Mellat points to the fact that the certificate of non-payment Stanwick filed with the Tribunal is a

duplicate copy of the certificate related to cheque No. 260213 drawn against Bank Tejarat in March 1982 and does not relate to the cheque allegedly drawn on Bank Mellat and, therefore, finds itself not in a position to comment on the reason for which the cheque might have been dishonored.

- 25. Both Bank Tejarat and Bank Mellat deny that the bank accounts were confiscated or attached. They argue that, while existing exchange restrictions in Iran did not allow for the exchange and transfer of bank funds in the absence of permission by Bank Markazi, these funds have always been available to Stanwick in rials in Iran. Banks, further, maintain that the keeping of accounts and transfers from depositary accounts in same currencies are the type of banking services that banks render and that such services are rendered in accordance with the stipulations of law and regulations, which are accepted by depositors when opening depositary accounts. The Banks argue that they did not commit themselves to convert the customer's deposits into U.S. dollars, which is a completely separate transaction, and to transfer the converted funds outside the In support of their arguments the Banks refer to section 5 of the conditions of the depositary agreements signed by Stanwick which renders the "balances on customers' account . . . subject to regulations in force in Iran and the country from which the currency [is] originated" when such funds are "[f]oreign exchange balances on customers' account[s]."
- 26. All Respondents take the position that Iranian exchange regulations are valid under international law, and that they were not applied in an unreasonable or discriminatory manner, and that this Tribunal lacks competence to decide allegations concerning the conformity conformity of Bank Markazi's regulations with IMF requirements because such decision lies with the IMF Board of They argue that Bank Markazi Governors. did

unreasonably in requiring information from the Navy and Air Force as that information was necessary to exercise properly the discretion given under the exchange regulations. In particular, the Respondents maintain that because both the Army and the Navy contracts expressly provided for payment of a part of the contract price in rials, these funds were not transferable outside Iran. Since Stanwick did not provide the requisite information from its clients, Bank Markazi argues that it was not obliged to approve the transfer of Stanwick's funds.

- 27. The Respondents also deny the Claim for costs allegedly incurred in maintaining an office in Tehran on the grounds that the maintenance of an office was not necessary for the purpose of transferring bank funds, and that any failure by the banks to transfer the funds was not a proximate cause of Stanwick's incurring these costs.
- 28. At the Hearing, Bank Tejarat stated that it maintains its Counterclaim against Stanwick for payment under standby letter of credit no. 79007 issued by Riggs National Bank in the United States, which backed up Bank Tejarat's letter of guarantee no. 9/178 for the sum of \$255,000 in favor of the Ministry of Defence. Bank Tejarat asserts that upon call by the Ministry of Defence it was obligated to honor the bank guarantee, but that it was unable to obtain payment from Riggs National Bank under the standby letter of credit because Stanwick had established a "blocked account" according to U.S. government regulations.
- 29. Stanwick denies the Tribunal's jurisdiction over the Counterclaim and moreover argues that the Counterclaim became moot as a result of the two settlement agreements in this Case. Further, Stanwick takes the position that it is not the proper Respondent for this Counterclaim and finally, that the Counterclaim fails on the merits.

C. REASONS FOR AWARD

I. Jurisdiction

1. The Claimants' United States Nationality

30. The Claimants have presented evidence that fulfills the requirements established by the Order of 20 December 1982 in Case No. 36, Flexi-Van Leasing, Inc. and Islamic Republic of Iran, reprinted in 1 Iran-U.S. C.T.R. 455, for proof of corporate nationality. On that basis, the Tribunal is satisfied that both The Stanwick Corporation and Stanwick International, Inc. are nationals of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

2. Article II, Paragraph 1, of the Claims Settlement Declaration

- 31. The Respondents argue that the Claims do not meet the jurisdictional requirements under Article II, paragraph 1, of the Claims Settlement Declaration for two reasons.
- 32. First, the Respondents argue that the Claim for the exchange and transfer of bank funds was not outstanding on 19 January 1981 because Stanwick failed to make proper demands for the transfers prior to that date. For the reasons detailed in the discussion of the merits of this Award, see infra paras. 40-41, the Tribunal is persuaded that Stanwick did make proper demands prior to 19 January 1981 and, accordingly, finds that the Claim for bank funds was outstanding on that date.
- 33. Second, the Respondents take the position that the Claim against them and the Government of the Islamic Republic of Iran, does not arise out of "debts, contracts . . .,

expropriation or other measures affecting property rights." They maintain that so far as the claim is directed against Bank Markazi the imposition of Iranian exchange regulations does not amount to expropriation of the bank funds in question and, as to the Claim against Bank Mellat and Bank Tejarat, no contract obligating them to sell foreign currency and to transfer the amount so sold, outside Iran ever existed and since no such right did exist prior to the alleged breach of duty under the law it cannot be considered as affected by any failure or interference.

34. For purposes of determining its subject matter jurisdiction, the Tribunal need only examine the Claimant's formulation of its Claim. Whether the Claim is meritorious is a separate question. See Stephen G. Shifflette and Islamic Republic of Iran, Award No. 423-10645-1, para. 17 (12 June 1989), reprinted in Iran-U.S. C.T.R. Stanwick's Claims are predicated, inter alia, on the argument that Bank Mellat and Bank Tejarat breached their deposit agreements with Stanwick. Stanwick further argues that the Government of the Islamic Republic of Iran and Bank Markazi unlawfully interfered with its right to exchange and transfer the Bank funds. If Stanwick prevails on these Claims, it will necessarily have shown that the injury it suffered arose from breach of contract, expropriation, or other "measures affecting property rights." The Tribunal is therefore satisfied that it has jurisdiction over the Claims.

3. The IMF Agreement

35. The Respondents further argue that the Tribunal has no jurisdiction to decide any issues concerning the IMF Agreement because Article 29 of the IMF Agreement provides for the sole jurisdiction of the International Monetary Fund to decide those issues. The Tribunal will not rely on the

IMF Agreement in this Case and, accordingly, need not reach the question whether it is competent to decide issues arising from the IMF Agreement.

II. MERITS

1. Claim for Bank Funds

- 36. There is no dispute between the Parties that Stanwick has bank deposits totalling 61,240,510 rials with Bank Mellat and Bank Tejarat. The issue to be decided by the Tribunal is whether Stanwick had a right to have these funds exchanged into United States dollars at the official exchange rate and transferred to the United States, and whether any of the Respondents unlawfully interfered with that right. The arguments by the Parties in this respect are stated above, supra paras. 18-19, 23-26.
- 37. The Tribunal considers that it need not reach the issue of the validity of Iranian exchange regulations unless the Parties involved have demonstrated that they fulfilled their respective contractual obligations to carry out the exchange transaction in compliance with these regulations.
- 38. Therefore, the Tribunal will first address the issue whether Bank Mellat and Bank Tejarat met their obligations under the deposit agreements with Stanwick. The Tribunal has previously found that it was the obligation of Iranian depositary banks to seek approval of Bank Markazi, when they received a request for the transfer of funds. See Benjamin Isaiah and Bank Mellat, Award No. 35-219-2, p. 14 (30 Mar. 1980), reprinted in 2 Iran-U.S. C.T.R. 232, 239; Computer Sciences and Government of the Islamic Republic of Iran, Award No. 221-65-1, p. 42 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 269, 302; Ronald Stuart Koehler and Islamic Republic of Iran, Award No. 223-11713-1, para. 35

(16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 333, 345. While the exchange of funds and their transfer abroad are technically separate transactions, there is no reason to distinguish them with respect to the depositary banks' obligation to seek necessary approval of Bank Markazi. finding is supported by Bank Markazi's Circular 11600, dated 4 November 1976, to the International Bank of Iran (now Bank Mellat). Pursuant to this Circular, the International Bank of Iran "can still engage in sale of commercial foreign exchange for importation of goods." A list attached to the Circular states, in item 4, that "[t]he sale of foreign exchange for services based on contracts concluded between domestic and foreign enterprises, . . . [is permitted] with prior authorization by Bank Markazi (Code 52 - Services)", and further states in item 14 that "[t]he sale of commercial foreign exchange for purposes other than specified above shall in all cases, be subject to prior authorization by Bank Markazi Iran." Thus, Circular 11600 demonstrates that the exchange of rials into United States dollars permissible when approved by Bank Markazi. The fact that the Circular is addressed to Bank Mellat further indicates that it was the duty of the commercial bank whose customer requests a sale of foreign exchange to seek Bank Markazi's In line with the above cited precedents, the Tribunal finds that the commercial banks which deny their obligation to exchange and transfer funds have the burden of proving that they had in fact sought approval of Bank In the Tribunal's view, they did not carry that Markazi. burden in this Case.

39. While Stanwick tried to obtain Bank Markazi's approval on its own initiative by sending its letter of 6 July 1979, the Tribunal does not consider that these attempts relieved Bank Mellat and Bank Tejarat of their independent obligation to seek approval.

- 40. In any event, by telex to Bank Mellat of 18 March 1980, Stanwick addressed a "formal request" to the bank for the exchange and transfer of its funds. See supra, para. The Tribunal is persuaded, based on the evidence before it, particularly the "answerback number" on the telex, that Bank Tejarat received a similar request from Stanwick by telex of 7 April 1980. These "formal" requests, at the latest, triggered the banks' obligation under their deposit agreements with Stanwick to take all appropriate steps to effect the exchange and transfer of funds. This included, as stated above, the banks' obligation to seek, on their own, Bank Markazi's approval, notwithstanding Stanwick's previous endeavors in this regard. Bank Mellat and Bank Tejarat could not just rely on the information Stanwick's attempts to obtain approval had failed. the banks fulfill their contractual obligations merely by invoking Iranian exchange regulations. The implementation of these regulations is Bank Markazi's function. The Tribunal need not reach the issue of the validity of the exchange regulations because even under a valid regulation, the depository banks would still have either to demonstrate that they have applied for the licence and that Bank Markazi denied approval of the exchange transaction, or that their application would have been, anyhow, denied under the regulations if they had made such application. Banks Mellat and Tejarat have not made such a showing here. Therefore, the depositary banks' failure to seek approval is deemed to result in damages equivalent to the amount Stanwick would have received had Bank Markazi approved the exchange.
- 41. Accordingly, the Tribunal holds that Bank Mellat and Bank Tejarat are obligated to pay Stanwick the United States dollar equivalent of its rial funds converted at the official exchange rate in effect at the time when the payment obligation became due. Under the circumstances of this Case, the Tribunal finds that no more than two months should have been necessary for the commercial banks to

request and obtain Bank Markazi's response and to effect the transfer of funds. The Tribunal therefore sets 18 May 1980 and 7 June 1980 as the dates on which Bank Mellat and bank Tejarat, respectively, should have carried out the exchange and transfer of funds. The official exchange rate in effect those dates was 70.36. Therefore, Bank Mellat obligated to pay \$609,077.58 and Bank Tejarat is obligated to pay \$261,310.55 to Stanwick International, Inc. as the holder of the bank deposits, plus interest at a rate determined in accordance with this Chamber's practice as outlined in Sylvania Technical Systems, Inc. and Government of the islamic Republic of Iran, Award No. 180-64-1, pp. 30-34 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 320-322 from the respective due dates.

42. The Claims against Bank Markazi and the Government of the Islamic Republic of Iran are denied.

Costs for Maintaining the Tehran Office

In the Tribunal's view, Stanwick failed to prove 43. that its purpose in having an office in Tehran was to pursue efforts to transfer funds from its bank accounts in Iran to Rather, the evidence submitted United States. Stanwick suggests that the office was maintained through 15 December 1979 in the expectation that Stanwick might resume business contacts with Iran. Accordingly, the Tribunal finds that Stanwick has not carried its burden to establish the requisite causal link between the Respondents' acts in connection with the transfer of bank funds and the necessity to maintain an office in Iran. The Claim for reimbursement of costs for maintaining an office in Iran is therefore dismissed.

3. Bank Tejarat's Counterclaim

Tejarat's Counterclaim for payment under 44. standby letter of credit no. 79007 issued by Riggs National Bank is dismissed. The letter of credit and the related bank guarantee issued by Bank Tejarat for the benefit of the Ministry of Defence, were procured by Stanwick in connection with its contract with the Ministry of Defence. All Claims and Counterclaims between Stanwick and the Ministry of Defence were settled by the Partial Award on Agreed Terms No. 83-66-1 (4 Nov. 1983). See supra para. 3. The Tribunal finds that, pursuant to the settlement agreement, Ministry of Defence should have withdrawn its call on the bank quarantee and should have released Bank Tejarat from any obligation to honor it. This, however, is a matter between the Ministry of Defence and Bank Tejarat. Stanwick, in any event, was released under this settlement agreement from any obligation which the bank guarantees and corresponding letter of credit was to secure. The Tribunal holds, therefore, that Bank Tejarat's Counterclaim has been rendered moot as a consequence of the settlement reached between Stanwick and the Ministry of Defence.

4. Costs

45. In view of the fact that Stanwick did not substantiate its costs of arbitration incurred in connection with the Claims at issue here, the Tribunal determines that each Party shall bear its own costs of arbitration.

D. AWARD

46. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- The Respondent BANK MELLAT is obligated to pay the Claimant STANWICK INTERNATIONAL, INC. the sum of Six Hundred Nine Thousand Seventy Seven United States Dollars and Fifty Eight Cents (U.S.\$609,077.58) plus simple interest at a rate of 9.75% per year (365-day basis) from 19 May 1980;
- The Respondent BANK TEJARAT is obligated to pay the Claimant STANWICK INTERNATIONAL, INC. the sum of Two Hundred Sixty One Thousand Three Hundred Ten United States Dollars and Fifty Five Cents (U.S.\$261,310.55) plus simple interest at a rate of 9.75% per year (365-day basis) from 8 June 1980;

up to and including the date on which the Escrow Agent instructs the Depositary bank to effect payment out of the Security Account.

- 3. The remaining Claims are dismissed.
- 4. Bank Tejarat's Counterclaim is dismissed.
- 5. Each Party shall bear its own costs of arbitration.

These obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague 31 January 1990

Karl-Heinz Böckstiegel

Chairman

Chamber One

In the Name of God

Assadollah Noori Dissenting Opinion

Howard M. Holtzmann