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Appendix: Documents

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Supreme Court Opinion
in
DAMES & MOORE, Petitioner v. DONALD T. REGAN,
Secretary of the Treasury, et al.
Argued, June 24, 1981
Decided, July 2, 1981
(49 U.S.L.W. 4969)

JUSTICE REHNQUIST delivered the opinion of the Court.

The questions presented by this case touch fundamentally upon the manner in which our Republic is to be governed. Throughout the nearly two centuries of our Nation's existence under the Constitution, this subject has generated considerable debate. We have had the benefit of commentators such as John Jay, Alexander Hamilton, and James Madison writing in *The Federalist Papers* at the Nation's very inception, the benefit of astute foreign observers of our system such as Alexis deTocqueville and James Bryce writing during the first century of the Nation's existence, and the benefit of many other treatises as well as more than 400 volumes of reports of decisions of this Court. As these writings reveal it is doubtless both futile and perhaps dangerous to find any epigrammatical explanation of how this country has been governed. Indeed, as Justice Jackson noted, "[a] judge... may be surprised at the poverty of really useful and unambiguous authority applicable to concrete problems of executive power as they actually present themselves." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634 (1952) (concurring opinion).

Our decision today will not dramatically alter this situation, for the Framers "did not make the judiciary the overseer of our government," *Id.*, at 594 (Frankfurter, J., concurring). We are confined to a resolution of the dispute presented to us. That dispute involves various Executive Orders and regulations by which the President nullified attachments and liens on Iranian assets in the United States, directed that these assets be transferred to Iran, and suspended claims against Iran that may be presented to an International Claims Tribunal. This action was taken in an effort to comply with an Executive Agreement between the United States and Iran. We granted certiorari before judgment in this case, and set an expedited briefing and argument schedule, because lower courts had reached conflicting conclusions on the validity of the President's actions and, as the Solicitor General informed us, unless the Government acted by July 19, 1981, Iran could consider the United States to be in breach of the Executive Agreement.

But before turning to the facts and law which we believe determine the result in this case, we stress that the expeditious treatment of the issues involved by all of the courts which have considered the President's actions makes us acutely aware of the necessity to rest decision on the narrowest possible ground capable of deciding the Case. Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis J., concurring). This does not mean that reasoned analysis may give way to judicial fiat. It does mean that the statement of Justice Jackson - that we decide difficult cases presented to us by virtue of our commissions, not our competence - is especially true here. We attempt to lay down no general "guide-lines" covering other situations not involved here, and attempt to confine the opinion only to the very questions necessary to decision of the case.

Perhaps it is because it is so difficult to reconcile the foregoing definition of Art. III judicial power with the broad range of vitally important day-to-day questions regularly decided by Congress or the Executive, without either challenge or interference by the Judiciary, that the decisions of the Court in this area have been rare, episodic, and afford little precedential value for subsequent cases. The tensions present in any exercise of executive power under the tri-partite system of Federal Government established by the Constitution have been reflected in opinions by Members of this Court more than once. The Court stated in United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-320, (1926):

"[W]e are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution."

And yet 16 years later, Justice Jackson in his concurring opinion in Youngstown, *supra*, which both parties agree brings together as much combination of analysis and common sense as there is in this area, focused not on the "plenary and exclusive power of the President" but rather responded to a claim of virtually unlimited powers for the Executive by noting:

"The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image." 343 U.S., at 641.

As we now turn to the factual and legal issues in this case, we freely confess that we are obviously deciding only one more episode in the never-ending tension between the President exercising the executive authority in a world that presents each day some new challenge with which he must deal and the Constitution under which we all live and which no one disputes embodies some sort of system of checks and balances.

I

On November 4, 1979, the American Embassy in Tehran was seized and our diplomatic personnel were captured and held hostage. In response to that crisis, President Carter, acting pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§1701-1706 (Supp. II 1978) (hereinafter "IEEPA"), declared a national emergency on November 14, 1979,¹ and blocked the removal or transfer of "all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States...." Executive Order No. 12170, 44 Fed. Reg. 65279.² President Carter authorized the Secretary of the Treasury to promulgate regulations carrying out the blocking order. On November 15, 1979, the Treasury Department's Office of Foreign Assets Control

1. Title 50 U.S.C. § 1701(a) (Supp. II 1978) states that the President's authority under the Act "may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or in substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." Petitioner does not challenge President Carter's declaration of a national emergency.
2. Title 50 U.S.C. § 1702(a)(1)(B) (Supp. II 1978) empowers the President to:
"investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property in which any foreign country or a national thereof has any interest. . . ."

issued a regulation providing that "[u]nless licensed or authorized . . . any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since [November 14, 1979] there existed an interest of Iran." 31 (CFR § 535.203(e) (1980)). The regulations also made clear that any licenses or authorizations granted could be "amended, modified, or revoked at any time." 31 CFR § 535.805 (1980).³

On November 26, 1979, the President granted a general license authorizing certain judicial proceedings against Iran but which did not allow the "entry of any judgment or of any decree or order of similar or analogous effect. . . ." 31 CFR § 535.504(a) (1980). On December 19, 1979, a clarifying regulation was issued stating that "the general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachment." 31 CFR § 535.418 (1980).

On December 19, 1979, petitioner Dames & Moore filed suit in the United States District Court for the Central District of California against the Government of Iran, the Atomic Energy Organization of Iran, and a number of Iranian banks. In its complaint, petitioner alleged that its wholly owned subsidiary, Dames & Moore International, S. R. L., was a party to a written contract with the Atomic Energy Organization, and that the subsidiary's entire interest in the contract had been assigned to petitioner. Under the contract, the subsidiary was to conduct site studies for a proposed nuclear power plant in Iran. As provided in the terms of the contract, the Atomic Energy Organization terminated the agreement for its own convenience on June 30, 1979. Petitioner contended, however, that it was owed \$3,436,694.30 plus interest for services performed under the contract prior to the date of termination.⁴ The District Court issued orders of attachment directed against property

3. 31 CFR § 535.805 (1980) provides in full: "The provision of this part and any rulings, licenses, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time."
4. The contract stated that any dispute incapable of resolution by agreement of the parties would be submitted to conciliation and that, if either party was unwilling to accept the results of conciliation, "the matter shall be decided finally by resort to the courts of Iran." Pet. for Cert., at 7, n.2. In its complaint, which was based on breach of contract and related theories, petitioner alleged that it had sought a meeting with the Atomic Energy Organization for purposes of settling matters relating to the contract but that the Organization "has continually postponed [the] meeting and obviously does not intend that it take place." Complaint in Dames & Moore v. Atomic Energy Organization of Iran, No. 79-04918 LEW (Px) (CD Cal.), at para. 27.

of the defendants, and the property of certain Iranian banks was then attached to secure any judgment that might be entered against them.

On January 20, 1981, the Americans held hostages were released by Iran pursuant to an Agreement entered into the day before and embodied in two Declarations of the Democratic and Popular Republic of Algeria. Declaration of the Government of the Democratic and Popular Republic of Algeria (App. to Pet. for Cert., at 21-29), and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (App. to Pet. for Cert., at 30-35). The Agreement stated that "it is the purpose of [the United States and Iran] . . . to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration." App. to Pet. for Cert. at 21-22. In furtherance of this goal, the Agreement called for the establishment of an Iran-United States Claims Tribunal which would arbitrate any claims not settled within 6 months. Awards of the Claims Tribunal are to be "final and binding" and "enforceable . . . in the courts of any nation in accordance with its law." Id. at 32. Under the Agreement, the United States is obligated:

"to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration." Id. at 21-22.

In addition, the United States must "act to bring about the transfer" by July 19, 1981, of all Iranian assets held in this country by American banks. Id. at 24-25. One billion dollars of these assets will be deposited in a security account in the Bank of England, to the account of the Algerian Central Bank, and used to satisfy awards rendered against Iran by the Claims Tribunal. Ibid.

On January 19, 1981, President Carter issued a series of Executive Orders implementing the terms of the Agreement. Executive Order Nos. 12276-12285, 46 Fed. Reg. 7913-7932. These orders revoked all licenses permitting the exercise of "any right, power, or privilege" with regard to Iranian funds, securities, or deposits; "nullified" all non-Iranian interests in such assets acquired subsequent to the blocking order of November, 14, 1979; and required those banks holding Iranian assets to transfer them "to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury." Executive Order No. 12279, 46 Fed. Reg. 7919.

On February 24, 1981, President Reagan issued an Executive Order in which he "ratified" the January 19th Executive Orders. Executive Order No. 12294, 46 Fed. Reg. 14111. Moreover, he "suspended" all "claims which may be presented to the ... Tribunal" and provided that such claims "shall have no legal effect in any action now pending in any court of the United States." Ibid. The suspension of any particular claim terminates if the Claims Tribunal determines that it has no jurisdiction over that claim; claims are discharged for all purposes when the Claims Tribunal either awards some recovery and that amount is paid, or determines that no recovery is due. Ibid.

Meanwhile, on January 27, 1981, petitioner moved for summary judgment in the District Court against the Government of Iran and the Atomic Energy Organization, but not against the Iranian banks. The District Court granted petitioner's motion and awarded petitioner the amount claimed under the contract plus interest. Thereafter, petitioner attempted to execute the judgment by obtaining writs of garnishment and execution in state court in the State of Washington, and a sheriff's sale of Iranian property in Washington was noticed to satisfy the judgment. However, by order of May 28, 1981, as amended by order of June 8, the District Court stayed execution of its judgment pending appeal by the Government of Iran and the Atomic Energy Organization. The District Court also ordered that all prejudgment attachments obtained against the Iranian defendants be vacated and that further proceedings against the bank defendants be stayed in light of the Executive Orders discussed above. App. to Pet. for Cert. at 106-107.

On April 28, 1981, petitioner filed this action in the District Court for declaratory and injunctive relief against the United States and the Secretary of the Treasury, seeking to prevent enforcement of the Executive Orders and Treasury Department regulations implementing the Agreement with Iran. In its complaint, petitioner alleged that the actions of the President and the Secretary of the Treasury implementing the Agreement with Iran were beyond their statutory and constitutional powers and, in any event, were unconstitutional to the extent they adversely affect petitioner's final judgment against the Government of Iran and the Atomic Energy Organization, its execution of that judgment in the State of Washington, its prejudgment attachments, and its ability to continue to litigate against the Iranian banks. Id. at 1-12. On May 28, 1981, the District Court denied petitioner's motion for a preliminary injunction and dismissed petitioner's complaint for failure to state a claim upon which relief could be granted. Id. at 106-107. Prior to the District Court's ruling, the United States Courts of Appeals for the First and the District of Columbia Circuits

upheld the President's authority to issue the Executive Orders and regulations challenged by petitioner. See Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, F.2d ____ (CA1 1981); American Int'l Group, Inc. v. Islamic Republic of Iran, U.S. App. D.C. F.2d (1981). ____ U.S. App. D.C. ____, ____ F.2d ____ (1981).

On June 3, 1981, petitioner filed a notice of appeal from the District Court's order, and the appeal was docketed in the United States Court of Appeals for the Ninth Circuit. On June 4, the Treasury Department amended its regulations to mandate "the transfer of bank deposits and certain other financial assets of Iran in the United States to the Federal Reserve Bank of New York by noon, June 19." App. to Pet. for Cert. at 151-152. The District Court, however, entered an injunction pending appeal prohibiting the United States from requiring the transfer of Iranian property that is subject to "any writ of attachment, garnishment, judgment, levy, or other judicial lien" issued by any court in favor of petitioner. Id. at 168. Arguing that this is a case of "imperative public importance," petitioner then sought a writ of certiorari before judgment. Pet. for Cert. at 10. See 28 U.S.C. § 2101(e); this Court's Rule 18 (1980). Because the issues presented here are of great significance and demand prompt resolution, we granted the petition for the writ, adopted an expedited briefing schedule, and set the case for oral argument on June 24, 1981. ____ U.S. ____ (1981).

II

The parties and the lower courts confronted with the instant questions have all agreed that much relevant analysis is contained in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Justice Black's opinion for the Court in that case, involving the validity of President Truman's effort to seize the country's steel mills in the wake of a nationwide strike, recognized that "[t]he President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." Id. at 585. Justice Jackson's concurring opinion elaborated in a general way the consequences of different types of interaction between the two democratic branches in assessing presidential authority to act in any given case. When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action "would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack

it." Id. at 637. When the President acts in the absence of congressional authorization he may enter "a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." Id. at 637. In such a case the analysis becomes more complicated, and the validity of the President's action, at least so far as separation of powers principles are concerned, hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action, including "congressional inertia, indifference or quiescence." Ibid. Finally, when the President acts in contravention of the will of Congress, "his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject." Id. at 637-638.

Although we have in the past and do today find Justice Jackson's classification of executive actions into three general categories analytically useful, we should be mindful of Justice Holmes' admonition, quoted by Justice Frankfurter in Youngstown, 343 U.S. at 597 (concurring opinion), that "The great ordinances of the Constitution do not establish and divide fields of black and white." Springer v. Philippine Islands, 277 U.S. 189, 209 (1928) (dissenting opinion). Justice Jackson himself recognized that his three categories represented "a somewhat over-simplified grouping," 343 U.S., at 635, and it is doubtless the case that executive action in any particular instance falls, not neatly in one of three pigeon-holes, but rather at some point along a spectrum running from explicit congressional authorization to explicit congressional prohibition. This is particularly true as respects cases such as the one before us, involving responses to international crises the nature of which Congress can hardly have been expected to anticipate in any detail.

III

In nullifying post-November 14, 1979, attachments and directing those persons holding blocked Iranian funds and securities to transfer them to the Federal Reserve Bank of New York for ultimate transfer to Iran, President Carter cited five sources of express or inherent power. The Government, however, has principally relied on § 1702 of the IEEPA as authorization for these actions. Section 1702 (a)(1) provides in part:

"At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise -

"(A) investigate, regulate, or prohibit -

"(i) any transactions in foreign exchange,

"(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

"(iii) the importing or exporting of currency or securities, and

"(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest; "by any person, or with respect to any property, subject to the jurisdiction of the United States."

The Government contends that the acts of "nullifying" the attachments and ordering the "transfer" of the frozen assets are specifically authorized by the plain language of the above statute. The two Courts of Appeals that have considered the issue agreed with this contention. In Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, supra, the Court of Appeals for the First Circuit explained:

"The President relied on his IEEPA powers in November 1979, when he 'blocked' all Iranian assets in this country, and again in January 1981, when he 'nullified' interests acquired in blocked property, and ordered that property's transfer. The President's actions, in this regard, are in keeping with the language of IEEPA; initially he 'prevent[ed] and prohibit[ed]' 'transfers' of Iranian assets; later he 'direct[ed] and compel[led]' the 'transfer' and 'withdrawal' of the assets, 'nullify[ing]' certain 'rights' and 'privileges' acquired in them.

"Main argues that the IEEPA does not supply the President with power to override judicial remedies, such as attachments and injunctions, or to extinguish 'interests' in foreign assets held by

United States citizens. But we can find no such limitation in IEEPA's terms. The language of IEEPA is sweeping and unqualified. It provides broadly that the President may void or nullify the 'exercising [by any person of] any right, power or privilege with respect to...any property in which any foreign country has any interest...' 50 U.S.C. § 1702 (a)(1)(B)." - F. 2d, at - (emphasis in original).

In American Int'l Group, Inc. v. Islamic Republic of Iran, supra, the Court of Appeals for the District of Columbia circuit employed a similar rationale in sustaining President Carter's action:

"The Presidential revocation of the license he issued permitting prejudgment restraints upon Iranian assets is an action that falls within the plain language of the IEEPA. In vacating the attachments, he acted to 'nullify [and] void . . . any . . . exercising any right, power, or privilege with respect to . . . any property in which any foreign country . . . has any interest . . . by any person . . . subject to the jurisdiction of the United States.'" - F. 2d, at - (footnote omitted).

Petitioner contends that we should in ignore the plain language of this statute because an examination of its legislative history as well as the history of § 5(b) of the Trading With the Enemy Act (hereinafter "TWEA"), 50 U.S.C. App. § 5(b), from which the pertinent language of § 1702 is directly drawn, reveals that the statute was not intended to give the President such extensive power over the assets of a foreign state during times of national emergency. According to petitioner, once the President instituted the November 14, 1979, blocking order, § 1702 authorized him "only to continue the freeze or to discontinue controls." Brief for Petitioner, at 32.

We do not agree and refuse to read out of § 1702 all meaning to the words "transfer," "compel," or "nullify." Nothing in the legislative history of either § 1702 or § 5(b) of the TWEA requires such a result. To the contrary, we think both the legislative history and cases interpreting the TWEA fully sustain the broad authority of the Executive when acting under this congressional grant of power. See,

e.g., Orvis v. Brownell, 345 U.S. 183 (1953).⁵ Although Congress intended to limit the President's emergency power in peacetime, we do not think the changes brought about by the enactment of the IEEPA in any way affected the authority of the President to take the specific actions taken here. We likewise note that by the time petitioner instituted this action, the President had already entered the freeze order. Petitioner proceeded against the blocked assets only after the Treasury Department had issued revocable licenses authorizing such proceedings and attachments. The Treasury regulations provided that "unless licensed" any attachment is null and void, 31 CFR § 535.203(e) and all licenses "may be amended, modified, or revoked at any time." 31 CFR § 535.805. As such, the attachments obtained by petitioner were specifically made subordinate to further actions which the President might take under the IEEPA. Petitioner was on notice of the contingent nature of its interest in the frozen assets.

5. Petitioner argues that under the TWEA the President was given two powers: (1) the power temporarily to freeze or block the transfer of foreign-owned assets; and (2) the power summarily to seize and permanently vest title to foreign-owned assets. It is contended that only the "vesting" provisions of the TWEA gave the President the power permanently to dispose of assets and when Congress enacted the IEEPA in 1977 it purposefully did not grant the President this power. According to petitioner, the nullification of the attachments and the transfer of the assets will permanently dispose of the assets and would not even be permissible under the TWEA. We disagree. Although it is true the IEEPA does not give the President the power to "vest" or to take title to the assets, it does not follow that the President is not authorized under both the IEEPA and the TWEA to otherwise permanently dispose of the assets in the manner done here. Petitioner errs in assuming that the only power granted by the language used in both § 1702 and § 5(b) of the TWEA is the power temporarily to freeze assets. As noted above, the plain language of the statute defies such a holding. Section 1702 authorizes the President to "direct and compel" the "transfer, withdrawal, transportation, . . . or exportation of . . . any property in which any foreign country . . . has any interest. . . ."

We likewise reject the contention that Orvis v. Brownell, 345 U.S. 183 (1953), and Zittman v. McGrath, 341 U.S. 446 (1951), grant petitioner the right to retain its attachments on the Iranian assets. To the contrary, we think Orvis supports the proposition that an American claimant may not use an attachment that is subject to a revocable license and that has been obtained after the entry of a freeze order to limit in any way the actions the President may take under § 1702 respecting the frozen assets. An attachment so obtained is in every sense subordinate to the President's power under the IEEPA.

This Court has previously recognized that the congressional purpose in authorizing blocking orders is "to put control of foreign assets in the hands of the President...." Propper v. Clark, 337 U.S. 472, 493 (1949). Such orders permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency. The frozen assets serve as a "bargaining chip" to be used by the President when dealing with a hostile country. Accordingly, it is difficult to accept petitioner's argument because the practical effect of it is to allow individual claimants throughout the country to minimize or wholly eliminate this "bargaining chip" through attachments, garnishments or similar encumbrances on property. Neither the purpose the statute was enacted to serve nor its plain language supports such a result.

Because the President's action nullifying the attachments and ordering the transfer of the assets was taken pursuant to specific congressional authorization, it is "supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it."

6. Although petitioner concedes that the President could have forbidden attachments, it nevertheless argues that once he allowed them the President permitted claimants to acquire property interests in their attachments. Petitioner further argues that only the licenses to obtain the attachments were made revocable, not the attachments themselves. It is urged that the January 19, 1981, order revoking all licenses only affected petitioner's right to obtain future attachments. We disagree. As noted above, the regulations specifically provided that any attachment is null and void "unless licensed," and all licenses may be revoked at any time. Moreover, common sense defies petitioner's reading of the regulation. The President could hardly have intended petitioner and other similarly situated claimants to have the power to take control of the frozen assets out of his hands.

Our construction of petitioner's attachments as being "revocable," "contingent," and "in every sense subordinate to the President's power under the IEEPA," in effect answers petitioner's claim that even if the President had the authority to nullify the attachments and transfer the assets, the exercise of such would constitute an unconstitutional taking of property in violation of the Fifth Amendment absent just compensation. We conclude that because of the President's authority to prevent or condition attachments, and because of the the orders he issued to this effect, petitioner did not acquire any "property" interest in its attachments of the sort that would support a constitutional claim for compensation.

Youngstown, 343 U.S., at 637 (Jackson, J., concurring). Under the circumstances of this case, we cannot say that petitioner has sustained that heavy burden. A contrary ruling would mean that the Federal Government as a whole lacked the power exercised by the President, see id. at 636-637, and that we are not prepared to say.

IV

Although we have concluded that the IEEPA constitutes specific congressional authorization to the President to nullify the attachments and order the transfer of Iranian assets, there remains the question of the President's authority to suspend claims pending in American courts. Such claims have, of course, an existence apart from the attachments which accompanied them. In terminating these claims through Executive Order No. 12294, the President purported to act under authority of both the IEEPA and 22 U.S.C. § 1732, the so-called "Hostage Act " App. to Pet. for Cert. at 52.

We conclude that although the IEEPA authorized the nullification of the attachments, it cannot be read to authorize the suspension of the claims. The claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property. An in personam lawsuit, although it might eventually be reduced to judgment and that judgment might be executed upon, is an effort to establish liability and fix damages and does not focus on any particular property within the jurisdiction. The terms of the IEEPA therefore do not authorize the President to suspend claims in American courts. This is the view of all the courts which have considered the question. Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, - F. 2d at - ; American Int'l Group, Inc. v. Islamic Republic of Iran, - F. 2d at - , n. 15; The Marschalk Co., Inc. v. Iran National Airlines, - F. Supp. -.- (SDNY 1981); Electronic Data Systems v. Social Security Organization of Iran, - F. Supp. -.- (ND Tex. 1981).

7. Judge Mikva, in his separate opinion in American Int'l Group, Inc. v. Islamic Republic of Iran, ___ U.S. App. D.C. ___, ___, F.2d ___, ___ (1981), argued that the moniker "Hostage Act" was newly-coined for purposes of this litigation. Suffice it to say that we focus on the language of 22 U.S.C. § 1732, not any short-hand description of it. See Shakespeare, *Romeo and Juliet*, 11, ii, 43 ("What's in a name?").

The Hostage Act, passed in 1868, provides:

"Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress." 22 U.S.C. § 1732.

We are reluctant to conclude that this provision constitutes specific authorization to the President to suspend claims in American courts. Although the broad language of the Hostage Act suggests it may cover this case, there are several difficulties with such a view. The legislative history indicates that the Act was passed in response to a situation unlike the recent Iranian crisis. Congress in 1868 was concerned with the activity of certain countries refusing to recognize the citizenship of naturalized Americans traveling abroad, and repatriating such citizens against their will. See e.g., Cong. Globe 4331, 40th Cong., 2d Sess. (1868) (Sen. Fessenden); *id.* at 4354 (Sen. Conness); see also 22 U.S.C. § 1731. These countries were not interested in returning the citizens in exchange for any sort of ransom. This also explains the reference in the Act to imprisonment "in violation of the rights of American citizenship." Although the Iranian hostage-taking violated international law and common decency, the hostages were not seized out of any refusal to recognize their American citizenship - they were seized precisely because of their American citizenship. The legislative history is also somewhat ambiguous on the question whether Congress contemplated presidential action such as that involved here or rather simply reprisals directed against the offending foreign country and its citizens. See e.g., Cong. Globe 4205, 40th Cong., 2d Sess. (1868); American Int'l Group, Inc. v. Islamic Republic of Iran, *supra*, at - (opinion of Mikva, J.).

Concluding that neither the IEEPA nor the Hostage Act constitutes specific authorization of the President's action suspending claims, however, is not to say that these statutory provisions are entirely irrelevant to the question of the validity of the President's action. We think both statutes highly relevant in the looser sense of indicating congressional acceptance of a broad scope for executive action in circumstances such as those presented in this case. As noted above in Part III, supra at 12-13, the IEEPA delegates broad authority to the President to act in times of national emergency with respect to property of a foreign country. The Hostage Act similarly indicates congressional willingness that the President have broad discretion when responding to the hostile acts of foreign sovereigns. As Senator Williams, draftsman of the language eventually enacted as the Hostage Act, put it:

"If you propose any remedy at all, you must invest the executive with some discretion, so that he may apply the remedy to a case as it may arise. As to England or France he might adopt one policy to relieve a citizen imprisoned by either one of those countries; as to the Barbary powers, he might adopt another policy; as to the islands of the ocean another. With different countries that have different systems of government he might adopt different means." Cong. Globe 4359, 40th Cong., 2d Sess. (1868).

Proponents of the bill recognized that it placed "a loose discretion" in the President's hands, id. at 4238 (Sen. Stewart), but argued that "[s]omething must be intrusted to the Executive" and that "[t]he President ought to have the power to do what the exigencies of the case require to rescue [a] citizen from imprisonment." Id. at 4233, 4357 (Sen. Williams). An original version of the Act, which authorized the President to suspend trade with a foreign country and even arrest citizens of that country in the United States in retaliation, was rejected because "there may be a great variety of cases arising where other and different means would be equally effective and where the end desired could be accomplished without resorting to such dangerous and violent measures." Id. at 4233 (Sen. Williams).

Although we have declined to conclude that the IEEPA or the Hostage Act directly authorizes the President's suspension of claims for the reasons noted, we cannot ignore the general tenor of Congress' legislation in this area in trying to determine whether the President is acting alone or at least with the acceptance of Congress. As we have noted, Congress cannot anticipate and legislate with regard to

every possible action the President may find it necessary to take or every possible situation in which he might act. Such failure of Congress specifically to delegate authority does not, "especially...in the areas of foreign policy and national security," imply "congressional disapproval" of action taken by the Executive. *Haig v. Agee*, - U.S. - (1981). On the contrary, the enactment of legislation closely related to the question of the President's authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to "invite" "measures on independent presidential responsibility." *Youngstown*, 343 U.S., at 637 (Jackson, J., concurring). At least this is so where there is no contrary indication of legislative intent and when, as here, there is a history of congressional acquiescence in conduct of the sort engaged in by the President. It is to that history which we now turn.

Not infrequently in affairs between nations, outstanding claims by nationals of one country against the government of another country are "sources of friction" between the two sovereigns. *United States v. Pink*, 315 U.S. 203, 225 (1942). To resolve these difficulties, nations have often entered into agreements settling the claims of their respective nationals. As one treatise writer puts it, international agreements settling claims by nationals of one state against the government of another "are established international practice reflecting traditional international theory." L. Henkin, *Foreign Affairs and the Constitution* 262 (1972). Consistent with that principle, the United States has repeatedly exercised its sovereign authority to settle the claims of its nationals against foreign countries. Though those settlements have sometimes been made by treaty, there has also been a longstanding practice of settling such claims by executive agreement without the advice and consent of the Senate. Under such agreements, the President has agreed to renounce or extinguish claims of United States nationals against foreign governments in return for lump sum payments or the establishment of arbitration procedures. To be sure, many of these settlements were encouraged by the United States claimants themselves, since a claimant's only

8. At least since the ease of the "Wilmington Packet" in 1799, Presidents have exercised the power to settle claims of United States nationals by executive agreement. See Lillich, *The Gravel Amendment to the Trade Reform Act of 1974*, 69 Am. J. Int'l L., 837, 844 (1975). In fact, during the period of 1817-1917, "no fewer than eighty executive agreements were entered into by the United States looking to the liquidation of claims of its citizens." McClure, *International Executive Agreements* 53 (1941). See also 14 M. Whiteman, *Digest of International Law* 247 (1970).

hope of obtaining any payment at all might lie in having his government negotiate a diplomatic settlement on his behalf. But it is also undisputed that the "United States has sometimes disposed of the claims of citizens without their consent, or even without consultation with them, usually without exclusive regard for their interests, as distinguished from those of the nation as a whole." Henkin, supra at 263. Accord, The Restatement (Second) of the Foreign Relations Law of the United States § 213 (1965) (President "may waive or settle a claim against a foreign state...even without the consent of the [injured] national"). It is clear that the practice of settling claims continues today. Since 1952, the President has entered into at least 10 binding settlements with foreign nations, including an \$80 million settlement with the People's Republic of China.⁹

Crucial to our decision today is the conclusion that Congress has implicitly approved the practice of claim settlement by executive agreement. This is best demonstrated by Congress' enactment of the International Claims Settlement Act of 1949, 22 U.S.C. § 1621 et seq., as amended (1980). The Act had two purposes: (1) to allocate to United States nationals funds received in the course of an executive claims settlement with Yugoslavia, and (2) to provide a procedure whereby funds resulting from future settlements could be distributed. To achieve these ends Congress created the International Claims Commission, now the Foreign Claims Settlement Commission, and gave it jurisdiction to make final and binding decisions with respect to claims by United States nationals against settlement funds. 22 U.S.C. § 1623 (a). By creating a procedure to implement future settlement agreements, Congress placed its stamp of approval on such agreements. Indeed, the legislative history of the Act observed that the United States was seeking settlements with countries other than Yugoslavia and stated that the bill "contemplates that settlements of a similar nature are to be made in the future." H.R. Rep. No. 81-770, 81st Cong., 1st Sess., 4, 8 (1949).

Over the years Congress has frequently amended the International Claims Settlement Act to provide for particular problems arising out of settlement agreements, thus demonstrating Congress' continuing acceptance of the President's claim settlement authority. With respect to the Executive Agreement with the People's Republic of China, for example, Congress established an allocation formula for distribution of the funds received pursuant to the Agreement.

9. Those agreements are 30 U.S.T. 1957 (1979) (People's Republic of China); 27 U.S.T. 3993 (1976) (Peru); 27 U.S.T. 4214 (1976) (Egypt); 25 U.S.T. 227 (1974) (Peru); 24 U.S.T. 522 (1973) (Hungary); 20 U.S.T. 2654 (1969) (Japan); 16 U.S.T. 1 (1965) (Yugoslavia); 14 U.S.T. 969 (1963) (Bulgaria); 11 U.S.T. 1953 (1960) (Poland); 11 U.S.T. 317 (1960) (Rumania).

22 U.S.C. § 1627. As with legislation involving other executive agreements, Congress did not question the fact of the settlement or the power of the President to have concluded it. In 1976, Congress authorized the Foreign Claims Settlement Commission to adjudicate the merits of claims by United States nationals against East Germany, prior to any settlement with East Germany, so that the Executive would "be in a better position to negotiate an adequate settlement . . . of these claims." S. Rep. No. 94-1188, 94th Cong., 1st Sess., 2 (1976); 22 U.S.C. § 1644b. Similarly, Congress recently amended the International Claims Settlement Act to facilitate the settlement of claims against Vietnam. 22 U.S.C. § 1645; § 1645a(5). The House Report stated that the purpose of the legislation was to establish an official inventory of losses of private United States property in Vietnam so that recovery could be achieved "through direct Government-to-Government negotiation of private property claims." H.R. Rep. No. 96-915, 96th Cong., 2d Sess., 2-3 (1980). Finally, the legislative history of the IEEPA further reveals that Congress has accepted the authority of the Executive to enter into settlement agreements. Though the IEEPA was enacted to provide for some limitation on the President's emergency powers, Congress stressed that "nothing in this Act is intended to interfere with the authority of the President to [block assets], or to impede the settlement of claims of United States citizens against

foreign countries." S. Rep. No. 95-466. 95th Cong. 2d Sess., 6 (1977); 50 U.S.C. § 1706(a)(1).¹⁰

In addition to congressional acquiescence in the President's power to settle claims, prior cases of this Court have also recognized that the President does have some measure of power to enter into executive agreements without obtaining the advice and consent of the Senate. In United States v. Pink, 315 U. S. 203 (1942), for example, the Court upheld the validity of the Litvinov Assignment, which was part of an Executive Agreement whereby the Soviet Union assigned to the United States amounts owed to it by American nationals so that outstanding claims of other American

10. Indeed, Congress has consistently failed to object to this longstanding practice of claim settlement by executive agreement, even when it has had an opportunity to do so. In 1972, Congress entertained legislation relating to congressional oversight of such agreements. But Congress took only limited action, requiring that the text of significant executive agreements be transmitted to Congress, 1 U.S.C. 112b. In Haig v. Agee, ___ U.S. ___ (1981), we noted that "Despite the longstanding and officially promulgated view that the Executive has the power to withhold passports for reasons of national security, Congress in 1978, 'though it once again enacted legislation relating to passports, left completely untouched the broad rule-making authority granted in the earlier Act.'" Id. at 20, quoting Zemel v. Rusk, 381 U.S. 1, 12 (1965). Likewise in this case, Congress, though legislating in the area, has left "untouched" the authority of the President to enter into settlement agreements.

The legislative history of 1 U.S.C. § 112b further reveals that Congress has accepted the President's authority to settle claims. During the hearings on the bill, Senator Case, the sponsor of the Act, stated with respect to executive claim settlements that:

"I think it is a most interesting [area] in which we have accepted the right of the President, one individual, acting through his diplomatic force, to adjudicate and settle claims of American nationals against foreign countries. But it is a fact."

Transmittal of Executive Agreements to Congress: Hearings before the Senate Committee on Foreign Relations, 92d Cong., 1st Sess., 74 (1971).

nationals could be paid. The Court explained that the resolution of such claims was integrally connected with normalizing United States' relations with a foreign state.

"Power to remove such obstacles to full recognition as settlement of claims of our nationals . . . certainly is a modest implied power of the President . . . No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of his power and responsibilities . . . is to be drastically revised." Id. at 229-230.

Similarly, Judge Learned Hand recognized:

"The constitutional power of the President extends to the settlement of mutual claims between a foreign government and the United States, at least when it is an incident to the recognition of that government; and it would be unreasonable to circumscribe it to such controversies. The continued mutual amity between this nation and other powers again and again depends upon a satisfactory compromise of mutual claims; the necessary power to make such compromises has existed from the earliest times and been exercised by the foreign offices of all civilized nations." Ozanic v. United States, 188 F.2d 228, 231 (CA2 1951).

Petitioner raises two arguments in opposition to the proposition that Congress has acquiesced in this longstanding practice of claims settlement by executive agreement. First, it suggests that all pre-1952 settlement claims, and corresponding court cases such as Pink, should be discounted because of the evolution of the doctrine of sovereign immunity. Petitioner observes that prior to 1952 the United States adhered to the doctrine of absolute sovereign immunity, so that absent action by the Executive there simply would be no remedy for an United States national against a foreign government. When the United States in 1952 adopted a more restrictive notion of sovereign immunity, by means of the so-called "Tate" letter, it is petitioner's view that United States nationals no longer needed Executive aid to settle claims and that, as a result, the President's authority to settle such claims in some sense "disappeared."

Though petitioner's argument is not wholly without merit, it is refuted by the fact that since 1952 there have been at least 10 claims settlements by executive agreement. Thus, even if the pre-1952 cases should be disregarded, congressional acquiescence in settlement agreements since that time supports the President's power to act here.

Petitioner next asserts that Congress divested the President of the authority to settle claims when it enacted the Foreign Sovereign Immunities Act of 1976 (hereinafter "FSIA"), 28 U.S.C. §§ 1330, 1602 *et seq.* The FSIA granted personal and subject matter jurisdiction in the federal district courts over commercial suits brought by claimants against those foreign states which have waived immunity. 28 U. S. C. § 1330. Prior to the enactment of the FSIA, a foreign government's immunity to suit was determined by the Executive Branch on a case-by-case basis. According to petitioner, the principal purpose of the FSIA was to depoliticize these commercial lawsuits by taking them out of the arena of foreign affairs--where the Executive Branch is subject to the pressures of foreign states seeking to avoid liability through a grant of immunity--and by placing them within the exclusive jurisdiction of the courts. Petitioner thus insists that the President, by suspending its claims, has circumscribed the jurisdiction of the United States courts in violation of Art. III of the Constitution.

We disagree. In the first place, we do not believe that the President has attempted to divest the federal courts of jurisdiction. Executive Order No. 12294 purports only to "suspend" the claims, not divest the federal court of "jurisdiction." As we read the Executive Order, those claims not within the jurisdiction of the Claims Tribunal will "revive" and become judicially enforceable in United States courts. This case, in short, illustrates the difference between modifying federal court jurisdiction and directing the courts to apply a different rule of law. See United States v. Schooner Peggy, 5 U. S. 1, 103 (1801). The President has exercised the power, acquiesced in by Congress, to settle claims and, as such, has simply effected a change in the substantive law governing the lawsuit. Indeed, the very example of sovereign immunity belies petitioner's argument. No one would suggest that a determination of sovereign immunity divests the federal courts of "jurisdiction." Yet, petitioner's argument, if accepted, would have required courts prior to the enactment of the FSIA to reject as an encroachment on their jurisdiction the President's determination of a foreign state's sovereign immunity.

Petitioner also reads the FSIA much too broadly. The principal purpose of the FSIA was to codify contemporary concepts concerning the scope of sovereign immunity and withdraw from the President the authority to make binding determinations of the sovereign immunity to be accorded foreign states. See Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, ___ F. 2d. at ___; American Int'l Group, Inc. v. Islamic Republic of Iran, ___ F.2d at ___. The FSIA was thus designed to remove one particular barrier to suit, namely sovereign immunity, and cannot be fairly read as prohibiting the President from settling claims of United States nationals against foreign governments. It is telling that the Congress which enacted the FSIA considered but rejected several proposals designed to limit the power of the President to enter into executive agreements, including claims settlement agreements.¹¹ It is quite unlikely that the same Congress that rejected proposals to limit the President's authority to conclude executive agreements sought to accomplish that very purpose sub silentio through the FSIA. And, as noted above, just 1 year after enacting the FSIA, Congress enacted the IEEPA, where the legislative history stressed that nothing in the IEEPA was to impede the settlement of claims of United States citizens. It would be surprising for Congress to express this support for settlement agreements had it intended the FSIA to eliminate the President's authority to make such agreements.

In light of all of the foregoing--the inferences to be drawn from the character of the legislation Congress has enacted in the area, such as the IEEPA and the Hostage Act, and from the history of acquiescence in executive claims settlement--we conclude that the President was authorized to suspend pending claims pursuant to Executive Order No. 12294. As Justice Frankfurter pointed out in Youngstown, 343 U. S. at 610-611, "a systematic, unbroken executive practice, long pursued to the knowledge of Congress and never before questioned . . . may be treated as a gloss on 'Executive Power' vested in the President by § 1 of Art. II." Past practice does not, by itself, create power, but "long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] has been [taken] in pursuance of its consent. . . ." United States v. Midwest Oil Co., 236 U. S. 459, 469 (1915). See Haig v. Agee, ___ U. S. at ___.

11. The rejected legislation would typically have required congressional approval of executive agreements before they would be considered effective. See Congressional Oversight of Executive Agreements: Hearings on S. 632 and S. 1251 before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., 243-261, 302-311 (1975); Congressional Review of International Agreements; Hearings before the Subcommittee on International Security and Scientific Affairs of the House Committee on International Relations, 94th Cong., 2d Sess., 167, 246 (1976).

Such practice is present here and such a presumption is also appropriate. In light of the fact that Congress may be considered to have consented to the President's action in suspending claims, we cannot say that action exceeded the President's powers.

Our conclusion is buttressed by the fact that the means chosen by the President to settle the claims of American nationals provided an alternate forum, the Claims Tribunal, which is capable of providing meaningful relief. The Solicitor General also suggests that the provision of the Claims Tribunal will actually enhance the opportunity for claimants to recover their claims, in that the Agreement removes a number of jurisdictional and procedural impediments faced by claimants in United States courts. Brief for United States, at 13-14. Although being overly sanguine about the chances of United States claimants before the Claims Tribunal would require a degree of naivete which should not be demanded even of judges, the Solicitor General's point cannot be discounted. Moreover, it is important to remember that we have already held that the President has the statutory authority to nullify attachments and to transfer the assets out of the country. The President's power to do so does not depend on his provision of a forum whereby claimants can recover on those claims. The fact that the President has provided such a forum here means that the claimants are receiving something in return for the suspension of their claims, namely, access to an international tribunal before which they may well recover something on their claims. Because there does appear to be a real "settlement" here, this case is more easily analogized to the more traditional claim settlement cases of the past.

Just as importantly, Congress has not disapproved of the action taken here. Though Congress has held hearings on the Iranian Agreement itself.¹² Congress has not enacted legislation, or even passed a resolution, indicating its displeasure with the Agreement. Quite the contrary, the relevant Senate Committee has stated that the establishment of the Tribunal is "of vital importance to the United

12. See Hearings on the Iranian Agreements before the Senate Committee on Foreign Relations, 97th Cong., 1st Sess. (1981); Hearings on the Iranian Assets Settlement before the Senate Committee on Banking, Housing and Urban Affairs, 97th Cong., 1st Sess. (1981); Hearings on the Algerian Declaration before the House Committee on Foreign Affairs, 97th Cong., 1st Sess. (1981).

States."¹³ S. Rep. No. 97-71, 97th Cong., 1st Sess., 5 (1981). We are thus clearly not confronted with a situation in which Congress has in some way resisted the exercise of presidential authority.

Finally, we re-emphasize the narrowness of our decision. We do not decide that the President possesses plenary power to settle claims, even as against foreign governmental entities. As the Court of Appeals for the First Circuit stressed, "the sheer magnitude of such a power, considered against the background of the diversity and complexity of modern international trade, cautions against any broader construction of authority than is necessary." Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, ___ F.2d at ___. But where, as here, the settlement of claims has been determined to be a necessary incident to the resolution of a major foreign policy dispute between our country and another, and where, as here, we can conclude that Congress acquiesced in the President's action, we are not prepared to say that the President lacks the power to settle such claims.

V

We do not think it appropriate at the present time to address petitioner's contention that the suspension of claims, if authorized, would constitute a taking of property in violation of the Fifth Amendment to the United States Constitution in the absence of just compensation.¹⁴ Both petitioner and the Government concede that the question whether the suspension of the claims constitutes a taking is not ripe for review. Brief for Petitioner, at 34, n. 32; Brief for United States, at 65. Accord, Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority, supra, at ___; American Int'l Group, Inc. v. Islamic Republic of Iran, ___ F.2d at ___. However, this contention, and the possibility that the President's actions may effect a taking of

13. Contrast congressional reaction to the Iranian Agreements with congressional reaction to a 1973 Executive Agreement with Czechoslovakia. There the President sought to settle over \$105 million in claims against Czechoslovakia for \$20.5 million. Congress quickly demonstrated its displeasure by enacting legislation requiring that the Agreement be renegotiated. See Lillich, supra, at 839-840. Though Congress has shown itself capable of objecting to executive agreements, it has rarely done so and has not done so in this case.

14. Though we conclude that the President has settled petitioner's claims against Iran, we do not suggest that the settlement has terminated petitioner's possible taking claim against the United States. We express no views on petitioner's claims that it has suffered a taking.

petitioner's property, makes ripe for adjudication the question whether petitioner will have a remedy at law in the Court of Claims under the Tucker Act, 28 U.S.C. § 1491, in such an event. That the fact and extent of the taking in this case is yet speculative is inconsequential because "there must be at the time of taking 'a reasonable, certain and adequate provision for obtaining compensation.'" Regional Rail Reorganization Act Cases, 419 U.S. 102, 124-125 (1974), quoting Cherokee Nation v. Southern Kansas R. Co., 135 U. S. 641, 659 (1890); Cities Service Co. v. McGrath, 342 U. S. 330, 335-336 (1952); Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 94, n. 39 (1978).

It has been contended that the "treaty exception" to the jurisdiction of the Court of Claims, 28 U.S.C. § 1502, might preclude the Court of Claims from exercising jurisdiction over any takings claim the petitioner might bring. At oral argument, however, the Government conceded that § 1502 would not act as a bar to petitioner's action in the Court of Claims. Tr. of Oral Arg., at 39-42, 47. We agree. See United States v. Weld, 127 U.S. 51 (1888); United States v. Old Settlers, 148 U.S. 427 (1893); Hughes Aircraft Co. v. United States, 534 F.2d 889 (Ct. Cl. 1976). Accordingly, to the extent petitioner believes it has suffered an unconstitutional taking by the suspension of the claims, we see no jurisdictional obstacle to an appropriate action in the United States Court of Claims under the Tucker Act.

The judgment of the District Court is accordingly affirmed, and the mandate shall issue forthwith.

JUSTICE STEVENS, concurring.

In my judgment the possibility that requiring this petitioner to prosecute its claim in another forum will constitute an unconstitutional "taking" is so remote that I would not address the jurisdictional question considered in Part V of the Court's opinion. However, I join the remainder of the opinion.

JUSTICE POWELL, concurring and dissenting in part.

I join the Court's opinion except its decision that the nullification of the attachments did not effect a taking of property interests giving rise to claims for just compensation. Ante at ___, n. 6. The nullification of attachments presents a separate question from whether the suspension and

proposed settlement of claims against Iran may constitute a taking. I would leave both "taking" claims open for resolution on a case-by-case basis in actions before the Court of Claims. The facts of the hundreds of claims pending against Iran are not known to this Court and may differ from the facts in this case. I therefore dissent from the Court's decision with respect to attachments. The decision may well be erroneous,¹ and it certainly is premature with respect to many claims.

I agree with the Court's opinion with respect to the suspension and settlement of claims against Iran and its instrumentalities. The opinion makes clear that some claims may not be adjudicated by the Claims Tribunal, and that others may not be paid in full. The Court holds that parties whose valid claims are not adjudicated or not fully paid may bring a "taking" claim against the United States in the Court of Claims, the jurisdiction of which this Court acknowledges. The Government must pay just compensation when it furthers the Nation's foreign policy goals by using as "bargaining chips" claims lawfully held by a relatively few persons and subject to the jurisdiction of

1. Even though the Executive Orders purported to make attachments conditional, there is a substantial question whether the Orders themselves may have effected a taking by making conditional the attachments that claimants against Iran otherwise could have obtained without condition. Moreover, because it is settled that an attachment entitling a creditor to resort to specific property for the satisfaction of a claim is a property right compensable under the Fifth Amendment, Armstrong v. United States, 364 U.S. 40 (1960), Louisville Bank v. Radford, 295 U.S. 555 (1935), there is a question whether the revocability of the license under which petitioner obtained its attachment suffices to render revocable the attachment itself. See Marschalk Co. v. Iran National Airlines Corp., No. 79 Civ. 7035 (CBM) (June 11, 1981).

our courts.² The extraordinary powers of the President and Congress upon which our decision rests cannot, in the circumstances of this case, displace the Just Compensation Clause of the Constitution.

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2. As the Court held in Armstrong v. United States, 364 U.S. 40, 49 (1960):

"The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

The Court unanimously reaffirmed this understanding of the Just Compensation Clause in the recent case of Agins v. City of Tibaron, 447 U.S. 225, 260-261 (1980).

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC
AND POPULAR REPUBLIC OF ALGERIA

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two Governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the points stated in the resolution of Nov. 2, 1980, of the Islamic Consultative Assembly of Iran.

On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two Governments.

General Principles

The undertakings reflected in this declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, insofar as possible, to that which existed prior to Nov. 14, 1979. In this context, the United States commits itself to insure the mobility and free transfer of all Iranian assets within its jurisdiction as set forth in paragraphs four to nine.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration.

Through the procedures provided in the declaration relating to the claims settlement agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

I: Nonintervention In Iranian Affairs

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

II and III: Return of Iranian Assets And Settlement of U.S. Claims

2. Iran and the United States (hereinafter the parties) will immediately select a mutually agreeable central bank (hereinafter the central bank) to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter the Algerian Central Bank) as depository of the escrow and security funds hereinafter prescribed and will promptly enter into depository arrangements with the central bank in accordance with the terms of this declaration. All funds placed in escrow with the central bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this declaration and in the declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter the Claims Settlement Agreement) are separately set forth in certain undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the declaration of the Democratic and Popular Republic of Algeria.

3. The depository arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will

thereupon instruct the central bank to transfer immediately all monies or other assets in escrow with the central bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right of 72 hours notice to terminate its commitments under this declaration. If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within 72 hour period of notice, the Algerian Central Bank will thereupon instruct the central bank to transfer such monies and assets. If the 72 hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the central bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

4. Commencing upon completion of the requisite escrow arrangements with the central bank, the United States will bring about the transfer to the central bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the central bank in escrow until such time as their transfer or return is required by paragraph 3 above.

Assets in Foreign Branches of U.S. Banks

5. Commencing upon the completion of the requisite escrow arrangements with the central bank, the United States will bring about the transfer to the central bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after Nov. 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through Dec. 31, 1980, to be held by the central bank to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with paragraph 3 of this declaration.

Assets in U.S. Branches of U.S. Banks

6. Commencing with adherence by Iran and the United States to this declaration and the Claims Settlement

Agreement attached hereto, and following the conclusion of arrangements with the central bank for the establishment of the interest-bearing security account specified in that agreement and paragraph 7 below, which arrangements will be concluded within 30 days from the date of this declaration, the United States will act to bring about the transfer to the central bank within six months from such date of all Iranian deposits and securities in U.S. banking institutions in the United States together with interest thereon, to be held by the central bank in escrow until such time as their transfer or return is required by paragraph 3.

7. As funds received by the central bank pursuant to paragraph 6 above, the Algerian Central Bank shall direct the central bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the central bank, until the balance in the security account has reached the level of \$1 billion. After the \$1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the Claims Settlement Agreement. Whenever the central bank shall thereafter notify Iran that the balance in the security account has fallen below \$500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of \$500 million in the account. The account shall be so maintained until the president of the arbitral tribunal established pursuant to the Claims Settlement Agreement has certified to the central bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the Claims Settlement Agreement, at which point any amount remaining in the security account shall be transferred to Iran.

Other Assets in the U.S. and Abroad

8. Commencing with the adherence of Iran and the United States to the declaration and the attached Claims Settlement Agreement and the conclusion of arrangements for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this declaration, the United States will act to bring about the transfer to the central bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in paragraphs 5 and 6 above, to be held by the central

bank in escrow until their transfer or return is required by paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached Claims Settlement Agreement and the making by the Government of Algeria of the certifications described in paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to Nov. 14, 1979, for the transfer of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

Nullification of Sanctions and Claims

10. Upon the making by the Government of Algeria of the certification described in paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period Nov. 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claims of the United States or United States nationals arising out of events occurring before the date of this declaration related to (A) the seizure of the 52 United States nationals on Nov. 4, 1979, (B) their subsequent detention (C) injury to the United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or future claims asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

12. Upon the making by the Government of Algeria of the certification described in paragraph 3 above, the United States will freeze, and prohibit any transfer of property and assets in the United States within the control of the estate of the former Shah or any close relative of the

former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendants, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury, within 30 days, for transmission to Iran, all information known to them, as of Nov. 3, 1979, and as of the date of the order with respect to the property and assets referred to in paragraph 12. Violation of the requirement will be subject to civil and criminal penalties described by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in paragraph 3 above, the United States will make known to all appropriate U.S. courts that in any litigation of the kind described in paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist with the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provision of, the Claims Settlement Agreement. If the tribunal determines that Iran has suffered a loss as a result of the failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

Settlement of Disputes

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provision of, the Claims Settlement Agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this declaration of the Claims Settlement Agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initiated on January 19, 1981

by:

Warren M. Christopher
Deputy Secretary of State
of the Government of the United States

By virtue of the powers vested in him by his Government with the Government of Algeria.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR
REPUBLIC OF ALGERIA CONCERNING THE SETTLEMENT OF CLAIMS BY
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE
GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously, within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members, within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the Tribunal to ensure that this agreement can be carried out. The UNCITRAL rules for appointing members of three-member Tribunals shall apply mutatis mutandis to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than \$250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.

3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen

of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981

by

Warren M. Christopher
Deputy Secretary of State
of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria

UNDERTAKINGS OF THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN WITH RESPECT TO THE
DECLARATION OF THE GOVERNMENT OF THE
DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

1. At such time as the Algerian Central Bank notifies the Governments of Algeria, Iran, and the United States that it has been notified by the Central Bank that the Central Bank has received for deposit in dollar, gold bullion, and securities accounts in the name of the Algerian Central Bank, as escrow agent, cash and other funds, 1,632,917.779 ounces of gold (valued by the parties for this purpose at \$0.9397 billion), and securities (at face value) in the aggregate amount of \$7.955 billion, Iran shall immediately bring about the safe departure of the 52 U.S. nationals detained in Iran. Upon the making by the Government of Algeria of the certification described in Paragraph 3 of the Declaration, the Algerian Central Bank will issue the instructions required by the following paragraph.

2. Iran having affirmed its intention to pay all its debts and those of its controlled institutions, the Algerian Central Bank acting pursuant to Paragraph 1 above will issue the following instructions to the Central Bank:

(A) To transfer \$3.667 billion to the Federal Reserve Bank of New York to pay the unpaid principal of and interest through December 31, 1980 on (1) all loans and credits made by a syndicate of banking institutions, of which a U.S. banking institution is a member, to the Government of Iran, its agencies, instrumentalities or controlled entities and (2) all loans and credits made by such a syndicate which are guaranteed by the Government of Iran or any of its agencies, instrumentalities or controlled entities.

(B) To retain \$1.418 billion in the escrow account for the purpose of paying the unpaid principal of the interest owing, if any, on the loans and credits referred to in Paragraph (A) after application of the \$3.667 billion and on all other indebtedness held by United States banking Institutions of, or guaranteed by, the Government of Iran, its agencies, instrumentalities or controlled entities not previously paid and for the purpose of paying disputed amounts of deposits, assets, and interests, if any, owing on Iranian deposits in U.S. banking institutions. Bank Markazi and the appropriate United States banking institutions shall promptly meet in an effort to agree upon the amounts owing.

In the event of such agreement, the Bank Markazi and the appropriate banking institution shall certify the amount owing to the Central Bank of Algeria which shall instruct the Bank of England to credit such amount to the account, as appropriate, of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. In the event that within 30 days any U.S. banking institution and the Bank Markazi are unable to agree upon the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree, or failing such agreement within 30 additional days after such reference, by the Iran-United States Claims Tribunal. The presiding officer of such panel or tribunal shall certify to the Central Bank of Algeria the amount, if any, determined by it to be owed, whereupon the Central Bank of Algeria shall instruct the Bank of England to credit such amount to the account of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. After all disputes are resolved either by agreement or by arbitration award and appropriate payment has been made, the balance of the funds referred to in this Paragraph (B) shall be paid to Bank Markazi.

(C) To transfer immediately to, or upon the order of, the Bank Markazi all assets in the escrow account in excess of the amounts referred to in Paragraphs (A) and (B).

Initialed on January 19, 1981

by

Warren M. Christopher
Deputy Secretary of State
of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria

ESCROW AGREEMENT

This Escrow Agreement is among the Government of the United States of America, the Federal Reserve Bank of New York (the "FED") acting as fiscal agent of the United States, Bank Markazi Iran, as an interested party, and the Banque Centrale d'Algerie acting as Escrow Agent.

This Agreement is made to implement the relevant provisions of the Declaration of the Government of Algeria of January 19, 1981 (the "Declaration"). These provisions concern the establishment of escrow arrangements for Iranian property tied to the release of United States nationals being held in Iran.

1. In accordance with the obligations set forth in paragraph 4 of the Declaration, and commencing upon the entry into force of this Agreement, the Government of the United States will cause the FED to:

(A) Sell, at a price which is the average for the middle of the market, bid and ask prices for the three business days prior to the sale, all U.S. Government securities in its custody or control as of the date of sale, which are owned by the Government of Iran, or its agencies, instrumentalities or controlled entities; and

(B) Transfer to the Bank of England as depositary for credit to accounts on its books in the name of the Banque Centrale d'Algerie, as Escrow Agent under this Agreement, all securities (other than the aforementioned U.S. Government securities), funds (including the proceeds from the sale of the aforementioned U.S. Government securities), and gold bullion of not less than the same fineness and quality as that originally deposited by the Government of Iran, or its agencies, instrumentalities or controlled entities, which are in the custody or control of the FED and owned by the Government of Iran, or its agencies, instrumentalities or controlled entities as of the date of such transfer.

When the FED transfers the above Iranian property to the Bank of England, the FED will promptly send to the Banque Centrale d'Algerie a document containing all information necessary to identify that Iranian property (type, source, character as principal or interest).

Specific details relating to securities, funds and gold bullion to be transferred by the FED under this paragraph 1 are attached as Appendix A.

2. Pursuant to the obligations set forth in paragraphs 5, 6 and 8 of the Declaration, the Government of the United States will cause Iranian deposits and securities in foreign branches and offices of United States banks, Iranian deposits and securities in domestic branches United States, to be transferred to the FED, as fiscal agent of the United States, and then by the FED to the Bank of England for credit to the account on its books, opened in the name of the Banque Centrale d'Algerie as Escrow Agent under this Agreement (the Iranian securities, funds and gold bullion mentioned in paragraph 1 above and deposits, securities and funds mentioned in this paragraph 2 are referred to collectively as "Iranian property").

3. Insofar as Iranian property is received by the Bank of England from the FED in accordance with this Agreement, the Iranian property will be held by the Bank of England in the name of the Banque Centrale d'Algerie as Escrow Agent as follows:

---- The securities will be held in one or more securities custody accounts at the Bank of England in the name of the Banque Centrale d'Algerie as Escrow Agent under this Agreement.

---- The deposits and funds will be held in one or more dollar accounts opened at the Bank of England in the name of Banque Centrale d'Algerie as Escrow Agent under this Agreement. These deposits and funds will bear interest at rates prevailing in money markets outside the United States.

---- The gold bullion will be held in a gold bullion custody account at the Bank of England, in the name of the Banque Centrale d'Algerie as Escrow Agent under this Agreement.

---- It will be understood that the Banque Centrale d'Algerie shall have no liability for any reduction in the value of the securities, bullion, and monies held in its name as Escrow Agent at the Bank of England under the provisions of this Agreement.

4. (a) As soon as the Algerian Government certifies in writing to the Banque Central d'Algérie that all 52 United States nationals identified in the list given by the United States Government to the Algerian Government in November, 1980, now being held in Iran, have safely departed from Iran, the Banque Centrale d'Algérie will immediately give the instructions to the Bank of England specifically contemplated by the provisions of the Declaration and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, ~~and the Implementing Technical Clarifications and Directions arising therefrom, all three shares of~~ [Deletion by hand, with initials] The contracting parties resolve to work in good faith to resolve any difficulty that could arise in the course of implementing this Agreement. [Handwritten addendum, with initials]

(b) In the event that

(i) either the Government of Iran or the Government of the United States notifies the Government of Algeria in writing that it has given notice to terminate its commitments under the Declaration referred to above, and

(ii) a period of 72 hours elapses after the receipt by the Government of Algeria of such notice, during which period the Banque Centrale d'Algérie has not given the Bank of England the instruction described in subparagraph (a) above,

the Banque Centrale d'Algérie will immediately give the instructions to the Bank of England specifically contemplated by the provisions of the Declaration, and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria ~~and the Implementing Technical Clarifications and Directions arising therefrom~~ [Deletion by hand, with initials]

(c) If the certificate by the Government of Algeria referred to in subparagraph (a) has been given before the United States Government has effectively terminated its commitment under the Declaration, the Iranian property shall be transferred as provided in subparagraph (a) of this paragraph 4.

(d) The funds and deposits held by the Bank of England under this Agreement will earn interest at rates prevailing in money markets outside the United States after their transfer to the account of the Banque Centrale d'Algérie, as Escrow Agent, with the Bank of England, and such interest will be included as part of the Iranian property for the purposes of subparagraphs (a) and (b) of this paragraph 4.

5. On the date of the signing of this Agreement by the four parties hereto, the Banque Centrale d'Algérie and the FED will enter into a Technical Arrangement with the Bank of England to implement the provisions of this Agreement.

Pursuant to that Technical Arrangement between the FED, the Bank of England and the Banque Centrale d'Algérie, the FED shall reimburse the Bank of England for losses and expenses as provided in paragraph 10 thereof. The FED will not charge the Banque Centrale d'Algérie for any expenses or disbursements related to the implementation of this Agreement.

6. This Agreement will become effective as soon as it has been signed by the four parties to it and the Banque Centrale d'Algérie and the FED have entered into the Technical Arrangement with the Bank of England referred to in paragraph 5 of this Agreement.

7. Throughout its duration, this Agreement may be amended, canceled, or revoked only with the written concurrence of all four of the signatory parties.

8. Nothing in this Agreement shall be considered as constituting, in whole or in part, a waiver of any immunity to which the Banque Centrale d'Algérie is entitled.

9. A French language version of this Agreement will be prepared as soon as practicable. The English and French versions will be equally authentic and of equal value.

10. This Agreement may be executed in counterparts, each of which constitutes an original.

In Witness whereof, the parties hereto have signed this Agreement on January 20, 1981.

APPENDIX A

Securities, Gold Bullion, and Funds to be transferred
by the Federal Reserve Bank of New York
International Bank for Reconstruction

and Development Securities \$35 million (face value)

Gold Bullion 1,632,917.746 fine ounces of gold, good
delivery, London bars of a fineness of
995 parts per 1,000 or better

Funds Approximately \$1.38 billion

TECHNICAL ARRANGEMENT BETWEEN
BANQUE CENTRALE D'ALGERIE AS ESCROW AGENT
AND
THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND
AND
THE FEDERAL RESERVE BANK OF NEW YORK
AS FISCAL AGENT OF THE UNITED STATES
(January 20, 1981)

This Technical Arrangement is made between the Banque Centrale d'Algérie (hereinafter referred to as the "Escrow Agent") as Escrow Agent, the Governor and Company of the Bank of England (hereinafter referred to as the "Bank"), and the Federal Reserve Bank of New York as fiscal agent of the United States (hereinafter referred to as the "FED").

1. The Bank are [sic] hereby appointed to hold, invest and distribute, in accordance with the terms of this Technical Arrangement, such of the funds and other property (as identified by the FED on its sole responsibility at the time of transfer) as may be transferred to them by the FED and such other funds or property representing such funds and other property as may from time to time be held by the Bank on such accounts or invested by the Bank pursuant to paragraph 4 hereof (all of which funds and property are collectively referred to as the "Escrow Fund"). The Bank shall act as a depository and shall hold and invest the Escrow Fund in accordance with the arrangements described herein until such time as the Escrow Fund shall have been distributed as provided in paragraph 7 below.

2. The Bank will open in the name of the Escrow Agent the following accounts:

(A) Two securities custody accounts, Securities Custody Account No. 1 and Securities Custody Account No. 2 (the "Securities Custody Accounts");

(B) Three accounts denominated in US dollars, "Dollar Account No. 1," "Dollar Account No.2" and "Dollar Account No.3" (the "Dollar Accounts");

(C) A gold bullion custody account (the "Bullion Account") and shall credit the securities to Securities Custody Account No. 1, the dollar deposits to Dollar Account No. 1 and the gold bullion to the Bullion Account when

ferred to the Bank by the FED for deposit on such accounts, and shall provide the Escrow Agent with a general description of the funds and other property so transferred.

3. The Bank shall

(A) Hold the securities for the time being in the Securities Custody Accounts in accordance with the provisions of this Arrangement;

(B) Hold the gold bullion for the time being in the Bullion Account in accordance with the provisions of this Arrangement; and

(C) Hold the funds for the time being in the Dollar Accounts on a call basis, so as to ensure the liquidity of those funds, and in accordance with the provisions of this Arrangement.

4. (a) The Bank shall make a good faith effort under the circumstances to invest and reinvest outside the United States the funds on the Dollar Accounts at market rates with such banks and in such manner as the Bank may determine and will pay by way of interest on the funds on those Dollar Accounts sums equivalent to those received by them, subject nevertheless to the deduction from Dollar Account No. 2 of sums equivalent to the amounts of their reasonable costs, charges and expenses in respect of the maintenance and operation of Dollar Account No. 2.

(b) Any interest received on the securities in the Securities Custody Account No. 1 shall be credited to Dollar Account No. 1 and any interest received on the Securities Custody Account No. 2 shall be credited to Dollar Account No. 3.

5. The Bank shall invest all monies representing interest paid in respect of any part of the Escrow Fund in the same manner as any funds for the time being on deposit on the Dollar Accounts.

6. The Bank shall not have or incur any liability by reason of any diminution in value of the securities or gold bullion for the time being held by them in the name of the Escrow Agent on the Securities Custody Accounts and the Bullion Account respectively.

Similarly, the Escrow Agent shall not have or incur any liability by reason of any diminution in value of the securities or gold bullion for the time being held in its name by the Bank on the Securities Custody Accounts and the Bullion Account respectively. Moreover, the Escrow Agent shall not have or incur any liability for any loss arising from investment of the funds held for the Escrow Agent on the Dollar Accounts.

In addition, the Escrow Agent shall not bear nor be liable for any expenses, charges, costs or fees of any kind incurred by the Bank or the FED in performance of their duties under this Arrangement.

7. In the performance of their duties under this Arrangement, the Bank shall not exercise any discretion designed to favour one of the parties to this Arrangement and shall act only on the instructions of the Escrow Agent.

(a) Provided that no previous instruction has been received under subparagraph (b) below, upon receipt of instructions from the Escrow Agent to do so, in the form provided in paragraph 8 below, the Bank shall immediately transfer the funds then held on Dollar Account No. 1 as follows:

- (i) U.S. Dollars 3,667,000,000 to the FED, subject to the FED's sole direction;
- (ii) U.S. Dollars 1,418,000,000 to Dollar Account No. 2; and
- (iii) the balance to an account of Bank Markazi Iran opened at the Bank, subject to Bank Markazi Iran's sole direction and transfer the securities and bullion then held in the Securities Custody Account No. 1 and the Bullion Account respectively to the account of Bank Markazi Iran at the Bank, subject to Bank Markazi Iran's sole direction.

(b) Provided that no previous instruction has been received under subparagraph (a) above, upon receipt of instructions from the Escrow Agent to do so, in the form provided in paragraph 8 below, the Bank shall immediately transfer the Escrow Fund to the account of the FED at the

Bank, subject to the FED's sole direction, and close all the Accounts opened under paragraph 2 of this Arrangement.

(c) Any funds or securities received by the Bank from the FED for deposit on any of the accounts described in paragraph 2 of this Arrangement, other than Dollar Account No. 2, after receipt and execution by the Bank of the instructions referred to in subparagraph (a) above, shall be credited in accordance with the instructions of the Escrow Agent in the form provided in paragraph 8 below, to the account of Bank Markazi Iran at the Bank, subject to Bank Markazi Iran's sole direction, and to Dollar Account No. 3 and Securities Custody Account No. 2 at the Bank in the name of the Escrow Agent.

Not later than 30 days after the date hereof the Escrow Agent shall instruct the Bank to transfer the funds and securities in these accounts to such bank as the Escrow Agent shall direct, for the account of the Banque Centrale d'Algerie.

(d) Upon receipt by the Bank of instructions from the Escrow Agent to do so in the form provided in paragraph 8 below, the Bank shall, as soon as practicable thereafter

- (i) transfer such amount as may be specified in the instructions from Dollar Account No. 2 to the FED, subject to the FED's sole direction, if sufficient funds then remain on Dollar Account No. 2 to make such transfer; and/or
- (ii) transfer the remaining funds on Dollar Account No. 2 to the account of Bank Markazi Iran at the Bank, subject to Bank Markazi Iran's sole direction, and close Dollar Account No. 2.

(e) The Escrow Agent shall not be entitled to give the Bank any instruction other than described in this paragraph 7, and the Bank shall be entitled and bound to rely on any instruction falling within this paragraph 7 without further inquiry, and any transfer by the Bank in accordance with any instructions given to them under this paragraph 7 shall constitute a good discharge to the Bank.

8. (a) The Bank and the Escrow Agent will exchange telegraphic keys which will permit the reciprocal validation

of messages and payment and transfer orders; however, the instructions set forth in paragraphs 7(a) and 7(b) shall be in writing, shall be transmitted by hand either

- (i) to the Bank or
- (ii) to the Deputy Governor of the Bank for and on behalf of the Bank at the British Embassy at Algiers and shall be authenticated as provided in subparagraph (b) below. In the event that a telegraphic test is challenged, the Bank and the Escrow Agent agree to contact each other by telex or other appropriate means as rapidly as possible, in order to obtain confirmation of the authenticity of the transmission.

(b) The Bank and the Escrow Agent shall provide each other with a list, which will be revised whenever necessary, of the names of the persons authorized to execute any written notice or instruction required or permitted under this Arrangement and identify the signatures of such designated persons; all such notices or instructions to the Bank shall be effective on receipt by the Bank; the Bank shall not be obliged to act on any such notice or instruction unless properly so authorized, authenticated and delivered in the manner required by this paragraph.

9. Except as provided in paragraph 8(a) above, any advices, written notices, or instructions permitted or required by this Arrangement shall be given to the parties hereto at the respective addresses shown below:

- (i) To the Bank at:
Threadneedle Street
London EC2R 8AH
ATTENTION: D.H.F. Somerset
J.G. Drake
W.B. Moule
- (ii) To the FED at:
33 Liberty Street
New York, New York 10045
ATTENTION: H. David Willey
George Ryan
- (iii) To the Escrow Agent at:
8 Boulevard Zirout Youcef
Algiers, Algeria

ATTENTION: Mr. Mohamed Bessekhoud
Mr. Bachir Saïl
Mr. Mohand Kirat
Mr. Lakhdar Benouataf

10. The FED shall indemnify and hold the Bank harmless against and shall reimburse the Bank for any loss or expense that they may incur by reason of their acts or omissions under or in connection with this Arrangement, except for

(A) Any loss or expense resulting from their own negligence or wilful misconduct and

(B) Any loss arising from investment of the funds held for the Escrow Agent on Dollar Accounts No. 1, No. 2 and No. 3.

11. The Bank may rely and shall be protected in acting on any instrument, instruction, notice or direction given by the Escrow Agent in accordance with paragraph 7 reasonably believed by them to be genuine and to have been signed or dispatched by the appropriate person or persons.

12. The Bank shall not be liable for any act or omission unless such act or omission involves negligence or wilful misconduct on the part of the Bank. This paragraph 12 does not apply to any loss arising from investment of the funds held for the Escrow Agent on the Dollar Accounts.

13. (a) The Bank shall advise the Escrow Agent by telex as soon as reasonably practicable thereafter of all changes in balances, deposits, interest earned and withdrawals on the six accounts opened and maintained by the Bank for the Escrow Agent as provided in paragraph 2 of this Arrangement.

(b) The Bank shall provide the FED by telex with a list of all debits and credits to the six accounts referred to in subparagraph (a) above.

14. The Bank and the FED accept that the Escrow Agent is a central bank, whose property is normally entitled to the full immunities of a central bank under the State Immunity Act of 1978 of the United Kingdom. Nothing in this Arrangement shall

be considered as constituting, in whole or in part, a waiver of any immunity to which they are entitled.

15. Nothing herein shall require the Bank to violate the laws of England or any court order thereunder; the Bank confirms that none of the provisions of this Arrangement is in violation of the laws of England.

16. The provisions hereof may not be modified or changed except by an instrument in writing duly executed by or on behalf of the Escrow Agent, the Bank and the FED.

17. This Arrangement is written in English and French texts but, in the event of any conflict between the two texts, the English text shall prevail.

18. The arrangements described herein shall be governed by and construed in accordance with the laws of England.

Dated 20th of January 1981

BANQUE CENTRALE D'ALGÉRIE

by Mohamed Bessekhoud
Lakhdar Benouataf

THE GOVERNOR AND COMPANY OF
THE BANK OF ENGLAND

by C.W. McMahon
D. H. F. Somerset

FEDERAL RESERVE BANK OF NEW YORK
AS FISCAL AGENTS OF THE UNITED STATES

by Ernest T. Patrikis

U.S. AUTHORIZATION TO APPROVE THE TEXT OF DOCUMENTS
RELATING TO THE RELEASE OF THE HOSTAGES

By the authority vested in the undersigned, as President and as Secretary of State, respectively, each of us hereby delegates to Warren M. Christopher, Deputy Secretary, Department of State, authority (1) to approve the texts of the Declaration of the Government of the Democratic and Popular Republic of Algeria relating to the release of the fifty-two United States nationals detained in Iran and to the resolution of claims of United States nationals against Iran, the Undertakings of the Governments of the United States and Iran with respect to such Declaration, and the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, to all of which the United States is today adhering, and to evidence such approvals by his initials or signature, and (2) to approve and to execute on behalf of the United States the Escrow Agreement and any other documents related to such Declarations and Undertakings.

Jimmy Carter

Edmund Muskie

THE WHITE HOUSE

January 18, 1981

STATEMENTS OF ADHERENCE
(January 19, 1981)

By the authority vested in me as President by the Constitution and laws of the United States, I hereby agree and adhere, on behalf of the United States of America, to the provisions of two Declarations that are being issued today by the Government of the Democratic and Popular Republic of Algeria relating to (1) the resolution of the current crisis between the United States and Iran arising out of the detention of the fifty-two United States nationals, and (2) the settlement of claims between the United States and Iran. The two Declarations shall constitute international agreements legally binding upon the United State and Iran upon the execution of an equivalent statement of agreement and adherence by the Islamic Republic of Iran and the delivery of both statements to the Government of the Democratic and Popular Republic of Algeria.

Jimmy Carter

By the authority vested in me as President by the Constitution and laws of the United States, I hereby agree and adhere, on behalf of the United States of America, to the provisions of the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria. These undertakings shall constitute an international agreement legally binding upon the United States and Iran upon the execution of an equivalent statement of agreement and adherence by the Islamic Republic of Iran and the delivery of both statements to the Government of the Democratic and Popular Republic of Algeria.

Jimmy Carter

PRESIDENT CARTER'S
SUMMARY STATEMENT TO THE CONGRESS
(January 19, 1981)

TO THE CONGRESS OF THE UNITED STATES:

Pursuant to Section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703, I hereby report to the Congress that I have today exercised the authority granted by this Act to take certain measures with respect to property of the Government of Iran and its controlled entities and instrumentalities.

1. On November 14, 1979, I took the step of blocking certain property and interests in property of the Government of Iran and its controlled entities and instrumentalities. This action was taken in response to a series of aggressive actions by Iran, including the attack on the United States Embassy in Tehran, the holding of U.S. citizens and diplomats as hostages, and threats to withdraw assets from United States banks, and otherwise seek to harm the economic and political interests of the United States. Subsequently, on April 7, 1980, and April 17, 1980, I took further action restricting various kinds of transactions with Iran by persons subject to the jurisdiction of the United States.

2. Agreement has now been reached with Iran concerning the release of the hostages and the settlement of claims of U.S. nationals against Iran. Among other things this agreement involves the payment by Iran of approximately \$3.67 billion to pay off principal and interest outstanding on syndicated loan agreements in which a U.S. bank is a party. This includes making all necessary payments to the foreign members of these syndicates. An additional \$1.418 billion shall remain available to pay all other loans as soon as any disputes as to the amounts involved are settled and to pay additional interest to banks upon agreement or arbitration with Iran. In addition, there will be established an international tribunal to adjudicate various disputed claims by U.S. nationals against Iran; and the deposit of \$1 billion by Iran from previously blocked assets as released, which will be available for payments of awards against Iran. Iran has committed itself to replenish this fund as necessary. This tribunal, among other things, will also hear certain disputes between Iranian nationals and the United States Government and contractual disputes between Iran and the United States.

In connection with this agreement, and to begin the process of normalization of relations between the two countries. I have issued and will issue, a series of Orders.

3. First, I have signed an Executive Order authorizing the Secretary of the Treasury to enter into or to direct the Federal Reserve Bank of New York to enter into escrow and depositary agreements with the Bank of England.

Under these agreements, assets in the escrow account will be returned to the control of Iran upon the safe departure of the United States hostages from Iran. I have also by this Order instructed the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive other blocked Iranian assets, and, as further directed by the Secretary of the Treasury, to transfer these assets to the escrow account.

4. Second, I have signed an Executive Order directing the Federal Reserve Bank of New York to transfer to its account at the Bank of England and then to the escrow account referred to in the preceding paragraph, the assets of the Government of Iran, both transfers to take place as and when directed by the Secretary of the Treasury.

In order to assure that this transaction can be executed, and having considered the claims settlement agreement described above, I have exercised my authority to nullify, and bar the exercise of, all rights, powers or privileges acquired by anyone; I have revoked all licenses and authorizations for acquiring any rights, powers, or privileges; and I have prohibited anyone from acquiring or exercising any right, power, or privilege, all with respect to these properties of Iran. These prohibitions and nullifications apply to rights, powers, or privileges whether acquired by court order, attachment, or otherwise. I have also prohibited any attachment or other like proceeding or process affecting these properties.

5. Third, I have signed an Executive Order which directs branches and offices of United States banks located outside the United States to transfer all Iranian government funds, deposits and securities held by them on their books on or after November 14, 1979 at 8:10 a.m. EST to the account of the Federal Reserve Bank of New York at the Bank of England in London. These assets will be transferred to the account of the Central Bank of Algeria, as escrow agent.

The transfer is to include interest from the date of the blocking order at commercially reasonable rates. In addition, any banking institution that has executed a set-off subsequent to the date of the blocking order against Iranian deposits covered by this order is directed to cancel the set-off and to transfer the funds that had been subject to the set-off in the same manner as the other overseas deposits.

This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

6. Fourth, I have signed an Executive Order directing American banks located within the United States which hold Iranian deposits to transfer those deposits, including interest from the date of entry of the blocking order at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury. Half of these funds will be transferred to Iran and the other half (up to a maximum of \$1 billion) will be placed in a security account as provided in the Declaration and the Claims Settlement Agreement that are part of the agreement we have reached with Iran. This fund will be maintained at a \$500 million level until the claims program is concluded. While these transfers should take place as soon as possible, I have been advised that court actions may delay it. This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

7. Fifth, I have signed an Executive Order directing the transfer to the Federal Reserve Bank of New York by non-banking institutions of funds and securities held by them for the Government of Iran, to be held or transferred as directed by the Secretary of the Treasury. This transfer will be accomplished at approximately the same time as that described in paragraph 6. This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

8. Sixth, I will sign, upon release of the hostages, an Executive Order directing any person subject to the jurisdiction of the United States who is in possession or control of properties owned by Iran, not including funds and securities, to transfer the property as directed by the Government of Iran acting through its authorized agent. The Order recites that it does not relieve persons subject

to it from existing legal requirements other than those based on the International Emergency Economic Powers Act. This order does not apply to contingent liabilities. This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

9. Seventh, I will sign, upon release of the hostages, an Executive Order revoking prohibitions previously imposed against transactions involving Iran. The Executive Order revokes prohibitions contained in Executive Order No. 12205 of April 7, 1980; and Executive Order No. 12211 of April 17, 1980; and the amendments contained in Proclamation No. 4702 of November 12, 1979. The two Executive Orders limited trade and financial transactions involving Iran and travel to Iran. The proclamation restricted oil imports. In revoking these sanctions I have no intention of superseding other existing controls relating to exports including the Arms Export Control Act and the Export Administration Act.

10. Eighth, I will sign, upon release of the hostages, an Executive Order providing for the waiver of certain claims against Iran. The Order directs that the Secretary of the Treasury shall promulgate regulations: (a) prohibiting any person subject to U.S. jurisdiction from prosecuting in any court within the United States or elsewhere any claim against the Government of Iran arising out of events occurring before the date of this order arising out: (1) the seizure of the hostages on November 4, 1979; (2) their subsequent detention; (3) injury to the United States property or property of United States nationals within the United States Embassy compound in Tehran after November 1979; (4) or injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran; (b) prohibiting any person not a U.S. national from prosecuting any such claim in any court within the United States; (c) ordering the termination of any previously instituted judicial proceedings based upon such claims; and (d) prohibiting the enforcement of any judicial order issued in the course of such proceedings.

The Order also authorizes and directs the Attorney General of the United States immediately upon the issuance of such a Treasury regulation to notify all appropriate courts of the existence of the Executive Order and implementing regulations and the resulting termination of relevant litigation. At the same time, I will create a commission to make recommendations on the issue of compensation for those who have been held as hostages.

11. Finally, I will sign, upon release of the hostages, an Executive Order invoking the blocking powers of the International Emergency Economic Powers Act to prevent the transfer of property located in the United States and controlled by the estate of Mohammed Reza Pahlavi, the former Shah of Iran, or by any close relative of the former Shah served as a defendant in litigation in United States courts brought by Iran seeking the return of property alleged to belong to Iran. This Order will remain effective as to each person until litigation concerning such person or estate is terminated. The Order also requires reports from private citizens and Federal agencies concerning this property so that information can be made available to the Government of Iran about this property.

The Order would further direct the Attorney General to assert in appropriate courts that claims of Iran for recovery of this property are not barred by principles of sovereign immunity or the act of state doctrine.

12. In addition to these actions taken pursuant to the International Economic Emergency Powers Act, other relevant statutes, and my powers under the Constitution, I will take the steps necessary to withdraw all claims now pending against Iran before the International Court of Justice.

/s/ Jimmy Carter

THE WHITE HOUSE,
January 19, 1981.

Executive Order 12170 of November 14, 1979

Blocking Iranian Government Property

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. sec. 1601 *et seq.*, and 3 U.S.C. sec. 301,

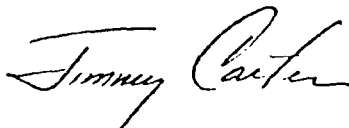
I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

THE WHITE HOUSE,
November 14, 1979.



Editorial Note: A White House statement of Nov. 14, 1979, on the blocking of Iranian Government property, is printed in the Weekly Compilation of Presidential Documents (vol. 15, no. 46).

Direction Relating to Establishment of Escrow Accounts

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The Secretary of the Treasury is authorized to enter into, and to license, authorize, direct, and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign central bank and with the Central Bank of Algeria under which certain money and other assets, as and when directed by the Secretary of the Treasury, shall be credited by the foreign central bank to an escrow account on its books in the name of the Central Bank of Algeria, for transfer to the Government of Iran if and when the Central Bank of Algeria receives from the Government of Algeria a certification that the 52 U.S. diplomats and nationals being held hostage in Iran have safely departed from Iran. Such agreements shall include other parties and terms as determined by the Secretary of the Treasury to be appropriate to carry out the purposes of this Order.

1-102. The Secretary of the Treasury is authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities, or controlled entities have an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the rights and obligations of the United States under the Declaration of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the escrow and related agreements described in paragraph 1-101 of this Order. Such money and other assets may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the effective date of this Order.

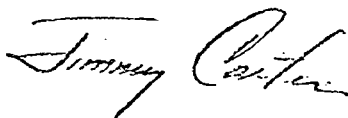
1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets referred to in paragraphs 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

A handwritten signature in dark ink, appearing to read "Jimmy Carter". The signature is fluid and cursive, with the first name "Jimmy" and the last name "Carter" clearly distinguishable.

Executive Order 12277 of January 19, 1981

Direction To Transfer Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the Secretary of the Treasury, all gold bullion, and other assets, (or the equivalent thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transactions he deems appropriate and consistent with the purposes of this Order, including any transactions related to the return of such bullion and other assets pursuant to the escrow agreement.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in

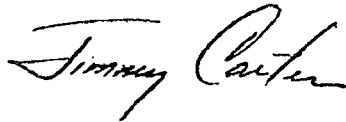
section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

A handwritten signature in black ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style with a large, prominent "C" at the end.

Direction To Transfer Iranian Government Assets Overseas

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a United States bank or subsidiary thereof, which branch or office is located outside the territory of the United States and which on or after 8:10 a.m. E.S.T. on November 14, 1979 (a) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities, is licensed, authorized, directed, and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The Secretary of the Treasury shall determine when the transfers required by this section shall take place. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria and its Annex.

1-102. Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after November 14, 1979, at 8:10 a.m. E.S.T. against Iranian funds, securities, authorized, directed, and compelled to cancel such set-off and to transfer all funds, securities, and deposits which have been subject to such set-off, or deposits referred to in section 1-101 is hereby licensed, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1-101 of this Order.

1-103. If the funds, securities, and deposits described in section 1-101 are not promptly transferred to the control of the Government of Iran, such funds, securities, and deposits shall be returned to the banking institutions holding them on the effective date of this Order and the set-offs described in section 1-102 shall be in force as if this Order had not been issued and the status of all such funds, securities, deposits and set-offs shall be *status quo ante*.

1-104. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations,

with respect to the properties described in Sections 1-101 and 1-102 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in Sections 1-101 and 1-102 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Sections 1-101 and 1-102 of this Order.

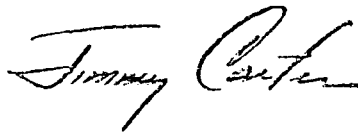
1-105. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in Sections 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-106. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-107. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-108. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

A handwritten signature in dark ink, appearing to read "Jimmy Carter", is written over the typed name of the President.

Direction To Transfer Iranian Government Assets Held by Domestic Banks

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 22 of the United States Code, Section 1732 of 3 Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

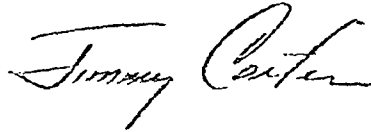
1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

A handwritten signature in cursive script, reading "Jimmy Carter". The signature is written in dark ink and is positioned to the right of the typed text of the executive order.

**Direction To Transfer Iranian Government Financial Assets
Held by Non-Banking Institutions**

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

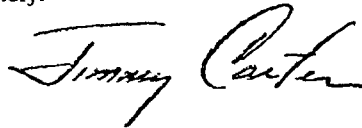
1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to

anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

A handwritten signature in black ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style with a large, prominent "C" at the end.

THE WHITE HOUSE,
January 19, 1981.

Direction To Transfer Certain Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the

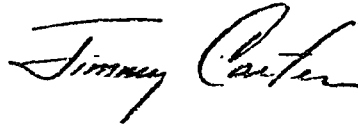
same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style with a large, prominent "J" and "C".

Executive Order 12282 of January 19, 1981

Revocation of Prohibitions Against Transactions Involving Iran

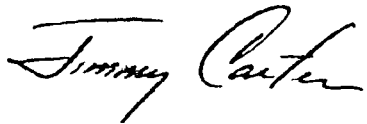
By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostage and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The prohibitions contained in Executive Order 12205 of April 7, 1980, and Executive Order 12211 of April 17, 1980, and Proclamation 4702 of November 12, 1979, are hereby revoked.

1-102. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1-103. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.



Executive Order 12283 of January 19, 1981

Non-Prosecution of Claims of Hostages and for Actions at the United States Embassy and Elsewhere

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

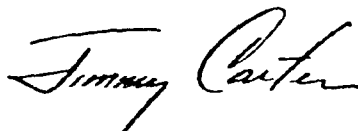
1-101. The Secretary of the Treasury shall promulgate regulations: (a) prohibiting any person subject to U.S. jurisdiction from prosecuting in any court within the United States or elsewhere any claim against the Government of Iran arising out of events occurring before the date of this Order relating to (1) the seizure of the hostages on November 4, 1979, (2) their subsequent detention, (3) injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979, or (4) injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran; (b) prohibiting any person not a U.S. national from prosecuting any such claim in any court within the United States; (c) ordering the termination of any previously instituted judicial proceedings based upon such claims; and (d) prohibiting the enforcement of any judicial order issued in the course of such proceedings.

1-102. The Attorney General of the United States is authorized and directed, immediately upon the issuance of regulations in accordance with Section 1-101, to take all appropriate measures to notify all appropriate courts of the existence of this Order and implementing regulations and the resulting termination of litigation.

1-103. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purpose of this Order.

1-104. This Order shall be effective immediately.

THE WHITE HOUSE,
January 19, 1981.



Restrictions on the Transfer of Property of the Former Shah of Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

1-102. The Secretary of the Treasury is authorized and directed (a) to promulgate regulations requiring all persons who are subject to the jurisdiction of the United States and who, as of November 3, 1979, or as of this date, have actual or constructive possession of property of the kind described in Section 1-101, or knowledge of such possession by others, to report such possession or knowledge thereof, to the Secretary of the Treasury in accordance with such regulations and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such reports to the fullest extent permitted by law. Such reports shall be required as to all individuals described in 1-101 and shall be required to be filed within 30 days after publication of a notice in the Federal Register.

1-103. The Secretary of the Treasury is authorized and directed (a) to require all agencies within the Executive Branch of the United States Government to deliver to the Secretary all official financial books and records which serve to identify any property of the kind described in Section 1-101 of this Order, and (b) to make available to the Government of Iran or its designated agents all identifying information derived from such books and records to the fullest extent permitted by law.

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and

that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

A handwritten signature in cursive script, reading "Jimmy Carter". The signature is written in dark ink and is positioned to the right of the typed text.

THE WHITE HOUSE,
January 19, 1981.

President's Commission on Hostage Compensation

By the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

1-1. *Establishment.*

1-101. There is established the President's Commission on Hostage Compensation, hereinafter referred to as the Commission, which shall be composed of not more than nine members who shall be appointed by the President.

1-102. The President shall designate a Chairman from among the members.

1-2. *Functions.*

1-201. The Commission shall study and analyze, and make recommendations to the President on, the question whether the United States should provide financial compensation to United States nationals who have been held in captivity outside the United States, either (1) by or with the approval of a foreign government, or (2) by reason of their status as employees of the United States Government or as dependents of such employees.

1-202. The Commission shall submit a report to the President ninety days after the date of this Order. The report shall contain the Commission's recommendations as to whether legislation to deal with the foregoing compensation issue is appropriate and, if so, as to what such legislation should provide. The report shall specifically contain the Commission's recommendations concerning the compensation of United States nationals held hostage in Iran on and after November 4, 1979.

1-203. In analyzing the foregoing issues the Commission shall consider all factors which it may consider relevant, including the prior practice with respect to governmental compensation, both by the United States Government and by foreign governments, of persons held in captivity abroad.

1-204. In the performance of its functions the Commission shall specifically address the following issues:

(a) whether any legislation authorizing compensation should set forth specific legislative standards, or whether the standards by which to award compensation should be administratively developed;

(b) whether any standards developed either legislatively or administratively should be applied uniformly to civilian and military government employees, dependents of such employees, and private citizens, or whether separate criteria should be developed for these or other categories;

(c) whether an existing administrative body should determine amounts of compensation, or whether a new body should be established for this purpose; and

(d) whether compensation should be paid for injuries suffered by members of families of persons who have been held in captivity.

1-3. *Administrative Provisions.*

1-301. In performing its functions the Commission shall conduct such studies, reviews, and inquiries as may be necessary. In addition to conducting open meetings in accordance with the Federal Advisory Committee Act, the Com-

mission shall conduct public hearings to identify critical issues and possible solutions related to compensation.

1-302. The Commission is authorized to request from any Executive agency such information that may be deemed necessary to carry out its functions under this Order. Each Executive agency shall, to the extent permitted by law, furnish such information to the Commission in the performance of its functions under this Order.

1-303. Each member of the Commission who is not otherwise employed in the Federal Government may receive, to the extent permitted by law, compensation for each day he or she is engaged in the work of the Commission at a rate not to exceed the maximum daily rate now or hereafter prescribed by law for GS-18 of the General Schedule, and may also receive transportation and travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

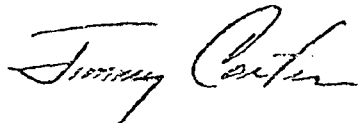
1-304. All necessary administrative staff services, support, facilities, and expenses of the Commission shall, to the extent permitted by law, be furnished by the Department of State.

1-4. General Provisions.

1-401. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of State in accordance with guidelines and procedures established by the Administrator of General Services.

1-402. The Commission shall terminate thirty days after submitting its report.

THE WHITE HOUSE,
January 19, 1981.



REAGAN ADMINISTRATION STATEMENT REGARDING
THE SETTLEMENT WITH IRAN*

(February 18, 1981)

Our position up until now has been that the United States will, of course, honor its obligations under international law. Because of the complexity of the agreements and the extraordinary conditions under which they were negotiated, we have undertaken a review to determine precisely what our obligations are under them.

That review has been completed. Having considered all the circumstances carefully, we have decided to approve implementation of the agreements in strict accordance with the terms of the agreements.

The review considered impact of implementing or not on: the rights of U.S. claimants; U.S. terrorist policy; U.S. international interests, including U.S. obligations to third parties, particularly Algeria, who had themselves made commitments during the course of these negotiations; long-term U.S. interests in the Persian Gulf, including Iran.

It did not consider several questions, of great potential interest to historians and of possible value for drawing lessons with respect to future policy but of no practical bearing on the immediate question of whether or not to implement the agreements.

THE ISSUES NOT CONSIDERED

The review just completed did not consider: how could the whole crisis have been handled better; could a better set of agreements have been negotiated; and we did not consider whether these agreements should have been signed.

We are confronted with an accomplished fact. We have an agreement signed by a President of the U. S. and the question is whether -- given the existence of the agreement and the consequences (legal, financial and political) of implementing it or not, what should this country do.

*2048 Dep't State Bull. 17 (1981).

The conclusion of the agreements was a legal exercise of Presidential authority. This authority will be subject to challenge in our courts, and the executive branch will, of course, abide by the determination of our judicial system. We did not find it necessary to reach a conclusion as to the legally binding character of these agreements under international law. We are proceeding because we believe it is in the overall interest of the United States to carry out the agreement.

THE STATUS QUO ANTE

The decision represents a practical judgment that implementation provides the surest resolution of the issue consistent with the best interest of the United States in the Gulf region and throughout the world. Iran has not profited from these agreements. It was ultimately forced to settle on terms that simply restored the status quo ante because the advent of the new Administration finally confronted it with a serious deadline. The funds already returned to Iran and those which may be returned following the implementation of these agreements and the settlement of commercial and financial claims are funds which belonged to Iran before the seizure of the American hostages.

It should be well understood that the decision to faithfully implement the agreements does not represent a precedent for future actions by the United States Government in similar situations. The present Administration would not have negotiated with Iran for the release of the hostages. Future acts of state-sponsored terrorism against the U.S. will meet swift and sure punishment.

Suspension of Litigation Against Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

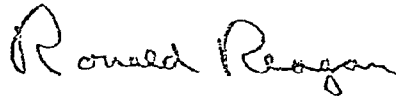
Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

THE WHITE HOUSE,
February 24, 1981.

A handwritten signature in dark ink, reading "Ronald Reagan". The signature is written in a cursive, flowing style with a large, prominent "R" at the beginning.

LETTER TO PRESIDENT CARTER FROM ATTORNEY GENERAL
BENJAMIN CIVILETTI, SETTING OUT HIS OPINION ON LEGALITY
OF U.S.-IRAN HOSTAGE RELEASE AGREEMENT

January 19, 1981

My dear Mr. President:

I have been asked for my opinion concerning the legality of certain actions designed to resolve issues arising from the detention in Iran of 52 American hostages, including the diplomatic and consular staff in Tehran.

An international agreement has been reached with Iran. The agreement, which consists of four separate documents, commits the United States and Iran to take specified steps to free the hostages and to resolve specified claims between the United States and its nationals and Iran and its nationals. These documents embody the interdependent commitments made by the two parties for which Algeria has been acting as intermediary.

The first document is captioned "Declaration of the Government of the Democratic and Popular Republic of Algeria" ("Declaration"). The Declaration provides, first, for nonintervention by the United States in the internal political and military affairs of Iran.

Second, the Declaration provides generally for return of Iranian assets. The transfer utilizes the Central Bank of Algeria as escrow agent and the Bank of England in London as depositary; their obligations and powers are specified in two other documents, the "Escrow Agreement" and the "Depositary Agreement." Separate timetables and conditions are described for assets in the Federal Reserve Bank of New York ("Fed"), in foreign branches of United States banks, and in domestic branches of United States banks, and for other financial assets and other property located in the United States and abroad. The transfer of the assets in the Fed and in the foreign branches to the Bank of England is scheduled to take place first. Upon Iran's release of the hostages, the Central Bank of Algeria, as escrow agent, shall direct the Bank of England, under the terms of the Escrow and Depositary Agreements, to disburse the escrow account in accordance with the undertakings of the United States and Iran with respect to the Declaration.

The transfer from the Central Bank of Algeria to Iran of the assets presently in the domestic branches will take place upon Iran's establishment with a foreign central bank of a Security Account to be used for the purpose of paying claims against Iran in accordance with a "Claims Settlement Agreement" set forth in the fourth document, which is captioned "Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran" ("Claims Settlement Agreement"). The Claims Settlement Agreement provides for the establishment of an Iran-United States Claims Tribunal, which will have jurisdiction to decide three categories of claims: (1) claims by United States nationals against Iran and claims by Iranian nationals against the United States, and counterclaims arising out of the same transaction or occurrence, for claims and counterclaims outstanding on the date of the Agreement; (2) official claims of the Governments of the United States and Iran against each other arising out of contracts for the purchase and sale of goods and services; and (3) any dispute as to the interpretation or performance of any provision of the Declaration.

Third, the Declaration provides for nullification of trade sanctions against Iran and withdrawal of claims now pending in the International Court of Justice. The United States also agrees not to prosecute its claims and to preclude prosecution by a United States national or in the United States courts of claims arising out of the seizure of the embassy and excluded by the Claims Settlement Agreement.

Fourth, the Declaration provides for actions by the United States designed to help effectuate the return to Iran of the assets of the family of the former Shah.

A series of Executive orders has been proposed to carry out the domestic, and some foreign, aspects of the international agreement. It is my opinion that under the Constitution, treaties, and laws of the United States you, your

¹Two categories of claims are specifically excluded: (1) claims relating to the seizure or detention of the hostages, injury to United States property or property within the compound of the embassy in Tehran, and injury to persons or property as a result of actions in the course of the Islamic Revolution in Iran which were not actions of the Government of Iran and (2) claims arising under the terms of a binding contract specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts.

subordinates the Fed, and the Federal Reserve Board are authorized to take the actions described in the four documents constituting the international agreement and in the Executive orders.²

I shall first examine the proposed Executive orders and consider them as to form and legality. Subsequently I shall consider certain questions which arise from other proposed actions and documents related thereto.

1. The first proposed Executive order is captioned "Direction Relating to Establishment of Escrow Accounts." Under it, the Secretary of the Treasury is authorized to direct the establishment of an appropriate escrow agreement with the Bank of England and with the Central Bank of Algeria to provide as necessary for distribution of funds in connection with the release of the hostages. The Escrow Agreement provides, among other things, that certain assets in which Iran has an interest shall be credited by the Bank of England to an escrow account in the name of the Central Bank of Algeria and transferred to Iran after the Central Bank of Algeria receives certification from the Algerian Government that the 52 hostages have safely departed from Iran.

The International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq. ("IEEPA"), provides you with authority, during a declared national emergency, to direct transactions and transfers of property in which a foreign country has an interest under such regulations as you may prescribe. As the proposed order recites, such an emergency has been declared. IEEPA was the authority for the blocking order of November 14, 1979, E.O. No. 12170, which asserted control over Iranian government assets. Moreover, the statute known as the Hostage Act, 22 U.S.C. § 1732, authorizes the President, when American citizens are unjustly deprived of liberty by a foreign government, to use such means, not amounting to acts of war, as he may think "necessary and proper" to bring about their release. The phrase "necessary and proper" is, of course, borrowed from the Constitution, and has been construed as providing very broad discretionary powers for legitimate ends. U.S. Const. Art. I, § 88, cl. 18; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819). Establishment of the escrow account is directed to the release of the hostages. ³ This order thus falls within your powers under these Acts.

² Documents testifying to the adherence to the agreement by both the United States and Iran will also be executed; these documents present no substantive legal issues.

³ Although I do not specifically discuss the applicability of the Hostage Act to the other proposed orders described in this opinion, I believe that it generally supports their issuance.

It is approved as to form and legality.

2. The second proposed Executive order is captioned "Direction to Transfer Iranian Government Assets." The Fed is directed to transfer to its account at the Bank of England, and then to the escrow account referred to in paragraph 1, the assets of the Government of Iran, as directed by the Secretary of the Treasury. The order also revokes the authorization for, and nullifies all interests in, the frozen Iranian government property except the interests of Iran and its agents. The effect of this order will be to void the rights of the plaintiffs in any possible litigation to enforce certain attachments and other prejudgment remedies that were issued against the blocked assets following the original blocking order.

I believe that this provision is lawful for several reasons. I am informed, first, that the Iranian funds on deposit in the Fed are funds of the Bank Markazi, the Central Bank of Iran. As such, they are clearly not subject to attachment. The Foreign Sovereign Immunities Act of 1976 specifically states that the property of a foreign central bank held for its own account shall be immune from attachment and execution unless that immunity has been explicitly waived. 28 U.S.C. § 1611(b). It is my view that there has been no such waiver.

Even assuming, arguendo, that the attachments are not precluded by 28 U.S.C. § 1611(b), there is power under IEEPA to nullify them or to prevent the exercise of any right under them. Under IEEPA, the President has authority in time of emergency to prevent the acquisition of interests in foreign property and to nullify new interests that are acquired through ongoing transactions. The original blocking order delegated this power to the Secretary of the Treasury, who promulgated regulations prohibiting the acquisition, through attachment or any other court process, of any new interest in the blocked property. The effect of these regulations was to modify both the substantive and the procedural law governing the availability of prejudgment remedies to creditors of Iran. The regulations contemplated that provisional remedies might be permitted at a later date but provided that any unauthorized remedy would be "null and void." 31 C.F.R. § 535.203(e).

Subsequently, all of the attachments and all of the other court orders against the Iranian assets held by the

Fed were entered pursuant to a general license or authorization given by the Secretary of the Treasury effective November 23, 1979. This authorization, like all authorizations issued under the blocking regulations, may be revoked at any time in accordance with 31 C.F.R. § 535.805, which expressly provides that any authorization issued under the blocking order could be "amended, modified, or revoked at any time." See Orvis v. Brownell, 345 U.S. 183 (1953). The regulations did not purport to authorize any transaction to the extent that it was prohibited by any other law (other than, IEEPA), such as the Foreign Sovereign Immunities Act.⁴ 31 C.F.R. § 535.101(b).

Upon revocation, the exercise or prosecution of any interests created by the outstanding attachments and other orders will be unauthorized. The orders themselves will no longer confer any enforceable right upon the creditors. Indeed, because IEEPA expressly grants to the President a power of nullification, the interests created by these provisional remedies are themselves subject to nullification, in addition to nullification by the revocation of the underlying authorization. In this respect the President's power under IEEPA is analogous to his constitutional power to enter into international agreements that terminate provisional interests in foreign property acquired through domestic litigation if necessary in the conduct of foreign affairs. See The Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801). The nullification of these interests is an appropriate exercise of the President's traditional power to settle international claims. United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 325 (1937).

Upon the direction of the Secretary of the Treasury, the Fed will be free to transfer the Iranian assets; the attachments and other prejudgment encumbrances will have been rendered unenforceable by the contemporaneous change in law. Moreover, the Fed may comply with the Secretary's directive without litigating in advance the issue of the Secretary's authority to nullify the provisional interests. IEEPA explicitly states, and the proposed order affirms, that "[n]o person shall be liable to any court . . . for

⁴ In New England Merchants National Bank v. Iran Power Generation and Transmission Co., 79 Civ. 6380 (KTD) (S.D.N.Y., Sept. 26, 1980), the District Court took the position that the freeze order under IEEPA took precedence over the Foreign Sovereign Immunities Act, thus removing Iran's immunity. Assuming arguendo, the correctness of that position, the legal effect of the totality of actions discussed herein would be to reinstate Iran's immunity, thereby removing the ratio decidendi of the District Court's decision.

anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, [IEEPA] or any regulation, instruction, or direction issued under [IEEPA]." 50 U.S.C. § 1702(a)(3). I believe that Congress intended this provision to relieve holders of foreign property, as well as individuals administering or carrying out orders issued pursuant to IEEPA, from any liability for actions taken in good faith in reliance on IEEPA and Presidential directives issued under IEEPA. This provision protects not only the Fed and the Federal Reserve Board but Executive Branch officials as well. In my opinion, this provision is valid and effective for that purpose.

Similarly, the Secretary himself is empowered, in my opinion, to nullify these provisional interests and to license the transfer of the assets without submitting the issue to litigation and without insisting that the Fed refuse any transfer until all objections to the transfer have been definitively rejected by the courts. As noted, the interests, if any, created by these prejudgment remedies were created upon the condition that the authority for the underlying transactions might be revoked "at any time"; and that condition may be invoked without delay. The powers that the Constitution gives and the Congress has given the President to resolve this kind of crisis could be rendered totally ineffective if they could not be exercised expeditiously to meet opportunities as they arise. The primary implication of an emergency power is that it should be effective to deal with a national emergency successfully. United States v. Yoshida International, 526 F.2d 560, 573 (C.C.P.A. 1975).

Moreover, the Fed may transfer the assets before the outstanding court orders have been formally vacated. When a supervening legislative act expressly authorizes a course of conduct forbidden by an outstanding judicial order, the new legislation need not require the persons subject to it to submit the matter to litigation before pursuing the newly authorized course. See Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855). I believe that this case is closely on point. A valid Executive order has the force of a federal statute, superseding state actions to the extent that it is inconsistent. Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159, 166 (3d Cir.), cert. denied, 404 U.S. 854 (1971). Thus the holding of the Bridge case applies here.

The order is approved as to form and legality, and actions taken consistent with and pursuant to it will be lawful and valid.

3. The third proposed Executive order is captioned "Direction to Transfer Iranian Government Assets Overseas." In general, it directs branches of United States banks outside the country to transfer Iranian government funds and property to the account of the Fed in the Bank of England. The transfer is to include interest at commercially reasonable rates from the date of the blocking order. The Secretary of the Treasury shall determine when the transfers shall take place. Any banking institution that executed a set-off against Iranian funds after entry of the blocking order is directed to cancel the set-off and to transfer the funds in the same manner as the other overseas deposits.

The Iranian funds in the branches of American banks overseas were subject to the November 1979 blocking order. Subsequently, the Secretary of the Treasury licensed foreign branches and subsidiaries of American banks to set off their claims against Iran or Iranian entities by debit to the blocked accounts held by them for Iran or Iranian entities. 31 C.F.R. § 535.902. As a result of this license, American banks with branches overseas set off various debts owing to them by Iran and Iranian entities. I understand that most of the debts were loans originally made from offices in the United States and that most of the overseas deposits were in branches located in the United Kingdom. The banks with overseas Iranian Accounts set off amounts owing not only to them directly but to other banks with whom they were participants in syndicated loans. The banks have acted on the assumption that any loan made to Iran or an Iranian entity could be set off against any account of Iran or an Iranian entity or enterprise on the theory that, as a result of the control of the Iranian economy by the Government of Iran and nationalization of private enterprises, all such entities and enterprises were the same party for purpose of setting off debts. In addition, the banks accelerated the amounts due on loans that were in default, and, under the doctrine of anticipatory breach, set off loans that had not come due.

The blocking order delegated to the Secretary of the Treasury the authority to license the set-offs to the extent that the Executive order prevented them. The license did not, however, determine whether the set-offs were valid under any other law. 31 C.F.R. § 535.101(b). I understand that Iran and its entities are contesting in litigation overseas whether the set-offs are lawful. The issues include the proper situs of the debts, identity of the parties, the propriety of acceleration, and the anticipation of breach.

IEEPA authorizes the President, under such regulations as he may prescribe, to nullify and void transactions

involving property in which a foreign country has an interest and to nullify and void any right respecting property in which a foreign country has an interest. 50 U.S.C. § 1702. Either analysis is appropriate here: Iran had an interest in the original set-off transaction and continues to have an interest both in the amounts in the accounts which have and have not been set off. The latter, as noted, are the subject of litigation abroad. See 31 C.F.R. § 535.311, .312. Cf. Behring International v. Miller, Civ. Action No. 80-2864 (D.N.J., Dec. 24, 1980) (holding that Iran continues to have interest in a trust account created to pay debt). The very use of the words "nullify" and "void" persuades me that Congress intended to authorize the President to set aside preexisting transactions.⁵

As noted, the order also requires the overseas banks, when transferring the Iranian assets, to include interest on those assets from November 14, 1979, at commercially reasonable rates. I understand that in most cases the accounts in overseas branches of American banks are interest-bearing. To the extent that they are not, such interest represents the benefit realized by the banks from holding the blocked Iranian assets which, under the law of restitution, should accrue to the owners of the assets. Cf. Phillips Petroleum Co. v. Adams, 513 F.2d 355 (5th Cir.), cert. denied, 423 U.S. 930 (1975). As such, the interest or benefit realized by the banks is property in which Iran has an interest.⁶

For these reasons, I believe that you are thus authorized under IEEPA to compel the transfer of both principal and interest to the Federal Reserve account at the Bank of England as provided by the order and to nullify or prevent the exercise of any interests in this property by anyone other than Iran. I also believe, as discussed in paragraph 2 above, that 50 U.S.C. § 1702(a)(3) relieves from liability anyone taking action in good faith under this Executive Order.

⁵I believe that the present case is distinguishable in several respects from that in Brownell v. National City Bank, 131 F. Supp. 60 (S.D.N.Y. 1955). There, the District Court concluded that the mere revocation of a license did not serve to void a preexisting and apparently uncontested set-off; the bank, moreover, had no opportunity to recoup its potential loss by bringing the loan current.

⁶See also Art. VII(2)(b) of the Treaty of Amity, Economic Relations, and Consular Rights with Iran, 8 U.S.T. 901, 905.

⁷Cf. Cities Service Co. v. McGrath, 342 U.S. 330, 334-36 (1952). It is my opinion that a person who has taken action in compliance with this Executive Order and is subsequently

(Continued)

The proposed order is approved as to form and legality, and actions taken consistent with and pursuant to it will be lawful and valid.

4. The fourth proposed Executive Order is captioned "Direction to Transfer Iranian Government Assets Held by Domestic Banks." The proposed order directs American banks in the United States with Iranian deposits to transfer them, including interest from the date of blocking at commercially reasonable rates, to the Fed, which will hold the funds subject to the direction of the Secretary of the Treasury.

As discussed in paragraphs 2 and 3, the President has power under IEEPA to direct the transfer of funds of Iran, including interest, and to nullify or prevent the exercise of any interests of anyone other than Iran in Iranian property. Actions taken in good faith pursuant to this order will be, as discussed above, immune from liability.

The order is approved as to form and legality, and actions taken consistent with and pursuant to it will be lawful and valid.

5. The fifth proposed Executive order is captioned "Direction to Transfer Iranian Government Financial Assets Held by Non-Banking Institutions." This order is similar to the order described in paragraph 4 except that it requires the transfer to the Fed of funds and securities held by non-banking institutions. The President has the power to direct the transfer of funds and securities of Iran held by non-banking institutions, and actions taken in good faith pursuant to this order shall likewise enjoy the immunity from liability as reflected in 50 U.S.C. § 1702(a)(3).

The proposed order is approved as to form and legality, and actions taken consistent with and pursuant to it will be lawful and valid.

6. The sixth proposed Executive order is captioned "Direction to Transfer Certain Iranian Government Assets."

7 (Continued)
finally required by any court to pay amounts with respect to funds transferred pursuant to this Executive Order will have the right as a matter of due process to recover such amount from the United States to the extent of any double liability.

The order would require anyone in possession or control of property owned by Iran, not including funds and securities, to transfer the property as directed by the Iranian government. The order recites that it does not relieve persons subject to it from existing legal requirements other than those based on IEEPA. It does, however, nullify outstanding attachments and court orders in the same manner as does the order discussed in paragraph 2.

For the reasons discussed in the preceding paragraphs, the President has power under IEEPA to order the transfer of property owned by Iran as directed by Iran and to nullify outstanding attachments and court orders related to such property. Actions taken in good faith pursuant to this order shall likewise enjoy the immunity from liability as reflected in 50 U.S.C. § 1702(a)(3).

The order is approved as to form and legality, and actions taken consistent with and pursuant to it will be lawful and valid.

7. The seventh proposed Executive order is captioned "Revocation of Prohibitions against Transactions Involving Iran." It revokes the prohibitions of Executive Order No. 12205 of April 7, 1980; Executive Order No. 12211 of April 17, 1980; and Proclamation 4702 of November 12, 1979. The two Executive orders limited trade with and travel to Iran. The proclamation restricted oil imports from Iran. It is my understanding that although the prohibitions are revoked, the underlying declarations of emergency remain in effect.

The order is approved as to form and legality.

8. The eighth proposed Executive order is captioned "Non-Prosecution of Claims of Hostages and for Actions at the United States Embassy and Elsewhere." The order directs the Secretary of the Treasury to promulgate regulations prohibiting persons subject to United States jurisdiction from prosecuting in any court or elsewhere any claim against Iran arising from the hostage seizure on November 4, 1979, and the occupation of the embassy in Tehran, and also terminating any previously instituted judicial proceedings based upon such claims.

The President has the power under IEEPA and the Hostage Act to take steps in aid of his constitutional authority to settle claims of the United States or its nationals against a foreign government. Thus, he has the right to license litigation involving property in which a foreign national has an interest, as described in paragraph 2. That license can be suspended by the Executive acting alone. New England Merchants National Bank v. Iran Power Generation and Transmission Co., 79 Civ. 6380 (KTD) (S.D.N.Y., Nov. 5, 1980) (Duffy, J.). But see National Airmotive Corp. v. the Government and State of Iran, Civ. 10 Action No. 80-0711 (D.D.C., Oct. 16, 1980) (Greene, J.).

The order is approved as to form and legality.

9. The final proposed Executive order is captioned "Restrictions on the Transfer of Property of the Former Shah of Iran." It invokes the blocking powers of IEEPA to prevent transfer of property located in the United States and controlled by the Shah's estate or by any close relative until litigation surrounding the estate is terminated. The order also invokes the reporting provisions of IEEPA, 50 U.S.C. § 1702(a)(2), to require all persons subject to the jurisdiction of the United States to submit to the Secretary of the Treasury information about this property to be made available to the Government of Iran. The property involved is property in which "[a] foreign country or a national thereof" has an interest. Restrictions on transfer and reporting requirements therefore fall within the authority provided by IEEPA.

⁸ See, e.g., Restatement (Second) of Foreign Relations Law of the United States § 213 (1965).

⁹ IEEPA was drafted and enacted with the explicit recognition that the blocking of assets could be directly related to a later claims settlement. H.R. Rep. No. 459, 95th Cong., 1st Sess. 17 (1977); S. Rep. No. 466, 95th Cong., 1st Sess. 6 (1977). See 50 U.S.C. § 1706(a)(1) (authorizing continuation of controls, after the emergency has ended, where necessary for claims settlement purposes).

¹⁰ I note that the issue of appropriate compensation for the hostages will be considered by a Commission on Hostage Compensation established by separate Executive order. Moreover, this eighth order does not, of course, purport to preclude any claimant from presenting his claim to Congress and petitioning for relief; nor could it constitutionally do so.

The order would further direct me, as Attorney General, to assert in appropriate courts that claims of Iran for recovery of this property are not barred by principles of sovereign immunity or the act of state doctrine. I have previously communicated to you and to the Department of State my view to this effect (based on advice furnished to me by the Office of Legal Counsel and the Civil Division of this Department) and will so assert in appropriate proceedings. The proposed order also recites that it is the position of the United States that all Iranian decrees relating to the assets of the former Shah and his family should be enforced in our courts in accordance with United States law.

The proposed order is approved as to form and legality.

10. The other questions relate to the Claims Settlement Agreement. I conclude that you have the authority to enter an agreement designating the Iran-United Claims Tribunal as the sole forum for determination of claims by United States nationals or by the United States itself against Iran and to confer upon the Tribunal jurisdiction over claims against the United States, including both official contract claims and disputes arising under the Declaration.

The authority to agree to the establishment of the Tribunal as an initial matter cannot be challenged. The Claims Settlement Agreement falls squarely within powers granted to the Executive by the Constitution, by treaty, and by statute.

As a step in the reestablishment of diplomatic relations with Iran, the Claims Settlement Agreement represents an appropriate exercise of the President's powers under Article II of the Constitution to conduct foreign relations. Moreover, by Article XXI(2) of the 1957 Treaty with Iran, the Senate gave its agreement for the two nations to settle disputes as to the interpretation or application of the treaty by submission to the International Court of Justice or by any "pacific means."¹¹ Arbitration by the Iran-United States Claims Tribunal is a pacific means of dispute settlement.

¹¹ Art. XXI(2) provides:

Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.

Finally, by the Hostage Act, 22 U.S.C. § 1732, Congress has conferred upon the President specific statutory powers applicable to this crisis. The agreement to resolve by arbitration the disputes now obstructing the release of the hostages is a proper exercise of this power.

I note in conclusion the congruence of your Constitutional powers and the congressionally conferred authority. In this situation, of course, your authority is at its maximum. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635-36 (1952) (Jackson, J., concurring).

The specific jurisdiction conferred upon the Tribunal must be further examined. The first category of claims, the private claims based on debts, contracts, expropriations, or other measures affecting property rights, includes both claims by United States nationals against Iran and claims by Iranian nationals against the United States. The former are referable to the Tribunal under the constitutional authority to settle claims recognized in United States v. Pink, 315 U.S. 203 (1942), and United States v. Belmont, 301 U.S. 324 (1937). See also Restatement (Second) of Foreign Relations Law of the United States § 213 (1965).¹²

From these claims are excluded claims arising out of the seizure of the embassy and claims on binding contracts providing for dispute resolution solely by Iranian courts. Again, the power to settle claims includes the power to exclude certain claims from the settlement process. Cf. Aris Gloves, Inc. v. United States, 420 F.2d 1386 (Ct. Cl. 1970). Moreover, the exclusion is not intended to be a final settlement or determination of these claims. I understand that the claims based on the seizure will be given separate consideration, see note 10 supra. I note also that the exclusion of the claims on binding contracts that provide the exclusive procedure for dispute resolution does not adversely affect any option that these claimants would have

¹¹ (Continued)

Because the Treaty provides for peace and friendship between the two nations, trade and commercial freedom, protection and security of nationals, prompt and just compensation for the taking of property, and the absence of restrictions on the transfer of funds, the disputes to be referred to the Tribunal are disputes "as to the interpretation or application of the . . . Treaty."

¹² Here again your constitutional powers are supplemented by statute. See note 9 supra.

had prior to the hostage crisis and all the actions taken in response to it. These claimants are not disadvantaged by the Claims Settlement Agreement; as to them, the status quo as of the time that the hostages were taken is merely preserved.

The latter claims in the first category, the claims by Iranian nationals against the United States, and also the official claims in the second category by Iran against the United States, are referable to the Tribunal for adjudication under the same authority. The President's power to refer these claims to binding arbitration as part of an overall settlement of our disputes with Iran is within the authority conferred on him by the Treaty and the Hostage Act and is also within his sole authority under Article II of the Constitution. Any award made by the Tribunal against the United States would create an obligation under international law. Such obligations have invariably been honored by the Congress in our constitutional system.

The remainder of the claims in this second category are official claims of the United States against Iran. The submission of the claims to the Tribunal is a matter for the Executive's sole determination in the conduct of foreign relations.

Finally, jurisdiction over the third category of claims, consisting of disputes as to the interpretation or performance of the Declaration, is appropriately conferred upon the Tribunal incident to the exercise of the power to agree to the Declaration in the first instance.

For these reasons, I conclude that the United States may enter into the international agreement and that you have legal authority to issue all of these documents and Executive orders.

Respectfully,

Benjamin R. Civiletti
Attorney General

JUSTICE DEPT'S "STATEMENT OF INTEREST OF THE
UNITED STATES," EXPLAINING U.S.-IRAN AGREEMENTS,
FILED WITH U.S. DISTRICT COURT FOR SOUTHERN NEW YORK
IN NL INDUSTRIES, INC. V. ISLAMIC REPUBLIC OF IRAN,
JANUARY 20, 1981

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NL INDUSTRIES, INC.,
NL INTERNATIONAL PETROLEUM SERVICES, INC.,
BAROID INTERNATIONAL S.B.A. and
NL PETROLEUM SERVICES, LTD.,

Plaintiffs,

No. 80 Civ. 6250

-v-

ISLAMIC REPUBLIC OF IRAN,
NATIONAL IRANIAN OIL COMPANY,
OIL SERVICES COMPANY OF IRAN
and IRAN BARITE BAROID COMPANY LTD.,

Defendants.

STATEMENT OF INTEREST
OF THE UNITED STATES

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On January 19, 1981, the United States reached agreement with the Government of Iran for the release from captivity of the 52 American hostages.¹ As a part of that agreement the President, inter alia, directed the Federal Reserve Bank of New York to transfer Iranian assets it held to an escrow account in the Bank of England for retransfer to the control of Iran upon release of the hostages.

This Statement of Interest is being filed in each case where an attachment or injunction has been served on the Federal Reserve Bank in connection with litigation involving Iran, its agencies and instrumentalities.² The purpose of this statement is to fully inform the Court of the agreement with Iran, the legal authority for the President's directing the Federal Reserve Bank to transfer these Iranian assets, and the propriety of the Federal Reserve Bank's compliance with that directive.

1. The Executive action revoking the authorization for attachments, nullifying third-party rights obtained since the blocking order, and directing the transfer of assets to resolve the hostage crisis is within the express authority conferred on the President by the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 et seq.

¹ The Secretary's declaration, attached hereto, outlines the full terms of the United States' agreement with Iran.

² Several claimants have obtained injunctions which are functionally equivalent to attachments, and for purpose of this document the term attachment is intended to incorporate those equivalent injunctions.

³ IEEPA's principal operative provision, § 1702(a)(1), provides that when a national emergency has been declared the President may:

- (A) investigate, regulate or prohibit --
 - (i) any transactions in foreign exchange,
 - (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
 - (iii) the importing or exporting of currency or securities; and
- (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest . . .

Following his declaration of a national emergency, see E.O. 12170, the President issued an order blocking Iranian assets pursuant to his authority under IEPA to "prevent or prohibit, any***transfer***of***property in which any foreign country***has any interest***" 50 U.S.C. § 1702(a)(1)(B). The President took this action to respond to the emergency created by the hostage taking, other hostile Iranian actions, and Iran's threat to withdraw its assets from the United States. The blocking order and implementing regulations required that all future transactions with respect to those assets be conducted pursuant to licenses issued by the Secretary of Treasury. 31 C.F.R. § 535.201.⁴

Subsequent to the blocking order the Secretary of Treasury licensed and authorized certain judicial proceedings against Iran. The Iranian Assets Control Regulations, 44 Fed. Reg. 65792 (1979), permitted pre-judgment attachment of Iranian assets, but prohibited judgments and actual transfer from blocked accounts. 31 C.F.R. § 535.203(e); 535.504; 535.418.⁵

These regulations also provided that any license or authorization "may be amended, modified or revoked at any time." 31 C.F.R. § 535.805. Thus, although Treasury's licensing scheme allowed pre-judgment attachment of Iranian assets, the license for those attachments, such as plaintiff's, was conditional, and subject to revocation. In the absence of a license, "any attachment***is null and void." 31 C.F.R. § 515.203(e). Further, those attachments remained subject to the powers granted the President by IEPA, including the authority to "nullify, [or] void***[the] exercising [of] any right, power, or privilege with respect to" Iranian assets, 50 U.S.C. § 1702(a)(1)(B).

To resolve the hostage crisis, the President early this morning acted by Executive Order to invoke the condition reserved in the licensed attachments by revoking the license for the attachments; and nullified all non-Iranian interests

⁴The identical language of section 5(b) of the Trading With the Enemy Act had been interpreted as providing the Executive that authority. See, e.g., Propper v. Clark, 337 U.S. 472, 484-486 (1949); Sardino v. Federal Reserve Board, 361 F.2d 106 (2d Cir. 1966); Nielsen v. Secretary of Treasury, 424 F.2d 106 833, 839 (D.C. Cir. 1970).

⁵These regulations were authorized by the power to "regulate *** any transfer *** of," Iranian assets, and the authority to "regulate *** [or] prevent or prohibit *** [the] exercising [of] any right, power or privilege with respect to" Iranian property. 50 U.S.C. § 1702(a)(1)(B).

in the blocked assets obtained since the issuance of the blocking order. (See attached Executive Orders.) Furthermore, pursuant to the power under IEEPA to "direct and compel *** and *** transfer [or] withdrawal," of Iranian assets, 50 U.S.C. § 1701(a)(1)(B), the Secretary of the Treasury directed the Federal Reserve Bank of New York to transfer the Iranian assets that it held to the escrow account for retransfer to the control of Iran upon the safe release of the hostages.

The President's action in terminating plaintiff's [sic] interest in Iranian funds held by the Federal Reserve Bank and ordering those funds transferred to an escrow account resolved the hostage crisis. These actions were not only specifically authorized by the language of IEEPA, but fell precisely within its purpose of enabling the President "to deal with [an] unusual and extraordinary threat, which has its source *** outside the United States, to the *** foreign policy *** of the United States." 50 U.S.C. § 1701(a).

2. Prior decisions under the parallel provisions of section 5(b) of the Trading With the Enemy Act (TWEA), confirm the broad scope of the President's authority under IEEPA.⁶ The language of the TWEA had "be[en] given [a] generous scope to accomplish its purpose." Propper v. Clark, 337 U.S. 472, 481 (1949). The courts have consistently recognized the unusual breadth of the power delegated to the President by the broad language used, and refused to recognize implied limitations. See, e.g., Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir. 1966); Pike v. United States, 114 F.2d 487 (9th Cir. 1949); Smith v. Witherow, 102 F.2d 638 (3d Cir. 1939). Indeed, when Congress enacted IEEPA, it was well aware that similar language in the Trading With the Enemy Act had been the basis for a wide range of Presidential actions designated to meet emergency situations. See, e.g., Emergency Powers Statutes, S. Rep. No. 93-549, 93d Cong., 1st Sess. 184 (1973). That Act, as this one, delegated to the President all powers which bear a "reasonable relation to the particular emergency confronted." United States v. Yoshida Inter. Inc., 526 F.2d 561 (C.C.P.A. 1975).

The Supreme Court's decision in Orvis v. Brownell, 345 U.S. 183 (1953), decided under the virtually identical language of the TWEA, is particularly compelling in confirming the President's authority to dispose of these assets as required to resolve the hostage crisis. Orvis stands for the proposition that in consenting to attachments on blocked property, the President may limit the substantive rights created by the attachment. In the Iranian Assets Control

⁶The provisions of IEEPA were modeled after the TWEA and interpretations of that Act are directly applicable to IEEPA. See H. Rep. No. 95-459, 95th Cong., 1st Sess. 14-15 (1977).

Regulations, the Executive consented to plaintiffs' obtaining an attachment subject to the Executive's expressed reserved authority to revoke the consent at any time. When the President exercise [sic] this reserved authority, the interest created by the attachment was extinguished according to its own terms. To interpret the authorization as creating any greater rights would, in the words of Orvis,

ignore the express condition on which the consent [to attach] was extended. Realistically, these reservations deprive the assent of much substance; but that should have been apparent on its face to those who chose to litigate.

Orvis v. Brownell, supra, 345 U.S. at 187.

3. The Executive's authority in the circumstances of this case finds independent support in the President's foreign policy powers under the Constitution. Resolution of the hostage crisis and the claims settlement provisions of the agreement are elements of the normalization of relations between the United States and Iran, and accordingly are within the President's exclusive "recognition" power under Article II, Section 3 of the Constitution. United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 324 (1937). Moreover, the President's action here is supported by his constitutional power to enter into international agreements that nullify provisional interests in foreign property acquired through domestic litigation, if nullification is necessary in the conduct of foreign affairs. See The Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801). The President's foreign policy responsibility and concomitant power regarding the seizure of the hostages by a foreign power is reflected in the separate Congressional authorization to "use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release" of any United States citizen "unjustly deprived of his liberty by or under the authority of any foreign government***" 22 U.S.C. § 1732.

4. In any event, the particular Iranian assets held by the Federal Reserve Bank are immune from pre-judgment attachment or similar restraint. The Foreign Sovereign Immunities Act of 1976 provides, with certain exceptions, for the general immunity of a foreign state from the jurisdiction of the courts of the United States and the states, 28 U.S.C. § 1604, and from the attachment of and execution against its property. 28 U.S.C. § 1609. In addition, the Act provides a broader measure of immunity for property of a foreign central bank. Absent an express waiver, "property of a foreign state shall be immune from attachment and from

execution, if -- (1) the property is that of a foreign central bank or monetary authority, held for its own account." 28 U.S.C. § 1611(b). The only Iranian assets held by the Federal Reserve Bank of New York are those of the Bank Markazi Iran, the central bank of Iran. Since there has been no express waiver of Iran's central bank's immunity from pre-judgment attachments, the funds that were held by the Federal Reserve Bank were immune from attachment.

5. The Federal Reserve Bank was entitled to comply with the President's order to transfer the assets immediately without seeking judicial action vacating the attachments. As the declaration of the Acting Secretary of State demonstrates, it was essential to securing the release of the hostages that the Federal Reserve Bank immediately transfer to the escrow account the Iranian assets held by it, upon the conclusion of the agreement with Iran. See Newsom Declaration, pars. 8, 9. Even a short delay would have seriously jeopardized the carrying out of the agreement. *Id.* The powers given to the President by IEEPA permit the President to act as expeditiously as diplomatic necessity warrants to achieve the resolution of the emergency. United States v. Yoshida Intern. Inc., 525 F.2d

⁷ Bank Markazi's immunity from attachment has not been waived by any pre-existing agreement within the terms of 28 U.S.C. § 1609. See New England Merchants Nat. Bank v. Iran Power Generation & Transmission Co., *supra*; E-Systems, Inc. v. Islamic Republic of Iran, CA-3-79-1487-G (N.D. Tex. June 19, 1980), and Reading & Bates Corp. v. National Iranian Oil Co., 478 F. Supp. 724 (S.D.N.Y. 1979), *contra* Behring Int'l, Inc. v. Imperial Iranian Air Force, 475 F. Supp. 383 (D.N.J. 1979).

In his September 26, 1980 opinion and order confirming attachments in New England Merchants National Bank v. Iran Power Generation and Transmission Co., 79 Civ. 6380 (S.D. N.Y., Sept. 26, 1980), Judge Duffy concluded that the Iranian assets would be immune from attachment on sovereign immunity grounds but for Executive Order 12170, which he viewed as "suspending" that immunity. Apart from the Executive Order "freezing" the assets, Judge Duffy found no legal basis to conclude that Iran had waived or otherwise was not entitled to immunity from pre-judgment attachment. Slip Op. pp. 8-17, 21-24.

Assuming, *arguendo*, that Judge Duffy's analysis of the effect of the blocking order on Iran's sovereign immunity was correct, the newly promulgated Executive Order restored Iran's incidents of sovereignty (namely the ability to fully deal with its assets) upon the return of the hostages and the attachments became invalid as a matter of law.

560, 573. (C.C.P.A., 1975).⁸ The Executive Order itself directing the Federal Reserve to transfer the assets provides, "All rights, powers, and privileges***which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, ***whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same." (See attachments.) Therefore, with the issuance of the Executive Order, all restrictions on the transfer of these assets had been specifically eliminated. Finally, the Supreme Court has recognized that when a statute removes the underlying legal predicate for a court order and authorizes conduct previously forbidden by that order, a party may follow the course authorized by statute without incurring sanctions even if the party never seeks formal vacation of the court order. Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. 421 (1855). A valid Executive Order has the same effect as a statute. See Contractors Ass'n of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159, 166 (3d Cir.), cert. denied, 404 U.S. 854 (1971).

⁸ Indeed, IEEPA specifically provides that "no person shall be held liable in any court***for anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, [IEEPA] or any regulation, instruction, or direction issued under [IEEPA]," 50 U.S.C. § 1702(a)(3), in order to insure that those subject to a Presidential directive may immediately comply with that directive without fear of liability for those actions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have, this 20th day of January, 1981, caused to be mailed, first class, postage prepaid, a copy of the foregoing Statement of Interest of the United States to counsel for the parties to this action as shown on the attached service list.

WILLIAM K. BLACK

Attorney, Civil Division

Department of Justice

DECLARATION OF DAVID D. NEWSOM

I, DAVID D. NEWSOM, declare as follows:

1. I am the Secretary of State ad interim of the United States. I have worked closely with Secretary of State Muskie and Deputy Secretary Christopher in the process of formulating the responses of the United States to the current crisis in Iran, in consultation with the President and other senior administration officials. In addition, in my capacity as Under Secretary of State for Political Affairs, I have had an opportunity to observe the effects of that crisis on the foreign policy and national security interests of the United States.

2. At long last the United States has obtained the release of the hostages and a resolution of the crisis in our relations with Iran. Iran and the United States have made interdependent commitments which have resolved the crisis. These commitments are reflected in the Declaration of the Democratic and Popular Republic of Algeria, attached to this Declaration. Major elements of that resolution are Iran's safe release of the hostages, the release to Iran of certain frozen assets, and Iran's agreement to international arbitration of certain claims of United States nationals against it.

3. In order to secure the release of the hostages, the United States committed itself to bring about the transfer of a number of categories of Iranian financial assets into an escrow account with a mutually agreeable central bank in the name of the Algerian Central Bank as escrow agent. Upon certification of the Government of Algeria to the Algerian Central Bank that the 52 hostages had safely departed from Iran, the Algerian Central Bank directed the transfer of certain of the assets in the escrow account immediately to Iran.

4. One category of assets which the United States was committed to cause to be transferred into the escrow account consisted of all Iranian assets in the custody of the Federal Reserve Bank of New York. These assets included gold bullion and securities with a total value of approximately \$2.5 billion. The transfer was carried out as required under the agreement.

5. Another category of assets to be transferred into the escrow account consisted of Iranian assets in foreign branches of United States banks. That transfer also occurred. The United States also made a commitment, contingent on Iran's adherence to a claims settlement agreement providing for the determination and payment of certain claims of United States nationals against Iran, and contingent also on the conclusion of arrangements for the establishment of a security account that will fund awards made pursuant to the claims settlement process, to bring about the transfer of certain Iranian assets into the escrow account. Assets in this category consist of Iranian deposits and securities in domestic offices of United States banks and all Iranian financial assets (funds or securities), other than those already mentioned, that are located in the United States jurisdiction. Finally, the United States agreed, contingent on release of the hostages and Iran's adherence to the claims settlement agreement, to arrange for the transfer directly to Iran of all Iranian properties not included in the categories just described. Iran adhered to the claims settlement agreement on January 19, 1981.

6. To meet the commitments of the United States and make possible the release of the hostages, the President issued a series of Executive Orders. One of these concerned the assets in the custody of the Federal Reserve Bank of New York. That order directed the Secretary of the Treasury to license and direct the Federal Reserve Bank of New York to enter into arrangements to transfer the assets to the Bank of England, where they were held in an account in the name of the Algerian Central Bank, as escrow agent, subject to certain conditions. The Secretary of the Treasury licensed and directed the Federal Reserve Bank of New York to make the necessary transfers, and the transfers were made pursuant to that authority.

7. In order to ensure that the assets in the Federal Reserve Bank of New York could be transferred without any delays that might have jeopardized the agreement, the President, by the same Executive Order, revoked all licenses for acquiring any right in Iranian assets in the custody of the Federal Reserve Bank, nullified rights relating to those assets which derive from any attachment or similar order in connection with litigation subsequent to November 14, 1979, and prohibited persons subject to jurisdiction of the United States from acquiring or exercising any right, whether by court order or otherwise, with respect to those assets.

8. In my judgment, it was essential to securing the release of the hostages that the Federal Reserve immediately transfer to the escrow account the Iranian assets held by it, upon the conclusion of the agreement with Iran. Under the terms of the agreement, as set forth in the Declaration of the Algerian Government, the release of the hostages could not occur unless and until the United States fulfilled its commitment to cause the transfer of these assets into the escrow account. Even a short delay would have seriously jeopardized the carrying out of the agreement. If, as a result of this delay, the agreement had failed, the hostages would have been left in captivity for an indeterminate period of time, and tensions in U.S. relations with Iran would have escalated.

9. In this regard, it should be noted that paragraph 3 of the Declaration of the Algerian Government gave Iran and the United States an opportunity to terminate their commitments under the Declaration at any time before the hostages were released. If the transfer of the assets held in the Federal Reserve Bank of New York had been delayed, the Iranian authorities might well have concluded that the United States could not, or would not, meet its commitments. Our failure to bring about the transfer of these assets might have led Iran to terminate its commitments under the Declaration and refuse to release the hostages. Under that circumstance there would have been no assurance that a new basis for agreement could have been achieved. Indeed, because a failure of the United States to bring about the transfer of these assets could have engendered doubts as to our willingness and ability to live up to our commitments, I believe that such a failure would have made it exceptionally difficult for the United States to reach a new agreement with Iran.

10. It is my judgment that the resolution of the hostage crisis on the terms described in the attached Declaration by the Government of Algeria is strongly in the interests of the United States foreign policy and national security. The hostage crisis has persisted for over fourteen months. It has already claimed the lives of eight American servicemen and has inflicted incalculable stress on the hostages and their families. In addition, it has threatened peace and security in the Persian Gulf region, which is of great strategic importance to the United States. It is very much in the interest of world stability that the crisis be resolved without any further delay.

I declare, under penalty of perjury, that the foregoing is true and correct.

DAVID D. NEWSOM

Executed on January 20, 1981.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 80-3063, 80-6254 and 80-7912

NEW ENGLAND MERCHANTS NATIONAL BANK,

Plaintiff-Appellee-Respondent
Cross-Appellant - Cross-Appellee

v.

IRAN POWER GENERATION AND TRANSMISSION COMPANY, et al.

Defendants-Appellees-Respondents
Cross-Appellants-Cross-Appellees-Petitioners.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT OF INTEREST OF THE UNITED STATES

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INTEREST OF THE UNITED STATES

As part of the Agreement that obtained the release of the American hostages, Iran and the United States agreed to settle claims of American nationals against Iranian entities through binding arbitration. Awards of the international arbitral tribunal would be satisfied out of a security account initially funded with a portion of Iran's funds and securities in this country which had been blocked by President Carter. To implement the Agreement, President Carter terminated attachments against the blocked assets, and directed transfer of those assets, and President Reagan suspended those claims that may be within the jurisdiction of the Tribunal. The United States accordingly requests that this Court (1) stay litigation of those claims against Iran arguably within the Tribunal's jurisdiction, and (2) vacate the attachments against Iranian assets.

STATEMENT

1. The seizure of the American hostages on November 4, 1979, precipitated a crisis between Iran and the United States, which ultimately involved Iran's threat to withdraw its assets from this country, a declaration of a national emergency and the blocking of Iranian assets,¹ the breaking of diplomatic relations, and the loss of American military lives. On January 19, 1981, the United States and Iran peacefully resolved many of their outstanding disputes. An overall agreement was reached for the release of the hostages, the settlement² of claims, and the return of the blocked Iranian property.

The Agreement states "the purpose of both parties is "to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims

¹ Executive Order No. 12,170. 44 Fed. Reg. 65729 (Nov. 15, 1979).

² The Agreement is principally comprised of two Declarations to which the United States and Iran adhered: (1) Declaration of the Government of the Democratic and Popular Republic of Algeria [hereinafter Decl. I]; (2) Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims By The Government of the United States of America and the Government of the Islamic Republic of Iran [hereinafter Decl. II]. See, *Iranian Assets Litigation Rep.* pp. 2224, 2227 (Jan. 22, 1981). Additional undertakings, an escrow agreement, and other technical banking documents were also part of the overall agreement, and have been made public.

through binding arbitration." (Decl. I, ¶B).³ Iran and the United States agreed that they "will promote the settlement of * * * claims" and that "[a]ny such claims not settled within six months * * * shall be submitted to binding third-party arbitration * * *." (Decl. II, Art. 1).

The Agreement establishes the Iran-United States Claims Tribunal to which American claimants may present their claims.⁴ Awards of the Tribunal are "final and binding," (Decl. II, Art. IV, ¶1), and enforceable "in the courts of any nation in accordance with its laws." (*Id.* at IV, ¶3). Iran has agreed to pay awards certified by the Tribunal in full, without limitations as to number and amount, and without regard to the total amount of Iranian assets that previously remained in the United States. A Security Account to fund awards to American claimants will contain an initial deposit of \$1 billion of Iranian funds and securities presently held in banks in the United States, and Iran has agreed to maintain a minimum balance of \$500 million in the Account until all awards of the Tribunal have been satisfied. (Decl. I, ¶7).⁵

In order for American claimants to obtain the advantages of arbitration, and avoid the vagaries and hazards of domestic litigation against a foreign sovereign, the United States agreed, through the procedures provided in Declaration II, "to terminate all legal proceedings in United States' courts involving claims of United States' persons and institutions against Iran and its state enterprises, to nullify all attachments⁶ and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration." (Decl. I, ¶B). Further, the United States must "act to bring about the transfer of [Iranian funds and securities held in Banks in the U.S.] within six

³ There are presently pending in the United States nearly 400 suits against Iran, involving several billion dollars in claims.

⁴ Certain categories of claimants are not eligible for relief before the Tribunal. See pp. 23-25 *infra*.

⁵ Under the Agreement, the United States is not required to place any assets in a security account to fund Tribunal awards in favor of Iranian claimants.

⁶ Several claimants have obtained injunctions against the transfer of Iranian assets which are functionally equivalent to attachments, and for purpose of this document the term attachment is intended to incorporate those equivalent injunctions.

months" from the date of the Agreement, i.e., July 19, 1981. (Decl. I, ¶¶6-7). Failure to transfer the assets within the prescribed time because of outstanding judicial attachments might be regarded by Iran as a material breach of the Agreement, which might jeopardize Iran's considerable financial undertakings on behalf of American claimants, or cause the Tribunal to adjudge the United States in default with potentially serious diplomatic and financial consequences. (Decl. II, Art. II, ¶2. See generally Declaration of Alexander M. Haig, Jr., ¶5 (attached)).

2. In order to fulfill the United States' commitment under these international agreements, President Carter, on January 19, 1981, issued a series of Executive Orders, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq. (hereinafter IEEPA), revoking the conditional license previously issued for prejudgment attachments against Iranian assets, nullifying non-Iranian rights in the assets acquired since the blocking order, precluding persons subject to U.S. jurisdiction from acquiring further interests in blocked property, directing those holding blocked Iranian funds and securities to transfer them to the Federal Reserve Bank of New York for disposition as the Secretary of Treasury directs, and requiring those holding other Iranian property in the United States to transfer the property as directed by Iran. (Executive Order Nos. 12,277-12,281, 46 Fed. Reg. 7915-7924 (Jan. 23, 1981)).

After an exhaustive review of the terms of the Agreement, the present Administration determined that conclusion of the Agreement "was a legal exercise of Presidential authority," and that it should be "implement[ed]" because it "represent[s] the surest way of resolving many of the financial problems between the United States and Iran consistent with the interests of U.S. claimants and the broader interests of the United States in the Persian Gulf area, a region of strategic importance to the United States." Haig Declaration, ¶4. Accordingly, on February 24, 1981, in furtherance of the Agreement with Iran, President Reagan "suspended" "[a]ll claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of * * * Algeria Concerning the Settlement of Claims * * *." "During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States * * *." (Executive Order No. 12,294, § 1,

⁷ Neither the Executive Orders nor implementing regulations, 31 C.F.R. 535.218(b), purport to terminate valid prejudgment attachments acquired prior to November 14, 1979 against Iranian property.

(Feb. 24, 1981) (attached)).⁸ The Secretary of the Treasury has issued the appropriate regulations to fulfill the provisions of the various Executive Orders, and has provided that "[u]ntil the Secretary of the Treasury determines that the authority of the United States to order [the transfers required by Executive Orders 12,279-12,281, and sections 535.213, 535.214 and 535.215 of the implementing regulations] has been the subject of a definitive legal ruling, the United States Government will not seek to impose civil or criminal sanctions on any party who does not make [such transfers]" 31 C.F.R. § 535.221(b).

⁸The Executive Order provides that if the Tribunal determines it does not have jurisdiction over a claim, the suspension of that claim terminates. If the Tribunal (1) rejects the claim on the merits or (2) provides that a claimant shall have a recovery, and the claimant is paid the full amount of the Tribunal award, then, either situation "shall operate as a final resolution and discharge of the claim for all purposes." Id. §§ 3, 4).

The Executive Order further provides (1) that the suspension applies to all claims for equitable or judicial relief in connection with claims that may be presented to the Tribunal under Article II; (2) that the suspension applies to all claims either presently pending or filed after the date of the Executive Order; (3) that the commencement of an action for purposes of tolling a period of limitation is not precluded; (4) that nothing requires dismissal of any action for want of prosecution; (5) that nothing shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond, or other similar instrument; (6) that nothing shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by Iran or its entities; and (7) that Executive Order Nos. 12,276 through 12,285 are ratified. The Executive Order delegates all the powers granted the President by IEEPA to the Secretary of Treasury. (Id. §§ 1, 2, 5, 6, 7, 8.)

ARGUMENT

Introduction and Summary

I. The President under Article II of the Constitution possesses plenary power to enter into agreements for the settlement of claims with foreign nations. United States v. Pink, 315 U.S. 203, 240 (1942)(Frankfurter, J., concurring). The Executive exercises the sovereign power of the United States to conduct foreign relations, United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-322 (1936), which includes the power to resolve disputes through the negotiated settlement of American claims. Historically, claims settlement negotiations have culminated in a variety of dispositions, including binding arbitration. The international agreements settling claims, like the Iran-United States Agreement, are part of the law of the land. Missouri v. Holland, 252 U.S. 416 (1920); United States v. Pink, *supra*. From the earliest days of the Republic, the Supreme Court has recognized that such agreements are binding upon the courts. United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801).

Under the Agreement with Iran, the President has exercised his constitutional authority to make arbitration an exclusive remedy for all claims within the jurisdiction of the arbitral tribunal. In conjunction with his constitutional authority the President has exercised his power under IEEPA to require such a suspension of the claims. It therefore follows that litigation in the U.S. judicial system of claims arguably within the jurisdiction of the Tribunal must be stayed.

II. In order to fulfill the Agreement, the attachments against the blocked Iranian property have been terminated, and therefore must be vacated. The United States could be in default under the Agreement unless the blocked assets are transferred by July 19, 1981 to either the Security Account, or Iran, as specified in the Agreement. The President's actions revoking the license for the attachments are authorized and valid.

The President's actions necessary to implement the international agreement, apart from his Article II powers, are authorized by IEEPA. That Act authorizes the President to "regulate, direct and compel, nullify, void, prevent or prohibit, any * * * transfer" with respect to foreign property when, as he did here, he has declared a national emergency. 50 U.S.C. 1701(a)(1)(B). Following the seizure of the hostages the Executive "prevented" and "prohibited" the transfer of any interest in Iranian property. 31 C.F.R. 535.201. The Executive did license claimants to institute judicial proceedings, including pre-judgment attachments, but consistent with

the bar against transfers the license did not permit judgments. 31 C.F.R. 535.504; 535.418. Further, the Executive reserved the right to revoke any license, at any time. 31 C.F.R. 535.805. Upon reaching the Agreement with Iran, the President revoked the license for pre-judgment attachments, and under IEEPA "directed" and "compelled" the transfer of the blocked assets to implement the Agreement. Executive Order Nos. 12, 277-12, 281, 46 Fed. Reg. 7915-7924 (1981).

IEEPA was enacted to enable the President to deal with unusual and extraordinary threats to the national security, foreign policy and the economy of the United States (50 U.S.C. § 1701(a)), and granted him economic powers sufficiently broad and flexible to enable him to respond as appropriate and necessary to unforeseen contingencies. H. Rep. No. 95-459, 95th Cong., 1st Sess. 1 (1977). By utilizing his IEEPA powers, and controlling transfers of Iranian property, the President preserved the United States' ability to negotiate and implement an agreement with Iran concerning the disposition of its property, and hence resolve the hostage crisis. The Court should take no action inconsistent with the resolution and exercise of the President's Article II power in the area of foreign affairs.

I

THE PRESIDENT HAS CONCLUDED A CLAIMS SETTLEMENT AGREEMENT WITH IRAN, AND HAS SUSPENDED THOSE CLAIMS WHICH MAY BE PRESENTED TO THE ARBITRAL TRIBUNAL; ACCORDINGLY LITIGATION OF THOSE CLAIMS SHOULD BE STAYED

A. The President Has The Constitutional Authority to Settle International Claims.

As a sovereign, the United States requires, and has the power to deal with other nations as an equal, United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936), and the Constitution gives that broad and plenary authority to conduct foreign affairs to the President. Id. at 319-322. "That the President's control of foreign relations includes the settlement of claims is indisputable." United States v. Pink, 315 U.S. 203, 240 (1942) (Frankfurter, J., concurring). See also United States v. Pink, *supra*, 315 U.S. at 229; United States v. Belmont, 301 U.S. 324 (1937); Ozanic v. United States, 188 F.2d 228, 231 (2d Cir. 1951). "[C]ontinued mutual amity between [this] nation and other powers again and again depends upon a satisfactory compromise of mutual claims," Ozanic v. United States, *supra*, 188 F.2d at 231, and, as in the present instance, settlement of claims may be central to foreign policy goals and the furthering of United States' interest as a whole, rather than the interest of individual claimants.¹⁰

The Agreement with Iran is only the latest in a historical practice of claims settlements which confirms the President's constitutional authority to settle international claims

⁹ See also Richardson v. Simon, 560 F.2d 500, 505 (2d Cir. 1977) appeal dismissed, 435 U.S. 939 (1978); Real v. Simon, 510 F.2d 557, 563 (5th Cir. 1975); Nielsen v. Secretary of Treasury, 424 F.2d 833, 840-841 (D.C. Cir. 1970).

¹⁰ 8 M. Whiteman, Digest of International Law, 1217, 1224 (1967) [hereinafter Whiteman Digest]; 6 J. Moore, A Digest of International Law, 1012-1027 (1906); 2 C. Hyde, International Law Chiefly as Interpreted And Applied By the United States, 890-891 (2d ed, 1947); William A. Parker (United States v. Mexico), Opinions of the Commissioners, 36 (1927).

to bind American claimants.¹¹ See generally United States v. Midwest Oil Co., 236 U.S. 459 (1915); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610-611 (1952) (Frankfurter, J., concurring). As early as 1800 the United States, in exchange for being released from a prior treaty obligation to come to the aid of France, renounced the claims of American nationals arising from French seizure of their vessels. See, e.g., Blagge v. Balch, 162 U.S. 439 (1896); Gray v. United States, 21 Ct. Cl. 340 (1886).

Typically, rather than renounce claims of American nationals, the Executive has utilized two primary methods to settle such claims and has often done so through Executive Agreement.¹² First, the Executive Branch has espoused single or multiple claims arising out of specific events or covering a specific period of time, often accepting lump sum

¹¹ Morevoer, the power to restore normal relations with a foreign government belongs to the President exclusively, U.S. Const., Art. II, and includes the "[p]ower to remove such obstacles to full recognition as settlement of claims * * *." United States v. Pink, supra, 315 U.S. at 229; United States v. Belmont, supra. Resolution of the hostage crisis and the claims settlement "eliminate * * * possible sources of friction * * *" between the United States and Iran, and "rehabilitat[e] * * * relations between this country and another nation * * *." United States v. Pink, supra, 315 U.S. at 225, 230.

¹² At least since the case of the "Wilmington Packet" in 1799 Presidents have exercised the right to settle claims of U.S. nationals by executive agreement. Lillich, The Gravel Amendment to the Trade Reform Act of 1974; Congress Checkmates A Presidential Lump Sum Agreement, 69 Am. J. of Intl. L. 837, 844 (1975). That case "set a precedent which was to be followed in a long line of subsequent claims, settlement of which has been sought by the authority of the Executive alone." McClure, International Executive Agreements 44 (1941). In fact, during the period 1817-1917, "no fewer than eighty executive agreements were entered into by the United States looking toward the liquidation of claims of its citizens * * *." Id. at 53. Throughout our history many claims of U.S. citizens have been remitted to arbitration by Executive Agreement. See, e.g., S. Crandall, Treaties: Their Making and Enforcement, 109-111 (1916); 79 Cong. Rec. 969-971 (1935) (listing 40 executive agreements, entered into between 1842 and 1931, providing for arbitration of claims against foreign governments); 2 C. Hyde, supra at 1409; 5 G. Hackworth, Digest of International Law 403 (1943); 12 Whiteman Digest, supra at 1267.

payments in full settlement of American claims.¹³ Second, the United States has agreed to settle claims through the establishment of arbitration mechanisms,¹⁴ and has made that arbitration binding, exclusive and non-reviewable. See, e.g., Comegys v. Vasse, 26 U.S. (1 Pet.) 193 (1828); Meade v. United States, 76 U.S. (9 Wall.) 691 (1869). See also Z. & F. Assets Corp. v. Hull, 311 U.S. 470 (1941). Cf. Convention on Recognition and Enforcement of Foreign Arbitral Awards, 3 U.S.T.

¹³ For instance, in the recent United States-Peoples Republic of China Settlement, T.I.A.S. 9306 (1979), the United States agreed to accept \$80.5 million in full settlement of the claims of American nationals against the PRC. Other Agreements similarly provide for the full settlement of specified claims. See, e.g., United States-Egypt Claims Settlement, 27 U.S.T. 4214, T.I.A.S. 8446 (1976); United States-Hungary Claims Settlement, 24 U.S.T. 522, T.I.A.S. 7569 (1973); United States-Bulgaria Claims Settlement, 14 U.S.T. 969, T.I.A.S. 5387 (1963); United States-Poland Claims Settlement, 11 U.S.T. 1953; T.I.A.S. 4545 (1960); United States-Rumania Claims Settlement, 11 U.S.T. 317, T.I.A.S. 4451 (1960); United States-Yugoslavia Claims Settlement, 12 Bevans 1277, T.I.A.S. 1803 (1948). See generally, R. Lillich and B. Weston, International Claims: Their Settlement by Lump-Sum Agreements, 2 Vols. (1975).

¹⁴ For example, claims commissions or their equivalent to resolve outstanding claims were established in 1871 (Spain), see, e.g., United States ex rel. Angarica v. Bayard, 127 U.S. 251 (1888); in 1839 and 1868 (Mexico), see, e.g., Williams v. Oliver, 53 U.S. (12 How.) 111 (1851); Alling v. United States, 114 U.S. 562 (1885); Peugh v. Porter, 112 U.S. 737 (1885); United States ex rel. Boynton v. Blaine, 139 U.S. 306 (1891); in 1871 (Britain), see, e.g., Williams v. Heard, 140 U.S. 529 (1891); United States v. Weld, 127 U.S. 51 (1888); and in 1965 (Canada), see 17 U.S.T. 1566, T.I.A.S. 6114. Such arbitrations have often involved contract claims such as those involved here. See, E. Borchard, The Diplomatic Protection of Citizens Abroad, 296, 299 (1915); 5 Hackworth, *supra*, 618-623. See generally A. Stuyt, Survey of International Arbitrations, 1794-1970 (1972).

2517, T.I.A.S. No. 6997 (1958), implemented by 9 U.S.C. §§ 201-208.¹⁵

International claims are claims of the United States,¹⁶ and once their settlement has been provided for in a claims agreement, as for example with the PRC, the agreement is a "full and final settlement of those claims,"¹⁷ even without

¹⁵The choice of arbitration in the present case is particularly appropriate in light of Art. XXI(2) of the Treaty of Amity, Economic Relations, and Consular Rights with Iran, 8 U.S.T. 899, T.I.A.S. 3853. In ratifying that treaty, the Senate gave its approval for the two nations to settle disputes regarding interpretation or application of the treaty by submission to the International Court of Justice or "by some other pacific means." Arbitration is a pacific means of settlement. See, e.g., United Nations Charter, Art. 33(1). Because the Treaty provides for peace and friendship between the two nations, trade and commercial freedom, prompt and just compensation for the taking of property, constant protection and security for each other's nationals and proscribes unreasonable or discriminatory measures that would impair legally acquired rights and interests, the claims referred to the Tribunal involve disputes "as to the interpretation or application of the * * * Treaty." Id. Art. XXI(2).

¹⁶1 M. Whiteman, *Damages in International Law* 275 (1937) [hereinafter *Whiteman Damages*]. Lillich and Weston, supra, vol. 1 at 1. Panevezys Saldutiskis Railway Case, P.C.I.J. Ser. A/B, No. 76 (1939).

¹⁷See, e.g., United States-PRC Settlement, supra, Art. II(a), Art. V. "Except as an agreement might provide otherwise, international claims settlements generally wipe out the underlying private debt, terminating any recourse under domestic law as well." L. Henkin, Foreign Affairs and the Constitution 262 (1972). See also Restatement (Second) of the Foreign Relations Law of the United States 628 (comment to § 213)(1965). Cf. Ozanic v. United States, supra; Christoffer Hannevig v. United States, 114 Ct. Cl. 410 (1949).

the approval of the individual whose claim has been settled.¹⁸ The Executive has exercised unreviewable discretion as to whether to present a claim,¹⁹ and when it does, in determining time, extent and means of pressure in presenting it.²⁰

Further, the Executive Branch "may make such settlement [of a claim] as it deems appropriate."²¹ This authority has allowed the President to sacrifice certain claims for overriding foreign policy reasons,²² and to release some or all

¹⁸ Restatement, supra, § 213; 8 Whiteman-Digest, supra at 1224.

¹⁹ United States v. La Abra Silver Mining Co., 29 Ct. Cl. 432, 512-513 (1894), aff'd 175 U.S. 423 (1899); Boynton v. Blaine, supra; Miller v. United States, 583 F.2d 857, 865 (6th Cir. 1978); United States ex rel. Keefe v. Dulles, 222 F.2d 390, 393 (D.C. Cir. 1954), cert. denied, 348 U.S. 952 (1955); U.S. ex rel. Holzendorf v. Hay, 20 D.C. App. 576 (1902). In fact, a claim may be presented even over the objection of the national whose claim is involved. 8 Whiteman Digest, supra at 1224.

²⁰ Borchard, supra at 365; Moore, Treaties and Executive Agreements, 20 Pol. Sci. Q. 385, 403 (1905); Restatement, supra, §§ 212-213; 8 Whiteman-Digest, supra at 1216-1217.

²¹ Whiteman Damages, supra at 275. See also Restatement, supra, § 213; 8 Whiteman Digest, supra at 1216-1217.

²² See, e.g., United States-PRC Settlement, supra, Art. II (b); United States-Yugoslavia Settlement, supra, discussed at 95 Cong. Rec. 8837-8838 (1949).

of a foreign nation's previously blocked assets as part of an overall claims settlement.²³

Even where, as here, a national's claim has entered the domestic judicial system, that does not defeat the President's authority to resolve that claim by international agreement. The agreements with Iran have become part of the law of the land, United States v. Pink, *supra*, 315 U.S. at 230; United States v. Belmont, *supra*, 301 U.S. at 331-332; Missouri v. Holland, 215 U.S. 416 (1920), and as such domestic courts are required to apply them to pending cases. Thus, in United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801), a

²³ 8 Whiteman Digest, *supra* at 1217; William A. Parker (United States v. Mexico), *supra* at 36.

The foregoing principles were summarized cogently by the Court of Claims:

When the national government urged upon Great Britain the demands of American citizens * * * those demands became reclamations by the sovereignty of this nation * * * and passed out of the region of mere private right into the domain of international law, and out of the hands of the citizen into those of his government.

When they so passed, the authority of the national government over them became immovable and supreme * * *.

* * * * *

[After] the United States received [the] sum * * * [awarded by the Tribunal], as a sovereign, and not otherwise * * *; they were all obliterated by the act of the United States as a sovereign, in demanding and receiving satisfaction therefor. Nor were there, in law, any such claims against the United States. That sum was received by the United States in their sovereign capacity, unmixed, in law, with any private right, and unaffected by any legal obligation to payout any part of it to any one. * * * No failure on the part of Congress to authorize payment of those claims, or any of them, could ever authorize judicial recourse against the United States in this or any other court.

Great Western Insurance Co. v. United States, 19 Ct. Cl. 206, 217-218, *aff'd on other grounds*, 112 U.S. 193 (1884). See also E. Borchard, *supra* at 366-367 (1915).

judgment of a lower court confirming an American's claim to a captured French ship was set aside by the Supreme Court on the basis of an intervening international agreement requiring that the American's claim to the ship be renounced.

In light of the Executive's broad discretion to negotiate and settle international claims, Americans having claims whose settlement has been provided for through an international agreement cannot have those claims resolved by domestic courts. Indeed, the diplomatic ability of the United States to negotiate a settlement with a foreign nation would be effectively undermined if a foreign nation could not be assured that a settlement understood to be final and binding would in fact be respected as such by the U.S. courts. Thus, the courts will not undertake to review claims settlements.²⁴ Further, claimants have no judicially enforceable right to payment from²⁵ a fund created by a settlement that extinguished their claim,²⁵ and such a fund may be distributed by a non-Article III tribunal without the right of judicial review.²⁶

2. Congressional actions have been consistent with and confirmed the Executive's full discretion over the settlement of international claims. Congress has rejected legislation that would require all claims settlement agreements negotiated by the Executive to be submitted as treaties, 99 Cong. Rec. 20514-18 (Nov. 12, 1963), while the vast majority of those that have been submitted as treaties have been approved by the Senate. Congress has ratified past Executive claims settlements by establishing a non-reviewable domestic distribution procedure for the lump-sums accepted, and has implicitly approved future Executive claims settlements by applying

²⁴ United States v. Schooner Peggy, *supra*, 5 U.S. at 110; Aris Gloves, Inc. v. United States, 420 F.2d 1386, 1393-1394 (Ct. Cl. 1970); U.S. ex rel. Holzendorf v. Hay, 20 D.C. App. 576 (1902); Henkin, *supra* at 263.

²⁵ Boynton v. Blaine, *supra*; Frelinghuysen v. Key, 110 U.S. 63 (1884); Williams v. Heard, *supra*; First National City Bank v. Gilliland, 257 F.2d 223, 226-27 (D.C. Cir.), *cert. denied*, 358 U.S. 837 (1958); 3 Whiteman Damages, *supra* at 2046-2047 (1943); Restatement, *supra*, § 214.

²⁶ Z & F Assets Corp. v. Hull, *supra*, 311 U.S. 470, 489 (1941); DeVegvar v. Gilliland, 228 F.2d 640 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 994 (1956); First National City Bank v. Gilliland, *supra*.

those procedures to future lump-sum awards. See, e.g., 22 U.S.C. § 1623(a), 31 U.S.C. § 547.²⁷

Congressional passage of IEEPA, and its predecessor, the trading with the Enemy Act (TWEA), confirm the critical role of the President's power to settle international claims.²⁸ At times of an emergency in our relations with a foreign nation those statutes give the President the necessary powers to block foreign property, to keep that blocked property free of any interests that could prevent its ultimate disposition, and to marshal those assets to facilitate a claims settlement agreement.²⁹ Indeed, IEEPA authorizes continuation of controls over foreign property even after the emergency has ended, where necessary for claims settlement purposes.³⁰ 50 U.S.C. 1706(a)(1).

3. Neither the language nor the legislative history of the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1602 et seq.,³¹ purport to restrict the President's Constitutional authority to settle claims. Essentially, the FSIA, whose enactment was proposed by the Executive Branch, withdrew from the Executive Branch its traditional role in making binding immunity decisions with respect to suits against foreign governments.³² But withdrawing that authority is fundamentally different from limiting the President's

²⁷ Indeed, at times Congress has authorized the Foreign Claims Settlement Commission to determine the amount and validity of claims prior to a claims settlement agreement and to provide that information to the Secretary of State, 22 U.S.C. § 1643 et seq., where it remains available to be used by the Executive Branch in future negotiations to settle those claims.

²⁸ These statutes are discussed in detail in Part II, infra. In the context of the present case the "Hostage Act," see pp. 32-33 infra, provides additional support for the President's actions.

²⁹ See Richardson v. Simon, supra; Real v. Simon, supra; Nielsen v. Secretary of Treasury, supra.

³⁰ H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 17 (1977); S.Rep. No. 95-466, 95th Cong., 1st Sess. 6 (1977).

³¹ The Act creates a comprehensive statutory scheme delineating a foreign government's various immunities and amenability to suits in American Courts. See generally, Ruggiero v. Compania Peruana de Vapores "Inca Capac Yupanqui," Nos. 80-7595, 7597, 7599 (2d Cir. Jan. 15, 1981).

³² See, e.g., Republic of Mexico v. Hoffman, 324 U.S. 30 (1945); Ex Parte Peru, 318 U.S. 578 (1943).

authority to settle a broad range of claims affecting our foreign relations, as he has traditionally done.³³

In any event, the agreements with Iran are now part of the law of the land. See United States v. Pink, supra; United States v. Belmont, supra; Missouri v. Holland, supra. At least absent the most explicit evidence of a contrary Congressional intent, a court should not interpret a statute, in this case the FSIA, in such a manner as to place the United States in breach of its international agreements. Murray v. The Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804); Filariga v. Pena-Irala, 630 F.2d 876, 887, n.20 (2d Cir. 1980).

4. The claims settlement agreement with Iran, and the requested stay of litigation, causes claimants no harm. Claimants can only speculate whether they will ultimately suffer a loss in light of the establishment of the Iran-United States Claims Tribunal, the initial \$1 billion to be placed in the Security Account, Iran's commitment to replenish the account to pay awards of the Tribunal, and the enforceability of the Tribunal's awards "in the courts of any nation in accordance with its laws." See n.55 infra.

Moreover, any future loss claimants may suffer is not grounds for limiting the President's constitutional and statutory powers to deal with property of a foreign government and settle foreign claims. If claimants believe that the exercise of these powers with respect to their claims result in a taking of property, they, of course, are free to seek compensation in any forum they wish, to the extent Congress has provided a remedy, but their remedy does not include interfering with the President's authority to settle claims. See, e.g., Regional Rail Reorganization Act Cases, 419 U.S. 102, 126-127 (1974); United States v. Causby, 328 U.S. 256, 267 (1946); Hurley v. Kincaid, 285 U.S. 95 (1932); Stringer v. United States, 471 F.2d 381 (5th Cir.), cert. denied, 412 U.S.

³³ Indeed, Congressional enactment of IEEPA in 1977, giving the President the necessary tools to settle international claims, after enactment of the FSIA, evidences Congressional intent not to alter fundamental Executive practice in this area. This is confirmed by the fact that neither the language nor the legislative history of the FSIA purports to limit the President's powers under the TWEA which was on the books when the FSIA was enacted. Essentially, FSIA establishes the ordinary rules of immunity to be applied to a foreign state, while IEEPA and the TWEA provide the President the necessary powers to deal with emergency or war-time situations. See United States v. Yoshida International Inc., 526 F.2d 560, 578 (C.C.P.A. 1975).

943 (1973). See also Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 703-704 (1949).³⁵

³⁵ The United States does not concede that a claim by plaintiff for compensation will be within the jurisdiction conferred by Congress on the Court of Claims, see 28 U.S.C. 1502, or indeed any Court. See, e.g., United States v. Schooner Peggy, supra, 5 U.S. at 110. Settlement of an international claim is not a taking, because the claim belongs to the United States, see pp. 14-15 supra, and because against foreign governments there can be no assured right of compensation. Avramova v. United States, 354 F. Sup. 420 (S.D. N.Y. 1973).

B. This Court Should Stay Litigation Of Those
Claims Against Iran Arguably Within The
Jurisdiction Of The Claims Tribunal

1. The President has exercised his constitutional authority to settle claims with Iran, by providing for binding, exclusive and non-reviewable arbitration. See pp. 11-15 supra. The Tribunal determines its own jurisdiction, and any claim within its jurisdiction will be discharged when the Tribunal rules on the merits, and upon payment of any award. While the exercise of the President's claims settlement authority often results in the immediate extinguishment of claims against foreign governments, here the President has taken the lesser measure of suspending claims until final disposition through the arbitral proceedings.

The President has also exercised his statutory power under IEEPA to suspend the claims. Where a national emergency has been declared the President under IEEPA may "regulate * * *, prevent, or prohibit * * * [the] acquisition * * * of * * * or [the] exercising [of] any right, power, or privilege with respect to * * * any property in which any foreign country * * * has any interest * * *." 50 U.S.C. 1702(a)(1)(B). Claims against Iran in American courts represent attempts to acquire or to exercise a right with respect to Iranian property, and pursuant to the President's broad IEEPA authority may be regulated, prevented, or prohibited.³⁶

Accordingly, in view of the President's exercise of his constitutional and statutory powers, this Court should apply the rule of law provided by the Executive Order and Treasury regulations and stay litigation of claims which arguably fall within the jurisdiction of the arbitral tribunal, and of claims for equitable or other judicial relief in connection with such claims. Executive Order No. 12,294, § 1 (Feb. 24, 1981).

2. It is appropriate here to note that certain limited categories or claims do not appear to be within the jurisdiction of the arbitral tribunal. In general, claims that may not be entertained in the arbitral tribunal can continue to be

³⁶ For example, in the instant case just as an Executive license was required to go forward with this litigation initially, see pp. 30-31 infra, the Executive retained full discretion under IEEPA to suspend that license. 31 C.F.R. § 535.805; New England Merchants National Bank v. Iran Power Generation and Transmission Co., No. 79 Civ. 6380 (KTD) (Order, Nov. 5, 1980). See also, Chase Manhattan Bank v. United China Syndicate, Ltd., 180 F. Supp. 848 (S.D.N.Y. 1960); Clark v. Propper, 169 F.2d 324 (2d Cir. 1948), aff'd, 337 U.S. 472 (1949).

litigated in United States' courts in accordance with applicable law.³⁷ Such claims include: (a) Claims of non-United States nationals against Iran (Decl. II, Art. II); (b) Claims which do not "arise out of debts, contracts * * * expropriations or other measures affecting property rights * * *" (Id.); (c) Certain indirect claims³⁸ of United States nationals as specified in Decl. II, Art. VII.

The Declaration also excludes from the Tribunal "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts * * *." (Decl. II, Art. II). Because of the materially changed circumstances in Iran since many of these contracts were executed, the United States believes that they may not be "binding" within the terms of the Declaration. American claimants are urged to take this position, which the United States Government will support, before the Tribunal. Even where such an exclusive jurisdiction clause is binding, the United States interprets this provision of the Declaration as excluding from the Tribunal only those claims which arise from contracts that specifically limit the resolution of disputes solely to Iranian courts,³⁹ i.e., claims arising from a contract that allows for arbitration or any other procedure prior to judicial resolution through Iranian courts could be heard by the Tribunal.

³⁷ Additionally, the Executive Order suspending claims does not apply to "any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument." Executive Order No. 12,294, §5 (Feb. 24, 1981).

³⁸ Article VII defines "claims of nationals" as:

claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interest in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement.

³⁹ In agreeing to arbitration of most claims of United States nationals, Iran has relinquished any sovereign immunity and act of state defenses it might otherwise possess against such claims. The Agreement, therefore, will greatly increase the chances of recovery for many American claimants.

This Court should require the Iranian defendants to take a position on the arbitrability of the claims. If Iran takes the position that the arbitral tribunal has jurisdiction to consider the claims, this action should be stayed pending the final determination by the Tribunal, and thereafter dismissed if the Tribunal renders a decision on the merits and any award paid. If the claimant believes that its claim is not subject to arbitration and Iran agrees, the litigation should be allowed to continue. Otherwise actions should be stayed unless the claims are unequivocally barred. Regardless of whether a claim is suspended or litigation permitted to continue, the Declaration and implementing Executive Orders and Treasury regulations require that attachments and injunctions against the transfer of Iranian assets be terminated. See Part II, *infra*.

II

THE PRESIDENT LAWFULLY TERMINATED ATTACHMENTS OF BLOCKED IRANIAN ASSETS, AND THE COURT SHOULD VACATE ALL SUCH ATTACHMENTS

The President's termination of attachments of Iranian assets was an essential part of the agreement for the hostages' release and for the settlement of claims against Iran. The President's constitutional authority to settle claims necessarily includes the power to dispose of attachments of foreign property which purport to secure those claims in domestic litigation. See United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801). See also Orvis v. Brownell, 345 U.S. 187 (1953) (discussed *infra*). The right to pre-judgment attachments of another's property is not a constitutional right, but rather solely a state-created right. As such it remains subordinate to our international obligations pursuant to executive agreements. U.S. Const. Art. VI; United States v. Pink, *supra*, 315 U.S. at 231-232.⁴⁰ Indeed, the President has the clear constitutional authority to marshal foreign assets for an eventual claims settlement program, even in the face of conflicting state law. United States v. Belmont, *supra*; United States v. Pink, *supra*.

There is no need here to determine whether the President's constitutional powers, standing alone, would authorize termination of the attachments. Where "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). Here, IEEPA provides express authorization for the President's actions. Beyond his constitutional authority, Congress provided the President sufficient statutory powers under IEEPA to control transactions in foreign property to effectively settle international claims. Through IEEPA Congress authorized the President to terminate attachments against Iranian assets, and obviously state-created rights to attachments remain

⁴⁰In denying a TRO seeking to restrain transfer of Iranian assets in this country District Judge Gesell stated:

[T]he President's power to enter into this agreement and establish a special fund in effect indicating the creditors that can proceed against the Iranian funds here is beyond question * * *. We don't need to refer to any statute. It is a power that he can exercise under Article II, and he has exercised it.

Ebrahimi v. Islamic Republic of Iran, Nos. 80-3127, 3128, 3129, Tr. pp. 31-32 (D.D.C. Jan. 21, 1981).

subordinate to that authority. U.S. Const. Art. VI; Free v. Bland, 369 U.S. 663 (1962).

1. IEEPA was enacted to enable the President "to deal with [an] unusual and extraordinary threat, which has its source * * * outside the United States, to the national security, foreign policy, or economy of the United States." 50 U.S.C. 1701(a). It provides the President and the Executive branch broad emergency powers to control the transfer of any property or interest in property of a foreign government, H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 11, 15 (1977); and it authorizes the regulation of international financial transactions "as necessary to protect the * * * foreign policy * * * of the United States." H. Rep. No. 95-459, supra at 15. IEEPA implicitly recognizes that ultimately disputes with foreign nations may be resolved by diplomatic means and international agreements, and that previously blocked funds may be utilized in a settlement of claims. See, e.g., id. at 17; S. Rep. No. 95-466, 95th Cong., 1st Sess. 6 (1977); 50 U.S.C. 1706(a)(1).

IEEPA's principal operative provision, 1702(a)(1), provides that when a national emergency has been declared the President may:

(A) investigate, regulate or prohibit --

* * * * *

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof.

* * * * *

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest* * *.

As the plain language indicates, Congress intended that the "new set of international economic powers" conferred by IEEPA be "sufficiently broad and flexible to enable the

President to respond as appropriate and necessary to unforeseen contingencies." H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 10 (1977).⁴¹ The President's actions here comported precisely with his IEEPA authority: he initially "prevented" and "prohibited" transfers of Iranian assets, and he later directed the "withdrawal" and "transfer" of the assets to settle the crisis with Iran. 50 U.S.C. 1702(a)(1)(B).

The seizure of American diplomats in Iran, other hostile Iranian actions, and Iran's threat to withdraw its assets from the United States constituted an extraordinary threat to the national security, foreign policy, and economy of the United States, and the President invoked IEEPA to deal with the crisis. Together with his declaration of a national emergency, the President issued an order blocking Iranian assets pursuant to his IEEPA authority to "prevent or prohibit, any * * * transfer * * * of * * * property in which any foreign country * * * has any interest * * *". 50 U.S.C. 1702(a)(1)(B). The blocking order gave the President full control over Iranian assets in this country and required that all future transactions with respect to those assets be conducted pursuant to licenses issued by the Secretary of the Treasury. 31 C.F.R. 535.201.⁴³ As required by IEEPA, 50 U.S.C. 1703(b), the President regularly informed Congress of actions he has taken pursuant to IEEPA. See, e.g., Message to Congress, 17 W'kly Comp. of Pres. Doc. 3041 (Jan. 19, 1981); Message to Congress, 15 W'kly Comp. of Pres. Doc. 2118 (Nov. 4, 1979).

The Secretary of Treasury promulgated Iranian Assets Control Regulations (IACR), 31 C.F.R. 535.101 et seq., which,

⁴¹ where Congress desired to limit the President's powers under the Act, it specifically so provided. For example, the Act expressly excludes authority to control non-economic aspects of international relations such as personal communications or humanitarian contributions, 50 U.S.C. 1702(b)(1), (b)(2), and does not authorize the President to vest title to foreign property. See, e.g., H. Rep. No. 95-459, supra, at 15. Similarly, Congress intended to limit the power to control purely domestic transactions, as Presidents occasionally did under the TWEA. See, e.g., id. at 3-5, 11.

⁴² Executive Order No. 12,170, 44 Fed. Reg. 65729 (1979).

⁴³ The identical language of section 5(b) of the Trading with the Enemy Act had been interpreted as providing the Executive similar authority in a variety of international financial transactions. See, e.g., Propper v. Clark, 337 U.S. 472, 484-486 (1949); Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir. 1966); Nielsen v. Secretary of Treasury, 424 F.2d 833, 838 (D.C. Cir. 1970).

inter alia, licensed claimants to institute judicial proceedings against Iran and permitted pre-judgment attachment of Iranian assets to the extent otherwise authorized, but prohibited judgments and actual payment from blocked accounts. 31 C.F.R. §§ 535.203(e), 535.504, 535.418.⁴⁴ The regulations also provided, however, that any license or authorization "may be amended, modified or revoked at any time." 31 C.F.R. 535.805.

Thus, although Treasury's licensing scheme allowed claimants to obtain pre-judgment attachments of Iranian assets under state law, the license for those attachments was conditional and subject to revocation. In the absence of a license, "any attachment * * * is null and void." 31 C.F.R. 515.203(e). Further, attachments against Iranian assets remained subject to the powers granted the President by IEEPA, including his authority to "nullify, [or] void * * * [the] exercising [of] any right, power, or privilege with respect to" Iranian property." 50 U.S.C. 1702(a)(1)(B).

To resolve the hostage crisis, the President, by Executive Order, revoked the license for attachments by exercising the condition expressly reserved,⁴⁵ nullified all non-Iranian interests in the blocked assets obtained since the issuance of the blocking order, and precluded the establishment of any

⁴⁴ These specific regulations were authorized by the power to "regulate * * * any transfer * * * of," Iranian assets, and the authority to "regulate * * * [or] prevent or prohibit * * * [the] exercising [of] any right, power or privilege with respect to" Iranian property. 50 U.S.C. 1702(a)(1)(B).

⁴⁵ On previous occasions Treasury had similarly revoked licenses with respect to blocked property. See, e.g., W. Reeves, The Control of Foreign Funds by the United States Treasury, 11 L. & Contemp. Prob. 17, 38 (1945).

further rights in the blocked assets. (Executive Order Nos. 12,227-12,281, 46 Fed. Reg. 7915-7924 (Jan. 23, 1981)).⁴⁶ Furthermore, pursuant to his power under IEEPA to "direct and compel * * * and * * * transfer [or] withdrawal," of Iranian assets, 50 U.S.C. § 1702(a)(1)(B),⁴⁷ the President has directed the transfer of previously blocked Iranian assets pursuant to the Executive Orders.⁴⁸ Because these Presidential actions with respect to blocked property were taken

⁴⁶ Contrary to the opinion of District Judge Porter (EDS Corp. v. Social Security Organization of the Government of Iran, Slip op. No. CA3-79-0218-F at 17-19 (N.D. Tex. Feb. 12, 1981)), the Executive Orders issued by President Carter on January 19, 1981 are valid. Judge Porter's ruling is now moot, because President Reagan has expressly ratified the January 19 Executive Orders. Executive Order No. 12,294, § 8 (Feb. 24, 1981). Furthermore, Judge Porter is incorrect. President Carter's orders took effect immediately upon issuance, which indisputably occurred before noon on January 20, 1981. While under the Agreement with Iran the United States was not required to terminate third party interests in Iranian property prior to the hostages' release, nothing precluded the President from taking that action earlier, and nothing in the Executive Orders was explicitly contingent on the hostages' release. Even if the provisions of the Executive Order were contingent on the release of the hostages, it is not unusual for an order, regulation or statute to have an effective date after the session of Congress expires or a cabinet official has left office, or contingent on some event to occur in the future, but at an unspecified time.

⁴⁷ See also 50 U.S.C. § 1701(a)(1)(A)

⁴⁸ The authority to direct the transfer of Iranian assets is explicitly provided by IEEPA, and contrary to District Judge Porter's decision in EDS v. Social Security Organization of the Government of Iran, supra, at 20-22, the exercise of that authority does not constitute a vesting by the United States, which is precluded by IEEPA. When the United States vests foreign property, it strips the foreign power of ownership and takes title for itself. See H.R. Rep. No. 95-459, supra, at 15; McGrath v. Manufacturers Trust Co., 338 U.S. 241, 244 (1949); Propper v. Clark, supra, 337 U.S. at 477 n.7. Under the Iranian Asset Control Regulations title to blocked property has never passed; indeed such transfers of title have explicitly been prohibited. 31 C.F.R. §§ 535.201, 535.310. Obviously, there has been no vesting of Iranian assets still in the United States because except for that portion that Iran committed to fund the claims settlement program for the benefit of American claimants, the remainder is to be returned to Iran.

during the period of a declared national emergency,⁴⁹ they were authorized by the statutory language. Moreover, the President's actions were also consistent with the congressional directive for him to "use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release" of any United States citizen "unjustly deprived of his liberty by or under the authority of any foreign government * * *" 22 U.S.C. § 1732.

2. Prior decisions under the parallel provisions of section 5(b) of the Trading With The Enemy Act (TWEA) confirm the broad scope of the President's authority under IEEPA.⁵⁰ The language of the TWEA has "[b]een] given [a] generous scope to accomplish its purpose." Propper v. Clark, *supra*, 337 U.S. at 481. The courts have consistently recognized the unusual breadth of the power delegated to the President by the broad language used, and refused to recognize implied limitations. See, e.g., Sardino v. Federal Reserve Bank, *supra*, Pike v. United States, 340 F.2d 487 (9th Cir. 1965). Indeed, the courts have recognized that the ultimate disposition of blocked funds could be used as a negotiating chip with a foreign country. Richardson v. Simon, 560 F.2d 500, 505 (2d Cir. 1977), *appeal dismissed*, 435 U.S. 939 (1978); Real v. Simon, 510 F.2d 557, 563 (5th Cir. 1975); Neilsen v. Secretary of Treasury, 424 F.2d 833, 840-841 (D.C. Cir. 1970). Thus when Congress enacted IEEPA, it was well aware that similar language in the TWEA had been the basis for a wide range of Presidential actions designed to meet emergency situations which might be maintained as long as the national interest requires. See, e.g., H.R. Rep. No. 95-459, *supra*; cf. Emergency Powers Statutes, S. Rep. No. 93-549, 93rd Cong., 1st Sess. 184 (1973). That Act, as this one, delegated to the President all powers which bear a "reasonable relation to the particular emergency confronted." United States v. Yoshida International Inc., 526 F.2d 560, 579 (C.C.P.A. 1975).

The Supreme Court's decision in Orvis v. Brownell, 345 U.S. 183 (1953), decided under the virtually identical language of the TWEA, is particularly compelling in confirming the President's authority to dispose of the assets as required to resolve the hostage crisis. In Orvis, claimants contended

⁴⁹ The national emergency remains in effect. 50 U.S.C. § 1622, 1706. The decision of the political branches of the government on this question is binding on the courts. See, e.g., Sardino v. Federal Reserve Bank, *supra*, 361 F.2d at 109.

⁵⁰ The 1977 Amendments to the TWEA removed from section 5(b) the President's authority to control economic transactions during national emergencies, and transferred those powers to IEEPA. Thus, the grant of authorities in IEEPA parallels section 5(b) of the TWEA, and interpretations of that Act are directly applicable to IEEPA. See H. Rep. No. 95-459, 95th Cong., 1st Sess. 14-15 (1977).

that an attachment of a blocked credit, valid under New York law, was sufficient to effect a transfer of interest to support a claim against the government custodian who had vested the credit. There, as here, the regulations under the freeze order permitted pre-judgment attachment, but prohibited any transfers to pay a judgment.

The Supreme Court rejected the judgment creditor's claim. The government's consent to "state attachment procedures * * * did not extend so far as to recognize them as effecting a transfer." Id., at 187. "[T]he freezing order prevented a creditor from thereafter acquiring by attachment an 'interest, right or title' in property such as will support a claim against the custodian * * *." Orvis v. Brownell, supra, 345 U.S. at 186-187.

Orvis, thus, stands for the proposition that in consenting to attachments on blocked property, the President may limit the substantive rights created by the attachment. In the Iranian Assets Control Regulations, the Executive consented to pre-judgment attachments, but specified that no judgment could be obtained. Furthermore, the consent to the pre-judgment attachment was expressly made subject to revocation at any time, 31 C.F.R. § 535.805, and the absence of a license renders "any attachment * * * null and void." 31 C.F.R. § 535.203(e).⁵¹ When the President exercised this reserved authority, the interest created by the attachment was extinguished according to its own terms. To interpret the

⁵¹ Significantly, the blocking order in Orvis was issued prior to the 1941 amendments to the TWEA which added, inter alia, the powers to nullify or void any interest in alien property. 55 Stat. 839, Title III, § 301 (1941). The President under IEEPA not only has the power to condition the creation of property interest, and then invoke the condition, but also the separate power to nullify or void any interest in blocked property even in the absence of any stated conditions or reservations.

authorization for pre-judgment attachments as creating any greater rights would, in the words of Orvis,

ignore the express condition on which the consent [to attach] was extended. Realistically, these reservations deprive the assent of much substance; but that should have been apparent on its face to those who chose to litigate.

Orvis v. Brownell, *supra*, 345 U.S. at 187.⁵²

3. Any doubt concerning the expansiveness of the authority granted by IEEPA must be resolved in favor of the President. IEEPA sets forth the President's power in a time of national emergency with respect to the foreign affairs of the United States. Absent compelling indications to the contrary, judicial deference to the President's interpretation of IEEPA is particularly appropriate because that Act implicates "the conduct of foreign relations * * * [which] is so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." Harisiades v. Shaughnessy, 342 U.S. 580, 598 (1952). See also Zemel v. Risk, 381 U.S. 1, 11 (1965); United States v. Belmont, 301 U.S. 324, 328 (1937); Real v. Simon, *supra*, 510 F.2d at 560. Indeed,

⁵²The Supreme Court's decision in Zittman v. McGrath, 341 U.S. 446 (1951) (Zittman I), decided two years before Orvis, is not to the contrary. In Zittman I the Court, construing the terms of a vesting order, denied the custodian's request that a state court attachment be declared null and void, with respect to the enemy debtor. Because the custodian had vested only the "right, title and interest" of the debtor-bank, he had voluntarily put himself in the shoes of the bank and therefore was subject to the attachment.

Unlike the present case, the creditor's attachment in Zittman I was obtained prior to the regulation prohibiting attachment, and not pursuant to a license specifically made revocable. *Id.* at 452. Significantly, in Zittman v. McGrath, 341 U.S. 471 (1951) (Zittman II), the Court carefully confined its decision to the Plaintiff's rights in relation to the enemy debtor under the particular vesting order, and reserved the issue whether state court judgments or attachments could have any conclusive effect on final disposition of the assets, *id.* at 474, the issue resolved favorably to the government in Orvis.

if, in the maintenance of our international relations embarrassment -- perhaps serious embarrassment -- is to be avoided and success of our aim achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory construction which would not be admissible were domestic affairs alone involved.

United States v. Curtiss-Wright Corp., 299 U.S. 304, 320 (1936).

Absent the most compelling reasons, a court should not interpret a statute in such a manner to place the United States in breach of its international obligations. Murray v. The Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804); Filartiga v. Pena-Irala, 630 F.2d 876, 887 n.20 (2d Cir. (1980)).⁵³ Indeed, under the Agreement with Iran failure of the United States to bring about the transfer of certain Iranian assets within six months could result in the Tribunal adjudging the United States in default with potentially serious diplomatic and financial consequences for the United States. (Decl. II, Art. II).

4. Termination of attachments against Iranian assets causes no compensable loss. At the time of the blocking order claimants had no interest in assets that Iran was then threatening to withdraw from this country. The President blocked these assets, preventing Iran from removing them. As a result of that action, and Treasury's license, those assets could be

⁵³ The Executive's decision to consider the international agreement with Iran in force is binding on the courts. See, e.g., Clark v. Allen, 331 U.S. 503, 514 (1947); Terlinden v. Ames, 184 U.S. 270, 288 (1902).

attached, where such an attachment would otherwise be invalid.⁵⁴ But the license for the attachments, and thus the attachments themselves, were conditional, Orvis v. Brownell, supra; 31 C.F.R. 535.805, and invocation of that condition precludes a finding that a compensable interest has been taken. See, e.g., Acton v. United States, 401 F.2d 896, 899-900 (9th Cir. 1968), cert. denied, 393 U.S. 1121, 395 U.S. 945 (1969). See also United States v. Fuller, 409 U.S. 488 (1973); Bridge Co. v. United States, 105 U.S. 470 (1881). In sum, the President's actions restored all claimants to their status as of November 14, 1979, when they had a putative claim against Iran, but Iran had control of its own assets. To the extent that Iran may now exercise its right to withdraw its funds, that is not a taking by the United States.

Moreover, for the same reasons that suspension of claims against Iran causes no immediate loss to claimants, termination of their attachments likewise causes no immediate loss.

⁵⁴ In fact, many of the claimants' attachments were invalid. The Foreign Sovereign Immunities Act, 28 U.S.C. § 1610(d), in general bars pre-judgment attachments as "foreign relations irritants." 122 Cong. Rec. 33532 (1976) (remarks of Rep. Danielson). The FSIA does keep in force, however, pre-existing treaty provisions, including Article XI, ¶4 of the 1955 Iran-United States Treaty of Amity, Economic Relations, and Consular Rights (FCN Treaty). 8 U.S.T. 899. 28 U.S.C. § 1609. See Behring International, Inc. v. Imperial Iranian Air Force, 475 F. Supp. 383, 392-395 (D.N.J. 1979). But see New England Merchants National Bank v. Iran Power Generation And Transmission Co., 502 F. Supp. 120, 124-25 (S.D.N.Y. 1980), appeal pending, Nos. 80-3063, 81-8002 (2d Cir.); E. Systems, Inc. v. Islamic Republic of Iran, 491 F. Supp. 1294, 1300 (N.D. Tex. 1980).

Like numerous other FCN treaties, the Iran-United States Treaty waives immunity only for a commercial or business "enterprise * * * which is publicly owned or controlled," but not for any other type of government agency. See, e.g., S. Exec. Rep. No. 5, 83d Cong., 1st Sess. 5 (1953); S. Exec. Rep. No. 5, 81st Cong., 2d Sess. 6 (1950); and cf. H. R. Rep. No. 94-1487, 94th Cong., 2d Sess. 27 (1976). The Treaty waiver of immunity would apply to suits arising out of a purchase of goods by a government airline, for example, but not by the Army. At a minimum, then, all current attachments of Iranian assets are invalid under the FSIA and the Treaty except for those attachments of assets owned by government-controlled business enterprises. This position is developed in detail in the United States' amicus curiae brief in Electronic Data Systems Corp. v. Social Security Organization of Iran, 610 F.2d 84 (2d Cir. 1979). That court did not reach the question.

(See pp. 20-21 supra). Additionally, at whatever point in the future plaintiff establishes its claim, there may well be new Iranian assets in this country based on renewed trade between Iran and the United States. And finally, even if there are no new assets in the United States, the Agreement with Iran specifically provides United States nationals with the right to enforce awards of the Tribunal in any country where Iranian assets can be found. (Decl. II, Art. IV, ¶3).⁵⁵ In these circumstances, speculation as to future losses is an insufficient basis to restrain the transfers the President has lawfully ordered.

⁵⁵ Among others, many oil importing nations, where Iranian assets have traditionally been on deposit, have committed themselves to honor international arbitral awards. Convention on the Recognition and Enforcement of Arbitral Awards, supra.

CONCLUSION

For the foregoing reasons, the Court should (1) stay litigation of those claims against Iran arguably within the Tribunal's jurisdiction, and (2) vacate the attachments against Iranian assets.⁵⁶

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⁵⁶ The President has exercised his IEEPA authority to terminate the attachments and to direct the transfer of Iranian assets by Executive Order. In order to relieve the concern of those who hold Iranian assets this Court should apply the rule of law established by the Executive Order and formally vacate its attachment order.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

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Sec.

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Authority: Secs. 201-207, 91 Stat. 1623; 50 U.S.C. 1701-1706; E.O. No. 12170, 41 FR 65729; E.O. 12203, 45 FR 24099; E.O. 12211, 45 FR 26685.

Source: 44 FR 63936, Nov. 15, 1979, unless otherwise noted.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 535.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 500, 505, 515, 520 and 530 of this chapter. Those parts do not relate to Iran. No license or authorization contained in or issued pursuant to such parts shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law (except this part) be deemed to authorize any transaction so prohibited.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any law or any statute other than the International Emergency Economic Powers Act, as amended, or any proclamation order or regulation other than those contained in or issued pursuant to this part.

Subpart B—Prohibitions

§ 535.201 Transactions involving property in which Iran or Iranian entities have an interest.

No property subject to the jurisdiction of the United States or which is in the possession of or control of persons subject to the jurisdiction of the United States in which on or after the effective date Iran has any interest of any nature whatsoever may be transferred, paid, exported, withdrawn or otherwise dealt in except as authorized.

[45 FR 24432, Apr. 9, 1980]

§ 535.202 Transactions with respect to securities registered or inscribed in the name of Iran.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise

dealing in any security (or evidence thereof) registered or inscribed in the name of any Iranian entity is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the effective date) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

§ 535.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which Iran has or has had an interest since such effective date is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which Iran has or has had an interest since the effective date unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such effective date.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void, or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void, or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such

person is able to establish each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained.

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to the provision of this part and was not so licensed or authorized or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that: (i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization thereunder, or (ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or (iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d) (1) and (2) of this section.

(e) Unless licensed or authorized pursuant to this part any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of Iran.

(f) For the purpose of this section the term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts,

claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

[44 FR 65956, Nov. 15, 1979, as amended at 45 FR 24432, Apr. 9, 1980]

§ 535.204 Imports from Iran or Iranian merchandise.

Except as specifically authorized by the Secretary of the Treasury (or by any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, no merchandise, other goods or services of Iranian origin may be imported into the United States if such merchandise or goods are or have been located in or transported from or through Iran after the effective date of this section.

[45 FR 26940, Apr. 21, 1980]

§ 535.206 Financial transactions.

(a) Except as authorized by means of regulations, rulings, instructions, licenses or otherwise, no person subject to the jurisdiction of the United States shall, directly or indirectly, in any transaction involving Iran, an Iranian governmental entity, an enterprise controlled by Iran or an Iranian governmental entity, or any person in Iran:

(1) Make available any new deposit facilities or allow substantial increases in existing non-dollar deposits.

(2) Allow more favorable terms of payment than customarily used in international commercial transactions.

(3) Fail to act in a business-like manner in exercising any rights when payments due on existing credits or loans are not made in a timely manner, provided the exercise of such rights is not otherwise prohibited by this part.

(4) Make any payment, transfer of credit, or other transfer of funds or other property or interests therein to any person in Iran.

(b) The prohibitions contained in paragraph (a) of this section shall not apply to transactions by any person

subject to the jurisdiction of the United States which is a non-banking association, corporation or other organization organized and doing business under the laws of any foreign country. The U.S. parent of any such person must report to the Office of Foreign Assets Control any prospective transaction with Iran contained in paragraph (a) of this section ten days before any subsidiary enters into such a transaction.

[45 FR 24432, Apr. 9, 1980, as amended at 45 FR 26940, Apr. 21, 1980]

§ 535.207 Trade, shipping and service transactions.

(a) All of the following transactions are prohibited, except as authorized by means of regulations, rulings, instructions, licenses or otherwise:

(1) The sale, supply or other transfer, by any person subject to the jurisdiction of the United States, of any items, commodities or products, except food, medicine or supplies intended strictly for medical purposes, and donations of clothing intended to be used to relieve human suffering, from the United States, or from any foreign country, whether or not originating in the United States, either to or destined for Iran, an Iranian governmental entity in Iran, any other person or body in Iran, or any other person or body for the purposes of any enterprise carried on in Iran.

(2) The shipment by vessel, aircraft, railway or other land transport of United States registration or owned by or under charter to a person subject to the jurisdiction of the United States or the carriage (whether or not in bond) by land transport facilities across the United States of any of the items, commodities or products covered by paragraph (a) of this section which are consigned to or destined for Iran, an Iranian governmental entity, or any person or body in Iran, or to any enterprise carried on in Iran.

(3) The shipment from the United States of items, products or commodities covered by paragraph (a) of this section on vessels or aircraft registered in Iran.

(4) The engaging, by any person subject to the jurisdiction of the United States, in any service contract in sup-

port of industrial projects in Iran, except any such contracts entered into prior to the effective date or concerned with the provision of medical services.

(b) The prohibitions contained in paragraph (a) of this section shall not apply to transactions by any person subject to the jurisdiction of the United States which is a non-banking association, corporation or other organization organized and doing business under the laws of any foreign country. The U.S. parent of any such person must report to the Office of Foreign Assets Control any transaction with Iran contained in paragraph (a) of this section ten days before any subsidiary enters into such a transaction.

[45 FR 24433, Apr. 9, 1980]

§ 535.208 Evasions; effective date.

(a) Any transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth in this subpart is hereby prohibited.

(b) The term "effective date" means, with respect to transactions prohibited in § 535.201, 8:10 a.m. eastern standard time, November 14, 1979, and with respect to the transactions prohibited in §§ 535.206 and 535.207, 4:19 p.m. eastern standard time, April 7, 1980.

(c) With respect to any amendments of the foregoing sections or any other amendments to this part the term "effective date" shall mean the date of filing with the FEDERAL REGISTER.

[45 FR 24433, Apr. 9, 1980, as amended at 45 FR 26940, Apr. 21, 1980]

§ 535.209 Transactions incident to travel and maintenance of U.S. nationals in Iran prohibited.

(a) The following actions by persons subject to the jurisdiction of the United States are prohibited:

(1) Any direct or indirect payment or transaction (including any transfer, other dealing in, or use of property) either to, by, on behalf of, or otherwise involving, any foreign country or any national thereof, which is incident to travel to, or travel or maintenance within Iran of any individual who is a U.S. citizen or U.S. permanent resident alien.

(b) The prohibitions of paragraph (a) of this section do not apply to transactions incident to travel to or travel or maintenance within Iran of individuals who are citizens of Iran.

(c) The effective date of this prohibition, as it relates to payments by or for the benefit of U.S. citizens or U.S. permanent resident aliens in Iran is April 24, 1980.

[45 FR 26940, Apr. 21, 1980; 45 FR 37688, June 4, 1980]

Subpart C—General Definitions

§ 535.301 Iran; Iranian Entity.

(a) The term "Iran" and "Iranian Entity" includes:

(1) The state and the Government of Iran as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by any of the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any territory which on or since the effective date is controlled or occupied by the military, naval or police forces or other authority of Iran; and

(5) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) hereof.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Iran solely by reason of being located in, organized under the laws of, or having its principal place of business in, Iran.

§ 535.308 Person.

The term "person" means an individual, partnership, association, corporation or other organization.

[45 FR 24433, Apr. 9, 1980]

§ 535.310 Transfer.

The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgement, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

[44 FR 75352, Dec. 19, 1980]

§ 535.311 Property; property interests.

Except as defined in § 535.203(f) for the purposes of that section, the terms "property" and "property interest" or "property interests" shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, grounds rents, options, negotiable in-

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struments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 535.312 Interest.

Except as otherwise provided in this part, the term "interest" when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

[44 FR 75352, Dec. 19, 1979]

§ 535.316 License.

Except as otherwise specified, the term "license" shall mean any license or authorization contained in or issued pursuant to this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.317 General license.

A general license is any license or authorization the terms of which are set forth in this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.318 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

[44 FR 66832, Nov. 21, 1979]

§ 535.320 Domestic bank.

(a) The term "domestic bank" shall mean any branch or office within the United States of any of the following which is not Iran or an Iranian entity: any bank or trust company incorporated under the banking laws of the United States or of any state, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any state, territory or district of the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a "domestic bank" for the purpose

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of this definition or for the purpose of any or all sections of this part.

(b) For purposes of §§ 535.413, 535.508, 535.531 and 535.901, the term "domestic bank" includes any branch or office within the United States of a non-Iranian foreign bank.

[44 FR 66832, Nov. 21, 1979]

§ 535.321 United States; continental United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof including the Trust Territory of the Pacific Islands. The term "continental United States" means the states of the United States and the District of Columbia.

[44 FR 66833, Nov. 21, 1979]

§ 535.329 Person subject to the jurisdiction of the United States.

The term "person subject to the jurisdiction of the United States" includes:

(a) Any person wheresoever located who is a citizen or resident of the United States;

(b) Any person actually within the United States;

(c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(d) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in paragraphs (a), (b), or (c) of this section.

§ 535.331 Food.

The term "food" as used in § 535.207(a) shall include commodities directly consumed by humans or by animals when such animals are primarily used as a source of food.

[45 FR 24433, Apr. 9, 1980]

Subpart D—Interpretations

§ 535.401 Reference to amended sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed

to refer to the same as currently amended unless otherwise so specified.
[45 FR 24433, Apr. 9, 1980]

§ 535.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation and all penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

[45 FR 24433, Apr. 9, 1980]

§ 535.403 Termination and acquisition of an interest of Iran or an Iranian entity.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from Iran or an Iranian entity, such property shall no longer be deemed to be property in which Iran or an Iranian entity has or has had an interest, unless there exists in the property another such interest the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to Iran or an Iranian interest, such property shall be deemed to be property in which there exists an interest of Iran or an Iranian entity.

[45 FR 24433, Apr. 9, 1980]

§ 535.413 Transfers between dollar accounts held for foreign banks.

Transfers authorized by § 535.901 include transfers by order of a non-Iran-

ian foreign bank from its account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary) for a second non-Iranian foreign bank which in turn credits an account held by it abroad for Iran. For the purposes of this section, a non-Iranian foreign bank means a bank which is not a person subject to the jurisdiction of the United States.

[44 FR 66833, Nov. 21, 1979]

§ 535.414 Payments to blocked accounts under § 535.508.

(a) Section 535.508 does not authorize any transfer from a blocked account within the United States to an account held by any bank outside the United States or any other payment into a blocked account outside the United States.

(b) Section 535.508 only authorizes payment into a blocked account held by a domestic bank as defined by § 535.320.

[44 FR 67617, Nov. 23, 1979]

§ 535.415 Payment by Iranian entities of obligations to persons within the United States.

A person receiving payment under § 535.904 may distribute all or part of that payment to anyone: *Provided*, That any such payment to Iran or an Iranian entity must be to a blocked account in a domestic bank.

[44 FR 67617, Nov. 26, 1979]

§ 535.416 Letters of credit.

(a) *Q* Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. Can payment be made upon presentation of documentary drafts?

A. Yes, provided payment is made into a blocked account in a domestic bank.

(b) *Q* Prior to the effective date, a domestic branch of a bank organized or incorporated under the laws of the United States has issued or confirmed a documentary letter of credit for a

non-Iranian account party in favor of an Iranian entity. Payment is to be made through a foreign branch of the bank. Can payment be made upon presentation of documentary drafts?

A. Yes, provided payment is made into a blocked account in a domestic bank.

(c) Q. Prior to the effective date, a foreign bank confirms a documentary letter of credit issued by its U.S. agency or branch for a non-Iranian account party in favor of an Iranian entity. Can the U.S. agency or branch of the foreign bank transfer funds to the foreign bank in connection with that foreign bank's payment under the letter of credit?

A. No, the U.S. agency's payment is blocked, unless the foreign bank made payment to the Iranian entity prior to the effective date.

(d) Q. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentary drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and authorize the bank to make payment?

A. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the bank's payment obligation, if any, under the letter of credit remains blocked, as does any obligation, contingent or otherwise, of the account party. The documents are also blocked.

(e) Q. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity does not make timely, complete, or proper presentation of documents, and the letter of credit expires. Does there remain a blocked payment obligation held by the bank?

A. No, but any documents held by the bank continue to be blocked. It is

also possible that the account party still has a related obligation to the Iranian entity and any such obligation would be blocked.

(f) Q. A bank subject to the jurisdiction of the United States has issued a letter of credit for a U.S. account party in favor of an Iranian entity. The letter of credit is confirmed by a foreign bank. Prior to or after the effective date, the Iranian entity presents documents to the U.S. issuing bank. Payment is deferred. After the effective date, the Iranian entity requests that the issuing bank either return the documents to the Iranian entity or transfer them to the confirming bank. Can the issuing bank do so?

A. No. The U.S. issuing bank can neither return nor transfer the documents without a license. The documents constitute blocked property under the Regulations.

(g) Q. Prior to the effective date, a bank subject to the jurisdiction of the United States has issued or confirmed a documentary letter of credit for a non-Iranian account party in favor of an Iranian entity. The Iranian entity presents documentary drafts which are deficient in some detail. May the non-Iranian account party waive the documentary deficiency and make payment?

A. Yes, provided payment is made into a blocked account in a domestic bank. However, the non-Iranian account party is not obligated by these Regulations to exercise a waiver of documentary deficiencies. In cases where such a waiver is not exercised, the amount of the payment held by the account party is blocked.

[44 FR 69287, Dec. 3, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

§ 535.418 Authorization of judicial proceedings under § 535.504.

The general authorization for judicial proceedings contained in § 535.504(a) includes pre-judgment attachment. However, § 535.504(a) does not authorize payment of delivery of any blocked property to any court, marshal, sheriff, or similar entity, and any such transfer of blocked property is prohibited without a specific license. It would not be con-

sistent with licensing policy to issue such a license.

[44 FR 75353, Dec. 19, 1979]

§ 535.419 Extensions of credit to Iran.

(a) § 535.201 prohibits the unlicensed extension of credit to Iran or any Iranian entity, by persons subject to the jurisdiction of the United States, after the effective date.

(b) This prohibition applies to the unlicensed renewal of credits in existence on the effective date.

(c) This prohibition applies to credit extended in any currency.

(d) In view of the provisions of §§ 535.566 and 535.901, the prohibition does not apply to trade credits which are fully collateralized in foreign currency or in unblocked U.S. dollars received after the effective date.

(e) The prohibition in § 535.201 does not apply to extensions or renewals of credits to Iran or an Iranian entity by any person subject to the jurisdiction of the United States which is a non-banking association, corporation or other organization organized and doing business under the laws of any foreign country.

[44 FR 76784, Dec. 28, 1979, as amended at 45 FR 24433, Apr. 9, 1980]

§ 535.420 Transfers of accounts under § 535.508 from demand to interest-bearing status.

§ 535.508 authorizes transfer of a blocked demand deposit account to interest-bearing status at the instruction of the Iranian depositor at any time.

[44 FR 76784, Dec. 28, 1979]

§ 535.421 Prior contractual commitments not a basis for licensing.

Specific licenses are not issued on the basis that an unlicensed firm commitment or payment has been made in connection with a transaction prohibited by this part. Contractual commitments to engage in transactions subject to the prohibitions of this part should not be made, unless the contract specifically states that the transaction is authorized by general license or that it is subject to the issuance of a specific license.

[45 FR 24433, Apr. 9, 1980]

§ 535.422 New deposit facilities.

(a) The prohibition contained in § 535.206(a) includes the opening of any new accounts as well as the acceptance of non-dollar deposits in any existing accounts where the resulting balance would be substantially greater than that existing on the effective date.

(b) A balance is substantially greater if it is more than 10% greater than the average daily balance during the six-month period prior to the effective date of § 535.206.

(c) An account is not a new account if it is established as a result of a transfer authorized by § 535.508 or otherwise licensed under this part.

[45 FR 24434, Apr. 9, 1980]

§ 535.423 Customary international commercial terms.

(a) § 535.206(b) prohibits the sale to Iran, any Iranian entity or any person in Iran of any commodity on conditions markedly different from those customarily offered by other sellers of that commodity in terms of price, method of payment and time of payment.

(b) This section shall not be construed to authorize any transaction which is otherwise prohibited by this part.

[45 FR 24434, Apr. 9, 1980]

§ 535.424 Service contracts in support of industrial projects in Iran.

Specific licenses to enter into any service contract in support of any enterprise in Iran will be considered on a case-by-case basis. No service contract should be entered into without a specific license.

[45 FR 24434, Apr. 9, 1980]

§ 535.425 Iranian enterprise.

For purposes of § 535.206, the term "enterprise" means any business or commercial activity or venture of any kind whatsoever, whether operated or organized as a corporation, partnership, joint venture, association, sole proprietorship, or otherwise.

[45 FR 24434, Apr. 9, 1980]

§ 535.426

§ 535.426 Remittances involving persons in Iran.

(a) Remittances to countries other than Iran are not prohibited by § 535.206(a)(4) unless the remitter knows or has reasonable cause to believe that the funds are being transferred directly or indirectly to Iran.

(b) Subject to the requirement of paragraph (c) of this section, liability of a U.S. bank under § 535.206(a)(4) in connection with a payment made on the order of a party other than the bank is limited to the following transactions:

(1) Payment from an account held by the bank for a person located in Iran;

(2) Payment from any other account where the bank has actual and current knowledge of facts that give reasonable cause to believe that the payment is being made in violation of § 535.206(a)(4).

(c) U.S. banks are required to disseminate information about the prohibitions contained in § 535.206(a)(4) and the provisions of this section to all officers and employees.

[45 FR 29287, May 2, 1980]

§ 535.427 Dividends, interest, and other periodic payments to Iran.

The prohibition of transfers to persons in Iran contained in § 535.206(a)(4) applies to all payments and transfers, including payment or transfer of dividend checks, interest payments and other periodic payments.

[45 FR 29287, May 2, 1980]

§ 535.428 Sponsored travel and maintenance of U.S. nationals in Iran.

The receipt or acceptance by any person who is a U.S. citizen or U.S. permanent resident alien of any gratuity, grant, or support in the form of meals, lodging, payments of travel or maintenance expenses, or otherwise, in connection with travel to or travel and maintenance within Iran constitutes a transaction or transfer within the meaning of the prohibition set forth in § 535.209(a).

[45 FR 29287, May 2, 1980]

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§ 535.429 Exportation of technical data prohibited.

(a) The prohibition in § 535.207(a)(1) includes transfers of information, in eye-readable or machine-readable form, intended for use, directly or indirectly, in the design, production, manufacture, reconstruction, servicing, operation or use of any product.

(b) The prohibition on the exportation of technical data extends not only to unpublished technical information that is not available to the public, but also to published technical data such as operating, repair or service manuals for automotive or industrial equipment that are available through commercial sources such as book distributors.

[45 FR 29288, May 2, 1980]

§ 535.430 U.S. components of foreign-made goods.

The prohibitions in § 535.207(a)(1) apply to the sale, supply or other transfer after the effective date of § 535.207 of items, commodities or products for incorporation in foreign-manufactured goods where the person subject to the jurisdiction of the United States has reasonable cause to believe that those goods are intended for export to Iran.

[45 FR 29288, May 2, 1980]

§ 535.431 Goods in transit.

Shipments of Iranian origin merchandise covered by a bill of lading dated on or before April 17, 1980 are not within the prohibition in § 535.204.

[45 FR 29288, May 2, 1980]

§ 535.432 Provision of travel-related services.

Transactions prohibited by § 535.209(a) include all transactions by airlines, shipping lines, travel agents, ticket agents and similar persons subject to the jurisdiction of the United States in connection with arranging travel to or within Iran by U.S. citizens or U.S. permanent resident aliens, unless such travel is authorized or licensed under the provisions of this part. Such prohibited transactions include, but are not limited to, arranging through transportation to Iran; selling

passages aboard a foreign carrier providing service to Iran, whether or not originating in the United States; chartering an aircraft or vessel; or arranging accommodations, ground transportation or travel activities within Iran.

[45 FR 37679, June 3, 1980]

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 535.502 Effect of license or authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 203 of the International Emergency Economic Powers Act, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of Parts 500, 505, 515, 520 or 530 of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing a transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions in Subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

[44 FR 66833, Nov. 21, 1979, as amended at 44 FR 75353, Dec. 19, 1979]

§ 535.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

[44 FR 66833, Nov. 21, 1979]

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, judicial proceedings are authorized with respect to property in which on or since the effective date there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which Iran or an Iranian entity has an interest.

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(d) Property transferred into or held in the United States by Iran or an Iranian entity under a specific license which by its terms withdraws the authorization for pre-judgment attachment with respect to such property is excluded from the privileges of paragraph (a) of this section.

[44 FR 67617, Nov. 26, 1979, as amended at 44 FR 69650, Dec. 4, 1979]

§ 535.508

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§ 535.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit, including any payment or transfer by any U.S.-owned or controlled foreign firm or branch to a blocked account in a domestic bank in the name of Iran or any Iranian entity is hereby authorized: *Provided*, Such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of Iran or an Iranian entity to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of Iran or the Iranian entity who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, or the income derived from such securities to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

(e) This section does not authorize any payment or transfer from a blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the specified blocked account or sub-account from which the payment or transfer is made.

(f) The authorization in paragraph (a) of this section is subject to the condition that a notification from the domestic bank receiving an authorized payment or transfer is furnished by the transferor to the Office of Foreign

Assets Control confirming that the payment or transfer has been deposited in a blocked account under the regulations in this part and providing the name and address of Iran or the Iranian entity in whose name the account is held.

[44 FR 66590, Nov. 20, 1979]

§ 535.528 Certain transactions with respect to Iranian patents, trademarks and copyrights authorized.

(a) The following transactions by any person subject to the jurisdiction of the United States are authorized:

(1) The filing and prosecution of any application for an Iranian patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any Iranian patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any Iranian patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of Iran, either directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a)(1), (2), and (3) of this section or for the maintenance of any Iranian patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in Iran incurred in connection with any of the transactions authorized by paragraphs (a)(1), (2), (3) or (4) of this section.

(b) Payments effected pursuant to the terms of paragraph (a)(4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term "Iranian patent, trademark, or copyright" shall mean any patent, petty patent, design patent, trademark or copyright issued by Iran.

[45 FR 29288, May 2, 1980]

§ 535.531 Payment of certain checks and drafts.

(a) A bank subject to the jurisdiction of the United States is hereby authorized to make payments from blocked

accounts with such banking institution of checks and drafts drawn or issued prior to the effective date, *Provided, That:*

(1) The amount involved in any one payment, acceptance, or debit does not exceed \$3000; or

(2) The check or draft was within the United States in process of collection by a domestic bank on or prior to the effective date and does not exceed \$50,000.

(3) The authorization contained in this paragraph shall expire at the close of business on January 14, 1980.

(b) A bank subject to the jurisdiction of the United States as its own obligation may make payment to a person subject to the jurisdiction of the United States who is the beneficiary of any letter of credit issued or confirmed by it, or on a draft accepted by it, prior to the effective date, where the letter of credit was issued or confirmed on behalf of Iran or an Iranian entity, *Provided, That:*

(1) Notwithstanding the provisions of § 535.902, no blocked account may at any time be debited in connection with such a payment.

(2) Such a payment shall give the bank making payment no special priority or other right to blocked accounts it holds in the event that such blocked accounts are vested or otherwise lawfully used in connection with a settlement of claims.

(3) Nothing in this paragraph prevents payment being made to the beneficiary of any draft or letter of credit or to any banking institution pursuant to § 535.904.

(c) The Office will consider on a case-by-case basis, without any commitment on its part to authorize any transaction or class of transactions, applications for specific licenses to make payments from blocked accounts of documentary drafts drawn under irrevocable letters of credit issued or confirmed by a domestic bank prior to the effective date, in favor of any person subject to the jurisdiction of the United States. Any bank or payee submitting such an application should include data on all such letters of credit in which it is involved. Applications should be submitted not later than January 10, 1980.

(d) Paragraphs (a) and (b) do not authorize any payment to Iran or an Iranian entity except payments into a blocked account in a domestic bank unless Iran or the Iranian entity is otherwise licensed to receive such payment.

[44 FR 75352, Dec. 19, 1979]

§ 535.532 Completion of certain securities transactions.

(a) Banking institutions within the United States are hereby authorized to complete, on or before November 21, 1979, purchases and sales made prior to the effective date of securities purchased or sold for the account of Iran or an Iranian entity provided the following terms and conditions are complied with, respectively.

(1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

§ 535.550 Publications, films, etc. from Iran.

(a) Specific licenses are issued as appropriate for importations of publications, films, posters, phonograph records, photographs, microfilms, microfiche and tapes originating in Iran. All payments due the suppliers will be required to be made into accounts in domestic banks subject to the provisions of § 535.201 or § 535.206(a)(4). Such an account shall be established in the name of the seller and the licensee shall report such information concerning the importation and the account established in the name of the seller as the Office of Foreign Assets Con-

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trol may require as a condition of the license.

(b) Such importations of publications, films, etc. are also licensed as appropriate when the Office of Foreign Assets Control is satisfied that they are bona fide gifts to the importer and that there is not and has not been any direct or indirect financial or commercial benefit to an Iranian entity or any person in Iran from the importations.

[45 FR 29288, May 2, 1980]

§ 535.562 News material.

(a) *Imports by newsgathering agencies.* The purchase and importation of Iranian origin newspapers, magazines, photographs, films, tapes, and other news material or copies thereof by newsgathering agencies in the United States are authorized, without restriction as to method of payment, provided such materials are intended for use in news publication or news broadcast dissemination.

(b) *Newsgathering activities in Iran by journalists and news correspondents.* The following transactions by a journalist or other person who is regularly employed by a newsgathering or transmitting organization who travels to Iran or is within Iran for the purposes of gathering or transmitting news, filming news or making documentary films, or similar activities are authorized:

(1) Payment of expenses for travel to, and maintenance within, Iran for the purposes of gathering and transmitting news to the United States; and

(2) The acquisition in Iran for transmission to and importation into the United States of newspapers, magazines, photographs, films, tapes, and other news material or copies thereof, necessary for the journalistic assignments.

(3) Within 5 days after engaging in the initial transaction with respect to a trip to or stay within Iran covered by this paragraph, the person engaging in the transaction, or the organization by which such person is employed, shall notify the Office of Foreign Assets Control. The notification shall include the name of the person upon whose behalf the general license is being used. Within 5 days after his depart-

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ture from Iran, any person utilizing the general license shall send a second notification to the Office of Foreign Assets Control that he has departed Iran.

(c) *Accompanied baggage of journalists and news correspondents.* All transactions incident to the importation into the United States of accompanied baggage of a journalist or other person referred to in paragraph (b) of this section are authorized, provided that such baggage does not contain goods in commercial quantities.

[45 FR 26940, Apr. 21, 1980, as amended at 45 FR 29288, May 2, 1980]

§ 535.563 Family remittances to Iran.

(a) Remittances to any close relative of the remitter or of the remitter's spouse, who is a citizen of Iran and who is a resident of and within Iran, are authorized provided they do not involve any debit to a blocked account and are for the support of the payee and members of his household.

(b) The term "close relative" used with respect to any person means spouse, child, grandchild, parent, grandparent, uncle, aunt, brother, sister, nephew, niece, or spouse, widow, widower of any of the foregoing.

(c) The term "member of a household" used with respect to any person means a close relative sharing a common dwelling with such person.

(d) Remittances authorized by this section are limited to \$1000 per month to any one payee or to any one household.

(e) Any remittance exceeding the amount specified in paragraph (d) of this section would require a specific license.

[45 FR 26941, Apr. 21, 1980, as amended at 45 FR 29288, May 2, 1980]

§ 535.566 Unblocking of foreign currency deposits held by U.S.-owned or controlled foreign firms.

Deposits held abroad in currencies other than U.S. dollars by branches and subsidiaries of persons subject to the jurisdiction of the United States are unblocked, provided however that conversions of blocked dollar deposits

into foreign currencies are not authorized.

[44 FR 56833, Nov. 21, 1979]

§ 535.567 Payment under advised letters of credit.

(a) Specific licenses may be issued for presentation, acceptance, or payment of documentary drafts under a letter of credit opened by an Iranian entity and advised by a domestic bank or an Iranian bank subject to the jurisdiction of the United States, *provided, That:*

(1) The letter of credit was advised prior to the effective date;

(2) the property which is the subject of the payment under the letter of credit was not in the possession or control of the exporter on or after the effective date;

(3) the Beneficiary is a person subject to the jurisdiction of the United States.

(b) As a general matter, licenses will not be issued if the amount to be paid to a single payee exceeds \$500,000, or if hardship cannot be shown.

[44 FR 75354, Dec. 19, 1979]

§ 535.568 Certain standby letters of credit and performance bonds.

(a) Notwithstanding any other provision of law, payment into a blocked account in a domestic bank by an issuing or confirming bank under a standby letter of credit in favor of an Iranian entity is prohibited by § 535.201 and not authorized, notwithstanding the provisions of § 535.508, if either (1) a specific license has been issued pursuant to the provisions of paragraph (b) hereof or (2) eight business days have not expired after notice to the account party pursuant to paragraph (b) hereof.

(b) Whenever an issuing or confirming bank shall receive such demand for payment under a standby letter of credit, it shall promptly notify the person for whose account the credit was opened. Such person may then apply within five business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the Iranian entity in the amount payable under the credit, in lieu of payment by

the issuing or confirming bank into a blocked account and reimbursement therefor by the account party.

(c) If necessary to assure the availability of the funds blocked, the Secretary may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) into a blocked account in a domestic bank or the supplying of any form of security deemed necessary.

(d) Nothing in this section precludes any person for whose account a standby letter of credit was opened or any other person from at any time contesting the legality of the demand from the Iranian entity or from raising any other legal defense to payment under the standby letter of credit.

(e) This section does not affect the obligation of the various parties to the instruments covered by this section if the instruments and payments thereunder are subsequently unblocked.

(f) For the purposes of this section, the term "standby letter of credit" shall mean a letter of credit securing performance of, or repayment of, any advance payments of deposits, under a contract with Iran or an Iranian entity, or any similar obligation in the nature of a performance bond.

(g) The regulations do not authorize any person subject to the jurisdiction of the United States to reimburse a non-U.S. bank for payment to Iran or an Iranian entity under a standby letter of credit, except by payment into a blocked account in accordance with § 535.508 or paragraph (b) of this section.

(h) A person receiving a specific license under paragraph (b) of this section shall certify to the Office of Foreign Assets Control within five business days after receipt of that license that it has established the blocked account on its books as provided in that paragraph.

(i) The extension or renewal of a standby letter of credit is authorized.

[44 FR 75354, Dec. 19, 1979, as amended at 45 FR 1877, Jan. 9, 1980]

§ 535.569 Licensed letter of credit transactions; forwarding of documents.

When payment of a letter of credit issued, advised, or confirmed by a bank subject to the jurisdiction of the

§ 535.572

United States is authorized by either general or specific license, the forwarding of the letter of credit documents to the account party is authorized.

[45 FR 1877, Jan. 9, 1980]

§ 535.572 Authorization of exports of certain types of goods to Iran.

All transactions not inconsistent with § 535.419 and ordinarily incident to the export to Iran of the following types of goods are hereby authorized:

(a) Medicines and supplies intended strictly for medical purposes.

(b) Food.

(c) Donations of clothing intended to be used to relieve human suffering.

[45 FR 24434, Apr. 9, 1980]

§ 535.574 Service contracts in support of telecommunications in Iran.

Specific licenses will be considered for transactions incident to telecommunications with Iran.

[45 FR 24434, Apr. 9, 1980]

§ 535.575 Exports of newspapers, magazines, films, etc. to Iran.

All transactions not inconsistent with § 535.419 and ordinarily incident to the export to Iran of newspapers, magazines, journals, newsletters, books, films, phonograph records, photographs, microfilms, microfiche, tapes or similar materials are authorized, except such materials which are principally devoted to the dissemination of technical data.

[45 FR 29288, May 2, 1980]

§ 535.576 Payment of non-dollar letters of credit to Iran.

Notwithstanding the prohibitions of §§ 535.201 and 535.205(a)(4), payment of existing non-dollar letters of credit in favor of Iranian entities or any person in Iran by any foreign branch or subsidiary of a U.S. firm is authorized, provided that the credit was opened prior to the respective effective date.

[45 FR 29288, May 2, 1980]

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§ 535.577 Household goods and personal effects.

All transactions incident to the exportation to Iran of household goods and personal effects of an Iranian individual departing the United States are authorized, provided that no goods in commercial quantities may be exported under this general license.

[45 FR 29288, May 2, 1980]

§ 535.578 Passengers' baggage and personal effects.

(a) All transactions incident to the importation into the United States of baggage, household goods and personal effects of the following persons are authorized, provided that such importation does not include goods in commercial quantities:

(1) United States citizens and U.S. resident aliens who departed Iran on or before April 24, 1980;

(2) Third country nationals; and

(3) Dual nationals of the United States and Iran.

(b) All transactions incident to the importation into the United States of baggage, household goods and personal effects of an Iranian national who enters the United States on a visa issued by the Department of State are authorized, provided that such importation does not include goods in commercial quantities.

(c) All transactions incident to the importation into the United States of baggage and personal effects of a crew member of vessels or aircraft in the United States on temporary sojourn are authorized, provided that such importation does not include goods in commercial quantities and any such articles are intended for export from the United States with the crew member upon his departure.

[45 FR 29288, May 2, 1980]

Subpart F—Reports

§ 535.601 Records.

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant

to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

[44 FR 75354, Dec. 19, 1979]

§ 535.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary of the Treasury or any person acting under his direction or authorization complete information relative to any transaction subject to the provisions of this part or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Secretary of the Treasury or any person acting under his direction may require that such reports include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, investigate any such transaction or property or any violation of the provisions of this part regardless of whether any report has been required or filed in connection therewith.

[44 FR 75354, Dec. 19, 1979]

§ 535.603 Report of proposed subsidiary transaction with Iran.

(a) A U.S. company required by § 535.206(b) or § 535.207(b) to submit a report to the Office of Foreign Assets Control regarding a proposed transaction with Iran by a subsidiary shall submit a letter containing the following information.

- (1) Name of the foreign subsidiary involved.
- (2) Location.
- (3) Description of the merchandise.
- (4) Value.
- (5) Ultimate Iranian consignee.
- (6) Identity of any intermediary firm(s).

(7) End-use.

(8) Payment terms.

(b) The report shall be addressed as follows: Ms. Susan Swinehart, Chief of Licensing, Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Attn: Section 535.603 Report—EXPEDITE.

(c) The report must be submitted in sufficient time to reach the Office of Foreign Assets Control 10 days before any subsidiary enters into any transaction covered by § 535.206 or § 535.207.

[45 FR 29289, May 2, 1980]

§ 535.615 Reports on Form TFR-615.

(a) *Requirement for report.* Reports on Form TFR-615 are hereby required to be filed on or before May 15, 1980, in the manner prescribed herein, with respect to all property subject to the jurisdiction of the United States or in the possession or control of any person subject to the jurisdiction of the United States at any time between the effective date and March 31, 1980, in which Iran or an Iranian entity has or has had any interest.

(1) *Who must report.* Reports on Form TFR-615 must be filed by each of the following:

(i) Any person subject to the jurisdiction of the United States or his successor, who on the effective date or any subsequent date up to and including March 31, 1980, had in his custody, possession or control, directly or indirectly, in trust or otherwise, property in which there was any direct or indirect interest of Iran or any Iranian entity, whether or not the property continued to be held by that person on March 31, 1980; and

(ii) Any business or non-business entity in the United States in which Iran or an Iranian entity held any financial interest on the effective date or on any subsequent date.

(2) *Property not required to be reported.* A report on Form TFR-615 is not required with respect to:

(i) Property of a private Iranian national; and

(ii) Patents, copyrights, trademarks and inventions; *Provided, however,* That a report is required with respect to any royalties due and unpaid in connection with such property.

§ 535.616

(b) *Filing Form TFR-615.* Reports on Form TFR-615 shall be prepared in triplicate. On or before May 15, 1980, two copies shall be sent in a set to Unit 615, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

(c) *Certification.* Every report on Form TFR-615 shall contain the certification required in Part F of the Form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(d) *Confidentiality of reports.* Reports on Form TFR-615 are regarded as privileged and confidential.

[45 FR 24408, Apr. 9, 1980]

§ 535.616 Reports on Form TFR-616.

(a) *Requirement for reports.* Reports on Form TFR-616 are hereby required to be filed on or before May 15, 1980, in the manner prescribed herein, with respect to claims for losses due to expropriation, nationalization, or other taking of property or businesses in Iran, including any special measures such as Iranian exchange controls directed against such property or businesses; claims for debt defaults, for damages for breach of contract or similar damages; and personal claims for salaries or for injury to person or property.

(b) *Who must report.* Reports on Form TFR-616 must be filed by every person subject to the jurisdiction of the United States which had a claim against Iran or an Iranian entity which arose before April 15, 1980. No report is to be submitted by a U.S. branch of a foreign firm not owned or controlled by a person subject to the jurisdiction of the United States or by a nonresident alien.

(c) *Filing Form TFR-616.* Reports on Form TFR-616 shall be prepared in triplicate. On or before May 15, 1980, two copies shall be sent in a set to Unit 616, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's record.

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(d) *Certification.* Every report on Form TFR-616 shall contain the certification required on Part E of the Form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports on Form TFR-616 are regarded as privileged and confidential.

[45 FR 24408, Apr. 9, 1980]

Subpart G—Penalties

§ 535.701 Penalties

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act which provides in part:

(a) A civil penalty of not to exceed \$10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

This section of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is also directed to 18 U.S.C. 1001 which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Subpart H—Procedures

SOURCE: 44 FR 66833, Nov. 21, 1979, unless otherwise noted.

§ 535.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions many types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses are required to file reports and statements in accordance with the instructions specified in the licenses.

(b) *Specific licenses.*—(1) General course of procedure. Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific license. The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Federal Reserve Bank of New York. When an unusual problem is presented, the proposed action is cleared with the Director of the Office of Foreign Assets Control or such person as he may designate.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part are to be filed in duplicate on Form TFAC-27 with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing the effecting of such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* Applicant must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each

application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any person, agency, or instrumentality designated by him.

§ 535.802 Unblocking.

Any interested person desiring the unblocking of accounts or other property on the ground that neither Iran nor any Iranian entity has an interest in the property may file such an application. Such application shall be filed in the manner provided in § 535.801(b) and shall contain full information in

§ 535.903

support of the administrative action requested.

The applicant is entitled to be heard on the application. If the applicant desires a hearing, arrangements should be made with the Office of Foreign Assets Control.

§ 535.903 Decision.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 535.904 Records and reporting.

Records are required to be kept by every person engaging in any transaction subject to the provisions of this part.

Reports may be required from any person with respect to any transaction subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest.

§ 535.905 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time.

§ 535.906 Rule making.

(a) In general, rule making by the Office of Foreign Assets Control involves foreign affairs functions of the United States to which the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rule making, the opportunity for public participation and a delay in effective date are inapplicable. However, the Office of Foreign Assets Con-

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trol may consult with interested groups or persons in connection with the issuance of rules or the establishment of licensing policies.

(b) Any interested person may recommend in writing to the Director of the Office of Foreign Assets Control the issuance, amendment or the repeal of any rule.

[44 FR 75353, Dec. 19, 1979]

Subpart I—Miscellaneous Provisions

§ 535.901 Dollar accounts at banks abroad.

Any domestic bank is hereby authorized to effect withdrawals or other transfers from any account held in the name of a non-Iranian bank located in a foreign country, provided such non-Iranian foreign bank is not a person subject to the jurisdiction of the United States.

§ 535.902 Set-offs by U.S. owned or controlled firms abroad.

Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities.

[44 FR 65988, Nov. 16, 1979]

§ 535.904 Payment by Iranian entities of obligations to persons within the United States.

The transfer of funds after the effective date by, through or to any U.S. banking institution or other person within the United States solely for purposes of payment of obligations by Iranian entities owed to persons within the United States is authorized: *Provided*, That there is no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

[44 FR 66591, Nov. 20, 1979]

Miscellaneous Findings

OSM has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on the decision on the Louisiana program.

The Director of OSM has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this proposed rule.

Dated: July 2, 1980.

Walter N. Heine, P.E.,

Director, Office of Surface Mining,
Reclamation and Enforcement.

[FR Doc. 80-30754 Filed 7-3-80; 8:45 a.m.]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Foreign Assets Control Office

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets
Control, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing an amendment to the Iranian Assets Control Regulations. The purpose of the amendment would be to add § 535.205, requiring that certain types of blocked Iranian property be held in interest-bearing status. The need for the amendment is to ensure that blocked property is held in a manner consistent with good management of the property and with the policy objectives of the Regulations. The effect of the amendment would be that most types of blocked Iranian property henceforth would be held in interest-bearing status.

DATE: Comments must be received on or before August 6, 1980.

ADDRESS: Send comments to the Acting Director, Office of Foreign Assets Control, Department of the Treasury, Room 504, 1331 G Street, NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Acting Director, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, (202) 376-0395.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being

requested. However, the comment period has been limited to 30 days.

Paragraph (a) of § 535.205 would require either that property identified in paragraph (f) be transferred into an interest-bearing account or that interest be credited to the property in the hands of the present holder or obligor.

The requirement to credit interest would be effective as of December 1, 1979. Persons who held blocked property as of that date would be subject to the requirement. In certain cases, blocked bank accounts may already have been transferred at the request of the depositor from demand to interest-bearing status. Section 535.420, published December 28, 1979, makes clear that transfers of such deposits from demand to interest-bearing status at the request of the account owner are authorized by § 535.508, published on November 20, 1979. In addition, depository institutions may have made such transfers on their own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand either withdrawal or payment on his order.

The December 1, 1979 effective date prevents any holder of blocked assets subject to the interest requirement from deriving any unjust enrichment from the fact that the emergency blocking action by the President, as a practical matter, converted obligations payable immediately or on demand into either deferred obligations or time deposits. This requirement is in furtherance of the preservation of the assets to ensure satisfaction of claims of Americans against the Government of Iran, a primary objective announced in the President's November 14, 1979, report to the Congress. It would be inequitable to permit the retention by holders of windfall profits derived from the interest-free use of blocked funds. Holders would have 30 days to comply with the interest requirement.

Paragraph (b) would defer the immediate effect of the interest requirement as to the amount of any set-off which would have been claimed against the owner by the holder of the blocked property absent the blocking of the assets. However, use of this exemption is subject to a duty to pay interest from the effective date of this section if the set-off is ultimately not recognized, either because it is determined to be without merit under applicable law or is otherwise disallowed as part of a claims settlement.

With respect to standby letters of

credit opened in favor of Iranian entities by U.S. account parties, three distinct situations should be noted. First, where there has been a demand and payment has been made by the bank into a blocked account in the name of the Iranian entity, this account would be subject to the interest requirement on the same basis as any other blocked bank account. (See paragraph (c)(1).)

Second, where no demand has yet been made under the letter of credit, there would be no matured obligation subject to the interest requirement. (Paragraph (c)(2) excludes unmatured obligations from the interest requirement.)

Third, where there has been a demand, but a substitute blocked account, in lieu of payment by the bank, has been established by the U.S. account party pursuant to a specific license issued under the provisions of § 535.568, that account is exempt. However, interest shall be due from the effective date of the section on any liquidated obligation of the U.S. account party to an Iranian entity on its underlying contract, performance of which is secured by the standby letter of credit. Liability for interest will be limited to interest on the obligation which is ultimately determined to exist and which is recognized, either by judicial or quasi-judicial determination or for purposes of a claims settlement.

Paragraphs (d) and (e) set forth the rates of interest to be credited on various types of blocked property.

Paragraph (f) identifies the types of blocked property subject to the interest requirement: currency, bank deposits and bank accounts, and undisputed debts, claims or obligations which are either liquidated or matured. However, the provisions of section 535.205 do not apply to blocked Iranian property held by foreign affiliates of U.S. firms. The duty to credit interest will be determined by the law of the host country of the foreign affiliate.

Paragraph (g) states that the requirement to credit interest applies to the United States Government and any agency or instrumentality thereof, except as otherwise licensed by the Office.

Paragraph (h) defines the term "effective date" solely for purposes of this section to mean December 1, 1979.

31 CFR Part 535 is amended by the addition of § 535.205 as follows:

§ 535.205 - Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as otherwise provided or as licensed under this part, any person holding any property included in

paragraph (f), or who held such property at any time on or since December 1, 1979, is prohibited from holding, withholding, using, transferring, engaging in any transaction involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account, or unless interest is credited on the property by the holder in accordance with the provisions of this section. Persons subject to this requirement have thirty days from the date of publication of this section in the Federal Register to comply with the requirement.

(l) Persons who, absent the prohibitions of § 535.201, normally would have claimed a set-off against property which is subject to the provisions of paragraph (a) of this section are exempt from paragraph (a) to the extent of the set-off, *provided* however, that interest shall be due from the effective date of this section if the claim to a set-off is ultimately not recognized.

(c) The interest requirement of paragraph (a) applies to obligations under standby letters of credit, as defined in § 535.568, as follows:

(1) Where there has been a demand under the letter of credit and payment has been made by the bank into a blocked account in the name of the Iranian entity, that account is subject to the interest requirement of paragraph (a), in accordance with paragraph (f)(1).
(2) Where no demand has been made under the letter of credit, the contingent obligations of the bank and the account party are not subject to the interest requirement of paragraph (a), in accordance with paragraph (f)(2) which excludes unmatured obligations from the scope of the interest requirement.

(3) Where there has been a demand, but a substitute blocked account, in lieu of payment by the bank and reimbursement by the account party, has been established by the U.S. account party pursuant to a specific license issued under § 535.568, the substitute blocked account is exempt from the interest requirement of paragraph (a), *provided* however, that interest shall be due from the effective date of this section if any liquidated obligation of the account party to an Iranian entity on the underlying contract between the parties is ultimately determined to exist and is recognized.

(d) The rate of interest required by paragraph (a) on interest-bearing account or other obligations subject to the interest requirement shall be calculated as from December 1, 1979, and shall be not less than 5½%, *provided* however, that on amounts of

\$100,000 or more, the rate payable on 30-day certificates of deposits, as stated in Federal Reserve Board weekly release H.15, shall apply.

(e) Any account subject to the provisions of this section may be held at a higher rate than specified in paragraph (d) upon instruction of the account owner.

(f) The following types of property are subject to paragraph (a):

(1) currency, bank deposits and bank accounts subject to the provisions of § 535.201; and,

(2) property subject to the provisions of § 535.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidences of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; *Provided* however, that the duty to credit interest on any property subject to the provisions of § 535.201 which, as of the effective date of this section, was held by a foreign branch or subsidiary of a U.S. person shall be determined in accordance with the local law of the host country of the foreign branch or subsidiary. Property in the form of a debt is not held outside the United States if the funds intended to pay that debt are held inside the United States.

(g) The provisions of this section apply to the United States Government and any agency or instrumentality thereof, except as otherwise licensed by the Office of Foreign Assets Control.

(h) *Solely for purposes of this section*, the term "effective date" shall mean December 1, 1979.

(Secs. 201-207, 91 Stat. 1826, 50 U.S.C. 1701-1706; EO No. 12170, 44 FR 65720; EO 12211, 45 FR 26585)

Dated: July 2, 1980.

Dennis M. O'Connell,
Acting Director.

Approved:
Richard J. Davis,
Assistant Secretary.

[FR Doc. 80-25194 Filed 7-3-80; 11:38 AM]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations;
Restrictions on Property of the Former
Shah of Iran

AGENCY: Office of Foreign Assets
Control.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purpose of the amendment is to prohibit transfers of all property and assets located in the United States within the control of the estate of the former Shah of Iran or any close relative of the former Shah served as a defendant in litigation in courts within the United States brought by Iran seeking the return of property alleged to belong to Iran. The need for the amendment is to implement the provisions of Executive Order No. 12284, signed by the President on January 19, 1981, requiring the blocking of such property and assets to protect the rights of litigants in courts within the United States, and directing the Secretary of the Treasury to require reports on such property and assets. The effect of the amendment is that all transfers of such property and assets will be prohibited when Iran proves to the Office of Foreign Assets Control (OFAC) that there has been service in such cases on such persons and OFAC publishes a notice to this effect in the Federal Register.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202-376-0236).

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Pursuant to Executive Order 12284 of January 19, 1981 the Office of Foreign Assets Control will conduct a census of property and assets within the control of the estate of the former Shah or close relatives of the former Shah served in litigation by Iran. Litigation has been filed naming numerous individuals. To avoid duplication, the census will be temporarily deferred to allow a period of time in which the Government of Iran

may provide proof of service of defendant's to the Office of Foreign Assets Control.

31 CFR Part 535 is amended as follows:

1. Section 535.217 is added to read as follows:

§ 535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.

(a) For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section.

(b) [Reserved]

(c) The effective date of this section is January 19, 1981.

Section 535.580 is added to read as follows:

§ 535.580 Necessary living expenses of relatives of the former Shah of Iran.

The transfer, payment or withdrawal of property described in § 535.217 is authorized to the extent necessary to pay living expenses of any individual listed in that section. Living expenses for this purpose shall include food, housing, transportation, security and other personal expenses.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12211, 45 FR 26683; E.O. No. 12284, 46 FR 7929)

Dated: February 24, 1981.

Dennis M. O'Connell,
Director.

Approved:

John P. Simpson,

Acting Assistant Secretary (Enforcement and Operation).

Filed: February 25, 1981.

Publication date: February 26, 1981.

IFR (Enc. 81-0811 Filed 2-25-81; 9:14 am)

BILLING CODE 4810-25-M

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are to add new directive provisions and related definitions and interpretations; and to revoke certain trade and financial sanctions against Iran, in order to implement the agreements reached between the United States and Iran on January 19, 1981, and related agreements (the "agreements"), which commit the United States and Iran to take certain steps to free the American hostages and to resolve certain claims between the United States and its nationals and Iran and its nationals.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

SUPPLEMENTARY INFORMATION: The need for the amendments is (a) to implement Executive Order 12276, signed by the President on January 19, 1981, providing for the establishment of an Escrow Agreement and to implement Executive Orders 12277, 12278, 12279, 12290 and 12281 of the same date licensing, authorizing, directing and compelling: (1) the transfer by the Federal Reserve Bank of New York of all assets held by it for the Government of Iran and its entities ("Iran") to accounts held for the Federal Reserve Bank of New York at the Bank of England; (2) the transfer by overseas branches and offices of United States banks of all deposits and securities held by them for Iran to the account of the Federal Reserve Bank of New York at the Bank of England; (3) the transfer by domestic banks of all funds, securities and deposits held by them for Iran to the Federal Reserve Bank of New York; (4) the transfer by persons which are not banking institutions of funds or securities of Iran to the Federal Reserve Bank of New York and (5) the transfer by all persons subject to the jurisdiction of the United States of certain properties, not including funds and securities, owned by Iran, as directed by the Government of Iran acting through its authorized agent; (b) to implement Executive Order 12282 of January 19, 1981, revoking various sanctions and prohibitions against transactions involving Iran; and Executive Order 12283 of January 19, 1981, barring the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims;

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets
Control.

and (c) to revoke miscellaneous provisions rendered unnecessary by the above described amendments. Certain of the amendments are also needed for purposes of prohibiting and nullifying the acquisition, by litigation or otherwise, of any rights or interests in the assets subject to the transfer directives which would interfere with the transfer of those assets and with implementation of the agreements between the United States and Iran.

The effect of the amendments is that prohibitions in the Regulations on the transfer of the assets covered by the directives, as well as rights and interests in the assets other than those of the Government of Iran or its entities will be removed so that the agreements can be effectuated. The amendments also have the effect of revoking miscellaneous sanctions against Iran; and of providing for the non-prosecution of certain claims against Iran.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

The President has signed a series of executive orders implementing the agreements between the U.S. and Iran.

Executive Order 12278 of January 19, 1981, authorizes the Secretary of the Treasury to enter into and to license, authorize, direct and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements under which certain money and other assets shall be transferred in implementation of the agreements between the United States and Iran. This Executive Order also authorizes the Secretary of the Treasury to license, authorize, direct and compel the Federal Reserve Bank of New York to receive certain money and other assets of the Government of Iran.

Executive Order 12277 of January 19, 1981, licenses, authorizes, directs and compels transfers into accounts at the Bank of England, and then into the escrow account, of assets of the Government of Iran held by the Federal Reserve Bank of New York.

Executive Order 12278 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by overseas branches and offices of United States banks to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The assets transferred

pursuant to this Executive Order are to be further transferred as provided for in the agreements.

Executive Order 12279 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by domestic branches or offices of banks which branches or offices are located within the United States to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

Executive Order 12280 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds and securities of Iran held by persons which are not banking institutions to the Federal Reserve Bank of New York to be held or transferred by the Secretary of the Treasury. This Executive Order applies to both overseas and domestically held assets.

Executive Order 12281 of January 19, 1981, licenses, authorizes, directs and compels the transfer by all persons subject to the jurisdiction of the United States of properties, not including funds and securities, owned by Iran, as directed by the Government of Iran acting through its authorized agent.

Executive Order 12282 of January 19, 1981 revokes various sanctions, and prohibitions against transactions involving Iran.

Executive Order 12283 of January 19, 1981, bars the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims.

These amendments to the Iranian Assets Control Regulations implement the above-described executive orders and are summarized below.

1. Direction to establish an escrow agreement.

New § 535.210(a) licenses, authorizes, directs and compels the Federal Reserve Bank of New York as fiscal agent of the United States to enter into escrow or related agreements under which certain money and other assets will be transferred to the escrow account. In connection with the implementation of the escrow agreement, § 535.210(b) licenses, authorizes, directs and compels the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive money and other assets in which Iran has an interest, and to hold or to transfer those assets in such a manner as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the agreements between the United States and Iran.

2. Direction involving transfers of assets held by the Federal Reserve Bank of New York.

New § 535.211 licenses, authorizes, directs and compels the Federal Reserve Bank of New York to transfer to its account at the Bank of England, and subsequently to transfer to the escrow account, all gold bullion and other assets held by it for Iran when and in the manner directed by the Secretary of the Treasury.

3. Direction to transfer assets held by overseas branches and offices of United States banks.

New § 535.212 licenses, authorizes, directs and compels any overseas branch or office of a United States bank which, on or after 8:10 a.m., e.s.t., on November 14, 1979, has been or is in possession of funds or securities owned by Iran, or has carried or is carrying on its books deposits standing to the credit of Iran, to transfer such assets, including interest at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the agreements between the United States and Iran.

Section 535.212(b) provides that any bank subject to the jurisdiction of the United States that executed set-offs against deposits or securities held by them for Iran are authorized and directed to cancel such set-offs and to include in the directed transfer all assets subject to the set-offs, including interest at commercially reasonable rates.

4. Direction to transfer assets held by domestic banks.

New § 535.213 licenses, authorizes, directs and compels the transfer by domestic banks of all funds, securities and deposits held by them for Iran, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

5. Direction to transfer other financial assets.

New § 535.214 licenses, authorizes, directs and compels persons subject to the jurisdiction of the United States which are not banking institutions to transfer all funds or securities of Iran in their possession or control to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury. However, such transfers are not required until certain disputes as to Iran's entitlement are resolved.

6. Direction to transfer other properties.

New § 535.215 licenses, authorizes, directs and compels all persons subject to the jurisdiction of the United States to transfer properties, not including funds and securities, which are owned by Iran and are in the possession or control of such persons as directed by the Government of Iran, acting through its authorized agent. (New § 535.333 defines the term "properties" as used in § 535.215.)

7. Certain claims against Iran barred.

New § 535.216 bars persons subject to the jurisdiction of the United States from prosecuting, in any court within the United States or elsewhere, any claim against the Government of Iran arising out of certain specified events. These events relate to the seizure and detention of the hostages, injury to United States property or property of United States nationals within the United States Embassy compound in Tehran and injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

Section 535.216 also bars the prosecution of such claims in any court within the United States by persons who are not United States nationals.

Section 535.216 bars further action in any previously instituted judicial proceedings which are based upon any of the above-described claims and provides that all such proceedings shall be terminated. In addition, § 535.216 prohibits the enforcement of any judicial order issued in the course of such proceedings.

8. Prohibitions with respect to assets subject to transfer directives; Nullification of attachments and similar remedies; Prohibitions on judicial action.

New § 535.218(a) revokes and withdraws all licenses and authorizations for acquiring or exercising any right, power or privilege by court order, attachment or otherwise, with respect to any of the properties covered by the directives in §§ 535.211 to 535.215. New § 535.218(b) provides that all rights, powers and privileges relating to the assets described in §§ 535.211 to 535.215 which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504 of the Regulations, whether acquired by court order or otherwise, are nullified. The nullification does not apply to rights, powers or privileges of Iran. New § 535.218(c) prohibits the acquisition or

exercise of any right, power or privilege with respect to any property (and any income earned thereon) referred to in the directives in §§ 535.211 to 535.215. New § 535.218(d) provides that the prohibition on the acquisition of rights contained in § 535.218(c) does not apply to the Government of Iran, its agencies, instrumentalities or controlled entities. New § 535.218(e) provides that § 535.218 does not revoke or withdraw certain specific licenses, issued prior to January 19, 1981, until April 15, 1981.

9. Compliance with this part a legal acquittance and discharge of the obligation of any person.

New § 535.219, pursuant to Section 203(a)(3) of the International Emergency Economic Powers Act, states that compliance in good faith with the directive provisions in §§ 535.210 to 535.215 or any other orders, regulations, instructions or directions which license, authorize, direct or compel the transfer of assets referred to in those sections shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person making the same. No person shall be held liable in any United States court for such good faith compliance.

10. Timing of transactions.

New § 535.220 provides that transfers of overseas bank assets required by § 535.212 shall be executed no later than 6:00 a.m., e.s.t., January 20, 1981.

11. Compliance with other directive provisions.

New § 535.221(a) provides that compliance with the directive provisions of §§ 535.213 and 535.214 pertaining to domestic bank assets and other financial assets requires that persons affected by these directives implement them as soon as reasonably practicable. New § 535.221(b) states the U.S. policy, until further notice, not to seek sanctions against any party who does not make any transfer required by §§ 535.213 to 535.215 while challenges to the authority of the United States to order the transfers are pending in U.S. courts.

12. Suspension of claims eligible for Claims Tribunal.

New § 535.222 provides (a) that all claims which may be presented to the Iran-United States Claims Tribunal provided for in the agreements between the United States and Iran and all claims for equitable or other relief in connection with such claims, are suspended, (b) that the section does not prohibit assertions of defense, set-off or counterclaim in any pending or future judicial proceeding commenced by Iran, (c) that the section does not preclude actions to toll periods of limitations for commencement of action, (d) that

dismissal for want of prosecution is not required, (e) that the suspension shall terminate if the Claims Tribunal determines it lacks jurisdiction, (f) that a determination on the merits by the Tribunal shall operate as a final resolution and discharge of the claim, provided that full payment of the award is paid, and (g) that the section does not apply to certain claims concerning standby letters of credit, performance or payment bonds or other similar instruments.

13. Definition of "properties."

New § 535.333 defines "properties" as used in § 535.215 to include only uncontested and non-contingent liabilities and property interests of Iran. Specifically excluded are (1) funds, (2) securities, (3) bank deposits, and (4) obligations under standby letters of credit or similar instruments. Properties are not Iranian properties owned by Iran, unless necessary obligations, charges and fees are discharged.

14. Definition of an act of the Government of Iran.

New § 535.334 defines an act of the Government of Iran as including any acts ordered, authorized, allowed or ratified by Iran or its entities.

15. Definition of "claim arising out of events in Iran."

New § 535.335 states that a claim is one arising out of events in Iran of the type specified in § 535.216 only if such event is the specific act that is the basis of the claim.

16. Definition of "funds."

New § 535.337 defines "funds" as used in this part to mean currency and coin, trust, escrow and special funds held by non-banking institutions.

17. Status of Central Bank of Iran.

New § 535.433 provides that, for purposes of this part, the Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran.

18. Effect on other authorities.

New § 535.437 states that nothing in this part relieves any persons from the necessity of securing licenses or other authorizations as required by the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part.

19. Standby letters of credit.

New § 535.438 states that nothing contained in § 535.212, 535.213 and 535.214 or in any other provision, revocation or amendment affects the prohibition in § 535.568 on the payment under certain standby letters of credit, performance or payment bonds and similar obligations. Section 535.568(a) prohibits the payment under a standby letter of credit into a blocked account

provided that the account party avails itself of the specific licensing procedure to establish a blocked account on its books. The prohibition and the procedure remain in effect. The section also provides that the term "funds and securities" as used in this part excludes the substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

20. *Commercially reasonable interest rates.*

New § 535.440 provides that the meaning of the term "commercially reasonable rates" depends on the particular circumstances of the deposit.

21. *Exclusion of pre-judgment attachments and similar proceedings from general license for judicial proceedings.*

The general license in § 535.504 for judicial proceedings is amended to exclude pre-judgment attachments and other proceedings of similar or analogous effect with respect to property subject to §§ 535.211 through 535.215 and reference is made to the claims suspension provisions of § 535.222.

22. *Authorization for new transactions.*

New § 535.579 authorizes new transactions involving property of Iran. Transactions involving standby letters of credit, performance or payment bonds and similar obligations remain subject to the provisions of § 535.568. The section also highlights that attachment, injunction and similar orders are prohibited with respect to property not blocked on January 19, 1981, which is or becomes subject to U.S. jurisdiction for the express purpose of settling claims against Iran.

23. *Reports on transfers of other assets.*

Section 535.618 provides that any person failing to transfer property as directed by Iran is required to submit a brief report to the Office of Foreign Assets Control explaining why the property was not transferred.

24. *Revocation of general license for overseas set-offs.*

Section 535.902 is amended to revoke the general license in paragraph (a) authorizing overseas set-offs and by adding paragraph (c) to provide that for purposes of this section, set-offs include combinations of accounts or any similar actions.

25. *Revocation of sanctions, prohibitions and obsolete provisions.*

These amendments revoke various sanctions and prohibitions against transactions involving Iran, including certain prohibitions against imports from Iran, financial transactions with

Iran, exports to Iran, and travel-related transactions. They also revoke miscellaneous definitions, interpretations and statements of licensing policy that are obsolete as the result of the above amendments.

Additional sections of the existing regulations may be revoked and additional provisions may be added, as appropriate.

31 CFR Part 535 is amended as follows:

1. Section 535.210 is added as follows:

§ 535.210 *Direction for establishing an escrow agreement.*

(a) The Federal Reserve Bank of New York, as fiscal agent of the United States, is licensed, authorized, directed and compelled to enter into escrow and related agreements under which certain money and other assets shall be credited by the Bank of England to escrow accounts.

(b) The Federal Reserve Bank of New York is licensed, authorized, directed and compelled, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities or controlled entities have an interest and to hold or transfer such money and other assets, and any earnings or interest payable thereon, in such manner and at such times as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the Declaration of the government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the Undertakings of the Government of the United States of America and the Government of Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, and the escrow and related agreements described in paragraph (a) of this section. Such money and other assets may be invested, or not, at the discretion of the Federal Reserve Bank of New York, as fiscal agent of the United States.

2. Section 535.211 is added as follows:

§ 535.211 *Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.*

The Federal Reserve Bank of New York is licensed, authorized, directed and compelled to transfer to its account at the Bank of England, and subsequently to transfer to accounts in the name of the Central Bank of Algeria as Escrow Agent at the Bank of England that are established pursuant to an escrow and related agreements approved by the Secretary of the Treasury, all gold bullion, together with

all other assets in its custody for the cash equivalent thereof, of Iran or its agencies, instrumentalities or controlled entities. Such transfers, and whatever further related transactions are deemed appropriate by the Secretary of the Treasury, shall be executed when and in the manner directed by the Secretary of the Treasury.

3. Section 535.212 is added as follows:

§ 535.212 *Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.*

(a) Any branch or office of a United States bank or subsidiary thereof, which branch, office or subsidiary is located outside the territory of the United States, and which, on or after 8:10 a.m., e.s.t., on November 14, 1979, (1) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (2) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such government, i.e., its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration.

(b) Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after 8:10 a.m., e.s.t., November 14, 1979, against Iranian funds, securities or deposits referred to in paragraph (a) of this section is hereby licensed, authorized, directed and compelled to cancel such set-off and to transfer all funds, securities and deposits which have been subject to such set-off, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of paragraph (a) of this section.

4. Section 535.213 is added as follows:

§ 535.213 Direction involving property held by offices of banks in the U.S. in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

5. Section 535.214 is added as follows:

§ 535.214 Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

6. Section 535.215 is added as follows:

§ 535.215 Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

All persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

7. Section 535.216 is added as follows:

§ 535.216 Prohibition against prosecution of certain claims.

(a) Persons subject to the jurisdiction of the United States are prohibited from prosecuting in any court within the United States or elsewhere, whether or not litigation was commenced before or after January 19, 1981, any claim against the Government of Iran arising out of events occurring before January 19, 1981 relating to:

(1) The seizure of the hostages on November 4, 1979;

(2) The subsequent detention of such hostages;

(3) Injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979; or

(4) Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

(b) Any persons who are not United States nationals are prohibited from prosecuting any claim described in paragraph (a) of this section in any court within the United States.

(c) No further action, measure or process shall be taken after the effective date of this section in any judicial proceeding instituted before the effective date of this section which is based upon any claim described in paragraph (a) of this section, and all such proceedings shall be terminated.

(d) No judicial order issued in the course of the proceedings described in paragraph (c) of this section shall be enforced in any way.

8. Section 535.218 is added as follows:

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order, attachment, or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) This section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981 and which do not relate to litigation. Such licenses are revoked as of April 15, 1981, unless extended by further general or specific license.

9. Section 535.219 is added as follows:

§ 535.219 Discharge of obligation by compliance with this part.

Compliance with §§ 535.210, 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in

reliance on, such orders, regulations, instructions or directions.

10. Section 535.220 is added as follows:

§ 535.220 Timing of transfers required by § 535.212.

Transfers required by § 535.212 to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England shall be executed no later than 6 a.m., e.s.t., January 20, 1981, when the banking institution had knowledge of the terms of Executive Order 12278 of January 19, 1981.

11. Section 535.221 is added as follows:

§ 535.221 Compliance with directive provisions.

(a) Compliance with the directive provisions of §§ 535.213 and 535.214 requires that persons affected by these sections shall implement the directives as soon as reasonably practicable.

(b) Until the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling, the United States Government will not seek to impose civil or criminal sanctions on any party who does not make the transfers required by §§ 535.213, 535.214 and 535.215 and Executive Orders 12279-81 of January 19, 1981.

(c) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following account: Federal Reserve Bank of New York as fiscal agent of the United States, Special Deposit Account.

(d) Securities to be transferred as required by §§ 535.213 and 535.214 of this part must be delivered to the Federal Reserve Bank of New York in fully transferable form, accompanied by all necessary transfer documentation, e.g., stock or bond powers, powers of attorney, and also accompanied by instructions to deposit such securities to the following account: Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York for credit to the account named in paragraph (d) of this section.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department.

(e) If a security in which Iran or an Iranian entity has an interest is

evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have it placed in registered form in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(f) Securities in which Iran or an Iranian entity has an interest that are held in the name of a nominee must be re-registered in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(g) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (d) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book entry form.

12. Section 535.222 is added as follows:

§ 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of

limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

(h) The effective date of this section is February 24, 1981.

13. Section 535.333 is added as follows:

§ 535.333 Properties.

(a) The term "properties" as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to § 535.568.

(b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.

(c) Liabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason. For purposes of this paragraph, the term "holder" shall include any person who possesses the property, or who, although not in physical

possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a "holder" by virtue of being the beneficiary of an attachment, injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction or other similar order.

14. Section 535.334 is added as follows:

§ 535.334 Act of the Government of Iran.

For purposes of § 535.216, an act of the Government of Iran, includes any acts ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities.

15. Section 535.335 is added as follows:

§ 535.335 Claim arising out of events in Iran.

For purposes of § 535.216, a claim is one "arising out of events" of the type specified only if such event is the specific act that is the basis of the claim.

16. Section 535.337 is added as follows:

§ 535.337 Funds.

For purposes of this part, the term "funds" shall mean monies in trust, escrow and similar special funds held by non-banking institutions, currency and coins. It does not include accounts created under § 535.568.

17. Section 535.433 is added as follows:

§ 535.433 Central Bank of Iran.

The Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran for all purposes under this part.

18. Section 535.437 is added as follows:

§ 535.437 Effect on other authorities.

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

19. Section 535.438 is added as follows:

§ 535.438 Standby letters of credit, performance or payment bonds and similar obligations.

Nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision or revocation or amendment of any provision in this part affects the prohibition in § 535.201 and the licensing procedure in § 535.568 relating to certain standby letters of credit, performance bonds and similar obligations. The term "funds and securities" as used in this part does not include substitute blocked accounts established under section 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

20. Section 535.440 is added to read as follows:

§ 535.440 Commercially reasonable interest rates.

For purposes of §§ 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances of the deposit. Where, for example, a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest-bearing account.

21. Section 535.504 is revised to read as follows:

§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section and § 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (and any income earned thereon) subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981, including, but not limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise;

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981;

(c) A judicial proceeding is not authorized by this section if it is based

on transactions which violated the prohibitions of this part.

22. Section 535.579 is added as follows:

§ 535.579 Authorization of new transactions concerning certain Iranian property.

(a) Transactions involving property in which Iran or an Iranian entity has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in § 535.568 remain subject to the prohibitions and procedures contained in §§ 535.201 and 535.568.

(c) Property not blocked under § 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a person subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, injunction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by §§ 535.201 and 535.203.

23. Section 535.618 is added to read as follows:

§ 535.618 Report of contested property.

(a) *Requirement for reports.* Reports are required to be filed within 15 days of receipt of a direction from Iran to transfer any interests in property claimed or believed to be an interest of Iran which was blocked by the Iranian Assets Control Regulations if the party receiving the direction to transfer has not transferred such claimed interest in property.

(b) *Who must report.* Reports must be filed by every person subject to the jurisdiction of the United States who does not transfer any interest or claimed interest in property described in paragraph (a) of this section within 15 days of a direction from Iran to transfer it.

(c) *Contents of report.* Each report shall contain the following information.

(1) Name and address of entity making the report.

(2) Name of person and entity directing the transfer.

§ 535.418 [Removed]

(3) Date of the direction and date of its receipt.

§ 535.419 [Removed]

(4) Description of the interest or claimed interest in property directed to be transferred.

§ 535.422-432 [Removed]

(5) Statement or estimate of value of the interest or claimed interest in property.

§ 535.550 [Removed]

§ 535.562 [Removed]

(6) Explanation why property was not transferred as directed.

§ 535.563 [Removed]

§ 535.572 [Removed]

(7) Statement of any planned actions with respect to the interest or claimed interest in the property described.

§ 535.574 [Removed]

§ 535.575 [Removed]

(d) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 617, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

§ 535.577 [Removed]

§ 535.578 [Removed]

(e) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential.

§ 535.603 [Removed]

Dated: February 24, 1981.

Dennis M. O'Connell,
Director.

Approved:

John P. Simpson,
Acting Assistant Secretary, Enforcement and Operations.

24. Section 535.902 is revised to read as follows:

§ 535.902 Set-offs by U.S. owned or controlled firms abroad.

(Sec. 201-207, 91 Stat. 1626; 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; E.O. No. 12283, 46 FR 7927, and E.O. No. 12294, 46 FR ———.)

[FR Doc. 81-3812 Filed 2-23-81; 8:16 am]

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(a) Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities.

(b) The general license in paragraph (a) of this section is revoked as of January 19, 1981.

(c) For purposes of this section, set-offs include combinations of accounts and any similar actions.

25. Part 535 is amended by the revocation and removal of sections 535.204, 535.206, 535.207, 535.209, 535.331, 535.332, 535.118, 535.419, 535.422, 535.423, 535.424, 535.425, 535.426, 535.427, 535.428, 535.429, 535.430, 535.431, 535.432, 535.550, 535.562, 535.563, 535.572, 535.574, 535.575, 535.577, 535.578, and 535.603.

§ 535.204 [Removed]

§ 535.206-207 [Removed]

§ 535.209 [Removed]

§ 535.331 [Removed]

§ 535.332 [Removed]

authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond, or similar obligation as to which a blocked account has been established pursuant to § 535.568 or as to which payment is prohibited under an injunction obtained by the account party, and (5) to require that persons making the required transfers of financial assets of Iran to the Federal Reserve Bank of New York promptly report on those transfers to the Office of Foreign Assets Control.

The amendments are needed to facilitate the ongoing implementation of the Iran-U.S. agreements of January 19, 1981, providing for the release of the hostages detained in Iran and the transfer of Iranian property blocked by the United States. See further discussion under "Supplementary Information".

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: In a recent decision, *Ches. T. Main International, Inc. v. Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir., May 22, 1981), the United States Court of Appeals for the First Circuit held that the President has authority to order the transfer of blocked Iranian assets without regard to attachments or other judicial orders obtained subsequent to the November 14, 1979, blocking order, and that he has the authority to settle claims of U.S. parties against Iranian entities by providing for their submission to binding arbitration.

Similarly, the United States Court of Appeals for the District of Columbia Circuit in *American International Group v. Islamic Republic of Iran*, No. 80-1779 (D.C. Cir., May 22, 1981), reviewed the Executive Orders nullifying attachments and suspending claims in implementation of the January 19, 1981, agreements, and rendered a judgment that the suspension of claims "is a lawful exercise of the President's power to arrange for the settlement of claims of American nationals against the governments of foreign states," and directed that attachments and other provisional remedies be vacated. These decisions confirm the legal judgments reached by the present Attorney General of the United States, and his predecessor, upholding the President's authority to order the prompt transfer of property in which Iran has an interest. Further, they provide the basis for

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations. Transfer of Financial Assets to Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets Control.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are: (1) to direct banks and other persons holding Iranian financial assets to transfer them to the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981; (2) to revoke the policy of not seeking to impose criminal and civil sanctions on holders of Iranian property who do not comply with the transfer requirements of the Iranian Assets Control Regulations; (3) to provide additional guidance on the meaning of the term "commercially reasonable" rates of interest; (4) to make clear that no transfer requirement under § 535.213 or § 535.214 shall be deemed to

invocation of the policy established by the prior regulations against the seeking of civil and criminal sanctions against persons who hold or control Iranian property required to be transferred.

Section 203(a)(3) of the International Emergency Economic Powers Act [50 U.S.C. 1702(a)(3)]. Section 1-103 of Executive Order 12279, Section 1-103 of Executive Order 12280, Section 1-103 of Executive Order 12281 and Section 505.219 of the Iranian Assets Control Regulations provide that compliance with the transfer directives of the Iranian Assets Control Regulations shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person so complying and further provide that no person shall be liable in any United States court for anything done or omitted in good faith compliance therewith.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

21 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by the revocation and removal of paragraph (b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

§ 535.213 [Amended]

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part, and such funds, securities or deposits, plus interest at commercially reasonable rates from November 14, 1979, to the transfer date, shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. For periods for which rates are to be determined in the future, whether by agreement between Iran and the bank or otherwise (see § 535.440), interest for such periods shall be transferred to the Federal Reserve Bank of New York promptly upon such determination. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

(d) The transfers of securities required by this section shall be made notwithstanding § 535.202.

2. Section 535.214 is amended by the revocation and removal of paragraph

(b), by adding a new paragraph (b) in its place, and by adding paragraph (d) as follows:

§ 535.214 [Amended]

(b) Transfers of funds and securities under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part, and such funds and securities shall be received by the Federal Reserve Bank of New York on or before noon, E.D.T., June 19, 1981. Persons in possession or control of property required to be transferred by this section shall take all actions they believe necessary to effect the required transfers.

(d) The transfers of securities required by this section shall be made notwithstanding § 535.202.

3. Section 535.221 is amended by the revocation and removal of paragraphs (a), (b) and (f), by the revision of paragraphs (c) and (d) and by the redesignation of paragraphs. As revised, § 535.221 reads as follows:

§ 535.221 Compliance with directive provisions.

(a) Transfers of deposits or funds required by § 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following accounts: with respect to transfers required by § 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account A, and with respect to transfers required by § 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Deposit Account B.

(b) Securities to be transferred as required by §§ 535.213 and 535.214 of this part that are not presently registered in the name of Iran or an Iranian entity shall be delivered to the Federal Reserve Bank of New York in fully transferable form (bearer or endorsed in blank), accompanied by all necessary transfer documentation, e.g., stock or bond powers or powers of attorney. All securities transferred, including those presently registered in the name of Iran or an Iranian entity, shall be accompanied by instructions to deposit such securities to the following accounts: with respect to transfers required by § 535.213, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account A, and with respect to transfers required by § 535.214, to the Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account B.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York to the appropriate account named in this paragraph.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department, to the appropriate account named in this paragraph.

(c) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have the security placed in fully transferable form (bearer or endorsed in blank) as provided in paragraph (b) of this section, and transferred pursuant to paragraph (b)(2) of this section.

(d) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (b) shall provide the Bank at least 2 business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book-entry form.

4. Section 535.337 is revised to read as follows:

§ 535.337 Funds.

For purposes of this part, the term "funds" shall mean monies in trust, escrow accounts and similar special funds, money market funds, cash balances held by a broker/dealer, currency and coins. It does not include accounts created under § 535.568.

5. Section 535.438 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) as follows:

§ 535.438 [Amended]

(b) No transfer requirement under §§ 535.213 or 535.214 shall be deemed to authorize or compel any payment or transfer of any obligation under a standby letter of credit, performance bond or similar obligation as to which a blocked account has been established pursuant to § 535.568 or as to which payment is prohibited under an injunction obtained by the account party.

6. Section 535.440 is revised to read as follows:

§ 535.440 Commercially reasonable interest rates.

For purposes of §§ 535.212 and 535.213, what is meant by "commercially

reasonable rates" depends on the particular circumstances. In the case of time or savings deposits, the "commercially reasonable rate" is that rate provided for by the deposit agreement or applicable law. With respect to other obligations where the rate remains to be determined, it is presently expected that the "commercially reasonable rate" will be the rate agreed upon by the bank and Iran. However, where a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest-bearing account.

7. New § 535.620 is added as follows:

§ 535.620 Report of transfer of domestic bank assets and financial assets held by nonbanking institutions.

(a) *Requirement for reports.* A report shall be filed on Form TFR-620 by any bank or nonbanking institution regarding any transfer to the Federal Reserve Bank of New York under §§ 535.213 and 535.214 within 5 business days of such transfer.

(b) *Contents of report.* Each report shall contain the following information:

(1) Name and address of the transferor (indicate whether bank or nonbanking institution).

(2) Name and telephone number of person to be contacted about the transfer.

(3) Description of the property transferred with a list of accounts transferred, including account party, account number, and account amount, with breakdown between principal and interest.

(4) Total value (market value in the case of securities) of each transfer.

(5) Date and time of transfer.

(6) A statement as to how interest was calculated, including rate(s) of interest and period(s) for which the rate(s) was applied.

(c) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 620, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy shall be retained for the reporter's records.

(d) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential but may be disclosed to Iran.

(Secs. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12215, 43 FR 24069; E.O. No. 12211, 43 FR 24415; E.O. No. 12278, 46 FR 7913; E.O. No.

12279, 46 FR 7919; E.O. No. 12780, 46 FR 7621; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111]

Dated: June 4, 1981.

Dennis M. O'Connell,
Director.

Approved:
John P. Simpson,
Acting Assistant Secretary, Enforcement and
Operations.

(FR Doc. 81-17622 Filed 6-4-81; 2:17 pm)

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations: Transfer of Financial Assets to Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets
Control.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are: (1) to extend the time for transfer to the Federal Reserve Bank of New York of certain Iranian financial assets held by domestic banks and nonbanking institutions to a date to be determined by the Department of the Treasury after the Supreme Court has had an opportunity to review legal arguments challenging the President's authority to order the transfers; (2) to provide that the United States Government will not seek to impose penalties for failure to transfer nonfinancial assets to Iran before that date to be determined by the Department of the Treasury when such assets are the subject of an attachment, injunction or other like proceeding or process; and (3) to specify that persons required to make transfers under § 535.213 or § 535.214 shall report by June 28, 1981, on the assets required to be transferred, whether or not the assets are actually transferred by that date.

EFFECTIVE DATE: June 12, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0226.

SUPPLEMENTARY INFORMATION: The Supreme Court will be reviewing the basic issues involved in legal challenges to the President's authority to order the transfer of certain assets of Iran. Because many of the financial assets required to be transferred under § 535.213 or § 535.214 are currently the subject of attachments, injunctions, or similar legal process, the validity of which is now before the Supreme Court for review, the time for their transfer to the Federal Reserve Bank of New York is being extended to a date to be determined subsequently by the Treasury Department.

The required reports are necessary to allow the timely compilation of information on financial assets required to be transferred to Iran by July 19,

pursuant to the Iran-United States agreements of January 19, 1981.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Similarly, because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of the February 17, 1981, dealing with Federal regulations.

31 CFR Part 535 is amended as follows:

1. Section 535.213 is amended by adding a new paragraph (e) as follows:
§ 535.213 [Amended]

(e) For any property described in paragraph (a) of this section, the transfer time in paragraph (b) is extended to a date to be determined subsequently by the Department of the Treasury.

2. Section 535.214 is amended by adding a new paragraph (e) as follows:
§ 535.214 [Amended]

(e) For any property described in paragraph (a) of this section, the transfer time in paragraph (b) is extended to a date to be subsequently determined by the Department of the Treasury.

3. Section 535.215 is amended by adding a new paragraph (c) as follows:
§ 535.215 [Amended]

(c) The United States Government will not seek to impose civil or criminal sanctions on any party for failure to transfer before a date to be determined by the Department of the Treasury any property described in paragraph (a) of this section that is the subject of an attachment, injunction, or other like proceedings or process on June 19, 1981.

4. Section 535.620 is revised to read as follows:

§ 535.620 Report on transfer of domestic bank assets and financial assets held by nonbanking institutions.

(a) *Requirement for reports.* A report shall be filed by June 28, 1981 on Form TFR-620 by any bank or nonbanking institution regarding any transfer to the Federal Reserve Bank of New York that is required by § 535.213 or § 535.214. Any reporter that transfers property to the Federal Reserve Bank of New York by June 19, pursuant to § 535.213 or § 535.214, shall describe the property so transferred. Property (including interest through July 8, 1981, not transferred but

required by § 535.213 or § 535.214 to be transferred shall be separately described).

(b) *Contents of report.* Each report shall contain the following information:

(1) Name and address of the transferor (indicate whether bank or nonbanking institution).

(2) Name and telephone number of person to be contacted about the transfer.

(3) Description of the property transferred or required to be transferred with a list of accounts, including branch, account party, account number, and account amount, with breakdown between principal and interest (as of date transferred or as of July 8 if not yet transferred).

(4) Total value (market value in the case of securities) of each transfer.

(5) Date and time of transfer (if applicable).

(6) A statement as to how interest was calculated, including rate(s) of interest and period(s) for which the rate(s) was applied.

(c) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 620, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy shall be retained for the reporter's records.

(d) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential but may be disclosed to Iran.

(e) *Updating of reports.* The Form TFR-620 report shall be updated within five business days of the transfer date to be determined by the Treasury Department by any reporter that does not transfer to the Federal Reserve Bank of New York, on or before that date, the property described in the reporter's TFR-620 report. The required updating shall include a full explanation as to why the property actually transferred was not the same as the property described in the reporter's TFR-620 report.

(Sec. 201-207, 81 Stat. 1828, 50 U.S.C. 1701-1708; E.O. No. 12170, 44 FR 55728; E.O. No. 12245, 45 FR 24098; E.O. No. 12211, 45 FR 28605; E.O. No. 12276, 46 FR 7923; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7823; and E.O. No. 12334, 46 FR 14111)

Dated: June 12, 1981.

Dennis M. O'Connell,
Director.

Approved:

John P. Simpson,
Acting Assistant Secretary, Enforcement and
Operations.
BILLING CODE 4810-25-4

SELECTED PROVISIONS OF THE 1955 TREATY
OF AMITY, ECONOMIC RELATIONS AND CONSULAR
RIGHTS BETWEEN THE UNITED STATES AND IRAN
(8 U.S.T. 899, T.I.A.S. 3853)

Article I

There shall be firm and enduring peace and sincere friendship between the United States of America and Iran.

Article II

1. Nationals of either High Contracting Party shall be permitted, upon terms no less favorable than those accorded to nationals of any third country, to enter and remain in the territories of the other High Contracting Party for the purpose of carrying on trade between their own country and the territories of such other High Contracting Party and engaging in related commercial activities, and for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital.

2. Nationals of either High Contracting Party within the territories of the other High Contracting Party shall, either individually or through associations, and so long as their activities are not contrary to public order, safety or morals: (a) be permitted to travel therein freely and reside at places of their choice; (b) enjoy freedom of conscience and the right to hold religious services; (c) be permitted to engage in philanthropic, educational and scientific activities; and (d) have the right to gather and transmit information for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside such territories. They shall also be permitted to engage in the practice of professions for which they have qualified under the applicable legal provisions governing admission to professions.

3. The provisions of paragraphs 1 and 2 of the present Article shall be subject to the right of either High Contracting Party to apply measures which are necessary to maintain public order, and to protect public health, morals and safety, including the right to expel, to exclude or to limit the movement of aliens on the said grounds.

4. Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of his country shall without unnecessary delay be notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed all facilities reasonably necessary to his defense and given a prompt and impartial disposition of his case.

Article III

1. Companies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. As used in the present Treaty, "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit.

2. Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.

3. The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the other High Contracting Party; and, in cases of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign situs of the arbitration proceedings shall of themselves be a bar to the enforceability of awards duly resulting therefrom.

Article IV

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

2. Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

3. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause. Official searches and examinations of such premises and their contents, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

4. Enterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the territories of the other High Contracting Party, shall be permitted freely to conduct their activities therein, upon terms no less favorable than other enterprises of whatever nationality engaged in similar activities. Such nationals and companies shall enjoy the right to continued control and management of such enterprises; to engage attorneys, agents, accountants and other technical experts, executive personnel, interpreters and other specialized employees of their choice; and to do all other things necessary or incidental to the effective conduct of their affairs.

Article VII

1. Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except (a) to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or (b) in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.

2. If either High Contracting Party applies exchange restrictions, it shall promptly make reasonable provision for the withdrawal, in foreign exchange in the currency of the other High Contracting Party, of: (a) the compensation referred to in Article IV, paragraph 2, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments and capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

3. Either High Contracting Party applying exchange restrictions shall in general administer them in a manner not to influence disadvantageously the competitive position of the commerce, transport or investment of capital of the other High Contracting Party in comparison with the commerce, transport or investment of capital of any third country; and shall afford such other High Contracting Party adequate opportunity for consultation at any time regarding the application of the present Article.

Article VIII

1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other High Contracting Party, by whatever route and by

whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to: (a) duties, other charges, regulations and formalities, on or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either High Contracting Party imposes quantitative restrictions on the importation or exportation of any product in which the other High Contracting Party has an important interest:

(a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and

(b) If it makes allotments to any third country, it shall afford such other High Contracting Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.

4. Either High Contracting Party may impose prohibitions or restrictions on sanitary or other customary grounds of a noncommercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other High Contracting Party.

5. Either High Contracting Party may adopt measures necessary to assure the utilization of accumulated inconvertible currencies or to deal with a stringency of foreign exchange. However, such measures shall deviate no more than necessary from a policy designed to promote the

maximum development of nondiscriminatory multilateral trade and to expedite the attainment of a balance-of-payments position which will obviate the necessity of such measures.

6. Each High Contracting Party reserves the right to accord special advantages: (a) to products of its national fisheries, (b) to adjacent countries in order to facilitate frontier traffic, or (c) by virtue of a customs union or free trade area of which either High Contracting Party, after consultation with the other High Contracting Party, may become a member. Each High Contracting Party, moreover, reserves rights and obligations it may have under the General Agreement on Tariffs and Trade, and special advantages it may accord pursuant thereto.

Article XI

1. Each High Contracting Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other High Contracting Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other High Contracting Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each High Contracting Party shall accord to the nationals, companies and commerce of the other High Contracting Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

3. The High Contracting Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either High Contracting Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and

companies of the other High Contracting Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the Government for government use; or (b) supplying at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

4. No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

Article XX

1. The present Treaty shall not preclude the application of measures:

(a) regulating the importation or exportation of gold or silver;

(b) relating to fissionable materials, the radio-active by products thereof, or the sources thereof;

(c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; and

(d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.

2. The present Treaty does not accord any rights to engage in political activities.

3. The stipulations of the present Treaty shall not extend to advantages accorded by the United States of America or its Territories and possessions, irrespective of any future change in their political status, to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or the the Panama Canal Zone.

4. The provisions of Article II, Paragraph 1, shall be construed as extending to nationals of either High Contracting Party seeking to enter the territories of the other High Contracting Party solely for the purpose of developing and directing the operations of an enterprise in the territories of such other High Contracting Party in which their employer has invested or is actively in the process of investing a substantial amount of capital: provided that such employer is a national or company of the same nationality as the applicant and that the applicant is employed by such national or company in a responsible capacity.

Article XXI

1. Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.

VIENNA CONVENTION ON THE LAW OF TREATIES
(U.N. DOC. A/CONF. 39/27, MAY 23, 1969)
SECTION 2. INVALIDITY OF TREATIES

Article 46

Provisions of internal law regarding competence to
conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47

Specific restrictions on authority to express the
consent of a State

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

Article 48

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49
Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50
Corruption of a representative of a State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51
Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52
Coercion of a State by the threat or
use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53
Treaties conflicting with a peremptory norm of general
international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international

law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

THE HOSTAGE ACT
(22 U.S.C. §§ 1731, 1732)

§ 1731. Protection to naturalized citizens abroad

All naturalized citizens of the United States while in foreign countries are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

§ 1732. Release of citizens imprisoned by foreign governments

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

FOREIGN SOVEREIGN IMMUNITIES ACT (FSIA)
(28 U.S.C. §§ 1330, 1332(a), 1391(f), 1441(d),
1602-1611)

Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between--

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

§ 1391. Venue generally

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought--

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

§ 1441. Actions removable generally

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign

states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§ 1603. Definitions

For purposes of this chapter--

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity--

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state:

Provided, that--

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit-- unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is

initiated within ten days either of the delivery of notice as provided in subsection (b)(1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: Provided, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

§ 1606. Extent of Liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim--

(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state--

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made--

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603 (a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property--

(A) which is acquired by succession or gift,
or

(B) which is immovable and situated in the United States: Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act if--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted

until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if--

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if--

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

NATIONAL EMERGENCIES ACT
(50 U.S.C. §§ 1601, 1621-1622, 1631, 1641, 1651)

§1601. Termination of existing declared emergencies

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of Title 5, as a result of the existence of any declaration of national emergency in effect on September 14, 1976 are terminated two years from September 14, 1976. Such termination shall not affect--

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) Any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

§1621. Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specif-

ically declares a national emergency, and (2) only in accordance with this chapter. No law enacted after September 14, 1976, shall supersede this subchapter unless it does so in specific terms, referring to this subchapter, and declaring that the new law supersedes the provisions of this subchapter.

§1622. National emergencies--Termination methods

(a) Any national emergency declared by the President in accordance with this subchapter shall terminate if--

(1) Congress terminates the emergency by concurrent resolution; or

(2) The President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect--

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c)(1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the

appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and a shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)-(4) of this subsection, subsection (b) of this section, and section 1651(b) of this title are enacted by Congress--

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary a date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

§ 1631. Declaration of national emergency by Executive order; authority; publication in Federal Register, transmittal to Congress

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

§ 1641. Accountability and reporting requirements of the President--Maintenance of file and index of Presidential orders, rules and regulations during national emergency

(a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

§ 1651. Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies

(a) The provisions of this chapter shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- (1) Repealed, Pub. L. 95-223, Title I, § 101(d), Dec. 28, 1977, 91 Stat. 1625.
- (2) Act of April 28, 1942 [section 278b of Title 40];
- (3) Act of June 30, 1949 [section 252 of Title 41];
- (4) Section 3477 of the Revised Statutes, as amended [section 203 of Title 31];
- (5) Section 3737 of the Revised Statutes, as amended [section 15 of Title 41];
- (6) Public Law 85-804 [sections 1431 to 1435 of Title 50];
- (7) Sections 2304(a)(1) of Title 10;
- (8) Sections 3313, 6386(c), and 8313 of Title 10.

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after September 14, 1976.

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA)
50 U.S.C. §§ 1701-1706

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities:

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

§ 1702. Presidential authorities:

(a) (1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise--

- (A) investigate, regulate, or prohibit--
 - (i) any transactions in foreign exchange,
 - (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
 - (iii) the importing or exporting of currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly--

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

§ 1703. Consultation and Reports--Consultation with Congress

(a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised. Report to Congress upon exercise of Presidential authorities

(b) Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying--

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

Periodic Follow-up Reports

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) of this section with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b) of this section.

Supplemental Requirements

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

§ 1704. Authority to Issue Regulations

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

§ 1705. Penalties

(a) A civil penalty of not to exceed \$10,000 may be imposed on any person who violates any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

§ 1706. Savings Provisions-Termination of National Emergencies Pursuant to National Emergencies Act

(a) (1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the

National Emergencies Act of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

Congressional Termination of National Emergencies by Concurrent Resolution

(b) The authorities described in subsection (a)(1) of this section may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

Supplemental Savings Provisions; Supersedure of Inconsistent Provisions

(c) (1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

Periodic Reports to Congress

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

UNCITRAL ARBITRATION RULES

Section 1. Introductory rules

SCOPE OF APPLICATION

Article 1

1. Where the parties to a contract have agreed in writing* that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

NOTICE, CALCULATION OF PERIODS OF TIME

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

*MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note - Parties may wish to consider adding:

- (a) The appointing authority shall be...(name of institution or person);
- (b) The number of arbitrators shall be...(one or three);
- (c) The place of arbitration shall be...(town or country);
- (d) The language(s) to be used in the arbitral proceedings shall be...

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

NOTICE OF ARBITRATION

Article 3

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and addresses of the parties;
- (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
- (d) A reference to the contract out of or in relation to which the dispute arises;
- (e) The general nature of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

- (a) The proposals for the appointments of a sole arbitrator and an appointing authority referred to in article 6, paragraph 1;

(b) The notification of the appointment of an arbitrator referred to in article 7;

(c) The statement of claim referred to in article 18.

REPRESENTATION AND ASSISTANCE

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II. Composition of the arbitral tribunal

NUMBER OF ARBITRATORS

Article 5

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

APPOINTMENT OF ARBITRATORS (ARTICLES 6 TO 8)

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other:

- (a) The names of one or more persons, one of whom would serve as the sole arbitrator; and
- (b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
- (b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed:

(a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or

(b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefor, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under article 6.

Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to article 6 or article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfill its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

CHALLENGE OF ARBITRATORS (ARTICLES 9 TO 12)

Article 9

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

- (a) When the initial appointment was made by an appointing authority, by that authority;
- (b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;
- (c) In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

REPLACEMENT OF AN ARBITRATOR

Article 13

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

Article 14

If under articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III. Arbitral proceedings

GENERAL PROVISIONS

Article 15

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

PLACE OF ARBITRATION

Article 16

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

LANGUAGE

Article 17

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defense, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defense, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

STATEMENT OF CLAIM

Article 18

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

- (a) The names and addresses of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

STATEMENT OF DEFENSE

Article 19

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defense in writing to the claimant and to each of the arbitrators.

2. The statement of defense shall reply to the particulars (b), (c) and (d) of the statement of claim (article 18, para.2). The respondent may annex to his statement the documents on which he relies for his defense or may add a reference to the documents or other evidence he will submit.

3. In his statement of defense, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The provisions of article 18, paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

AMENDMENTS TO THE CLAIM OR DEFENSE

Article 20

During the course of the arbitral proceedings either party may amend or supplement his claim or defense unless the arbitral

tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 21

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

3. The plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defense or, with respect to a counter-claim, in the reply to the counter-claim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

FURTHER WRITTEN STATEMENTS

Article 22

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defense, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

PERIODS OF TIME

Article 23

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defense) should not exceed forty-five days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

EVIDENCE AND HEARINGS (ARTICLES 24 AND 25)

Article 24

1. Each party shall have the burden of proving the facts relied on to support his claim or defense.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defense.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 25

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM MEASURES OF PROTECTION

Article 26

1. At the request of either party, the arbitral tribunal may make any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

EXPERTS

Article 27

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

DEFAULT

Article 28

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defense without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

CLOSURE OF HEARINGS

Article 29

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

WAIVER OF RULES

Article 30

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Section IV. the award

DECISIONS

Article 31

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

FORM AND EFFECT OF THE AWARD

Article 32

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. The award may be made public only with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 33

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

Article 34

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2 and 4 to 7, shall apply.

INTERPRETATION OF THE AWARD

Article 35

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

CORRECTION OF THE AWARD

Article 36

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ADDITIONAL AWARD

Article 37

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

COSTS (ARTICLES 38 TO 40)

Article 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

Article 39

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Article 40

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

DEPOSIT OF COSTS

Article 41

1. The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs (a), (b) and (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

TESTIMONY OF JOHN E. HOFFMAN
HEARING ON IRANIAN ASSETS SETTLEMENT
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
U. S. SENATE
(February 19, 1981)

Mr. Hoffman: My name is John E. Hoffman, Jr. I am a partner in the New York law firm of Shearman & Sterling, Citibank's principal outside counsel. I am grateful to the Committee for the opportunity to appear here this morning, and speak for a few moments on a subject of the role that we found ourselves in in these extraordinary events.

I will try to describe our participation in the process that followed the U.S. government's freezing of Iranian assets from the foundation Mr. Angermueller has just outlined.

After the litigation began, while Mr. Angermueller and I were discussing the kinds of settlement plans that might work, Citibank was regularly in contact with U.S. government officials responsible for administering the Iranian asset freeze. And I frequently talked with government lawyers at State, Justice, and Treasury who were closely following the Iranian litigation in London, and in Paris and Germany as well as in the United States.

In February I mentioned to the lawyers at State and Treasury that Mr. Angermueller and I had been working on settlement concepts, and they invited us to come to Washington if we wished to share these ideas. The result was a meeting with Mr. Mundheim, General Counsel of the Treasury, and Mr. Owen, Legal Advisor of the State Department, on February 20, 1980. Mr. Carswell, Deputy Secretary of the Treasury, joined us towards the end of the discussion.

Mr. Angermueller and I roughly outlined our ideas. We believed that both funds and mechanical structures were available to effect a settlement of at least the overseas Iranian litigation, but until the chief missing player, Iran, came to the table, obviously nothing could be done. But we did establish a dialogue with our government, and continued planning.

Since we were involved in litigation with Iran in four countries, I hoped that sooner or later, one of these contacts might develop into some kind of negotiation. I was encouraged, early in March, when one of Iran's attorneys informally told me of some important sentiment favoring settlement on the Iranian side.

On May 2nd, an opening appeared. It came from West Germany, where we had a court hearing approaching. Our local German counsel phoned to say he had just met with Iran's German counsel to discuss the case. At the meeting, Iran's counsel had asked our counsel if we would be willing to discuss and [the] economic solution of the Iranian difficulties.

Iran's German lawyer said he had been instructed to open confidential negotiations leading toward a pragmatic economic solution of the worldwide litigation -- looking particularly to a release of the frozen deposits overseas and settlement of bank claims.

Iran's lawyer set two conditions on their side: first, any talks had to be in absolute secrecy. Any publicity would embarrass his clients in Iran and destroy any negotiations. Second, Iran would not put up any fresh money.

I relayed this signal to Mr. Angermueller, and within the hour he and I were in conference with Citibank chairman Walter Wriston, who instructed us to pursue this invitation, but only with the express consent of the United States government. I might add that Mr. Wriston, without any need for coaching by his counsel, was well aware of the provisions of the Logan Act, and one of the considerations that he and we had in mind in making sure that anything that we did was in full consultation with our government were the provisions of that statute.

I immediately reported the Iranian contact to Treasury Deputy Secretary Carswell, and on May 6th, Mr. Angermueller and I went to Washington to discuss it in greater detail. We were asked to delay any response until the U.S. government had considered the desirability of such talks. On May 13th, Mr. Carswell informed me that the government approved our meeting with Iran's lawyers.

I then scheduled the first of what turned out to be a long series of meetings, most of them in Europe, with lawyers for Iran. The first meeting with two German lawyers for Iran took place in a small town outside Frankfurt on May 15th.

At that meeting, I emphasized that I did not in any way represent the U.S. government -- or for that matter, anyone but Citibank -- but that we would not engage in any discus-

sions without the approval of the U.S. government -- which, in any event, would have to approve any settlement. I also informed Iran's lawyers that I had been directed by the United States government to inform them that the United States would not approve any financial settlement involving the frozen dollar assets unless the hostages were released. The Iranian representatives, for their part, emphasized their belief and intention that these discussions would be important in achieving the release of the hostages.

I would like to add that from the beginning, the issue of the hostages was constantly in our minds. But we were not engaged in the process that ensued as negotiators for the release of the hostages; we were not volunteering to take on a political responsibility, which we felt was the charge and responsibility of the government officials.

Nonetheless, we did believe, and we were encouraged to find that the Iranian representatives shared that sentiment, that the opening of these kind of discussions in which we could pursue the subject of resolution of some of the intensely complicated financial and legal entanglements that had followed the freeze would be a constructive process in trying to frame any situation involving the release of the hostages, because, as Mr. Angermueller indicated, from the outset, we viewed the imposition of the freeze and the possible availability of frozen assets as an essential element in that process.

We then discussed the structure of our meetings, and reached some other procedural agreements. I would keep the U.S. government informed of our progress, and they would consult other necessary Iranian lawyers -- since the Bank Markazi and the Iranian government had different lawyers, and the laws of at least four countries were involved. We also agreed to keep the meetings as small as possible. Finally, confidentiality of the talks must be preserved.

It was also understood that our plan would have to meet the special government and political needs of both sides, even allowing for the manifest mutual mistrust between the sides. I told Iran's lawyers if they and their clients were willing to proceed on this basis, then I was prepared to present some detailed plans and ideas.

I asked for a green light from their side, and returned to New York where I reported on the meeting to Mr. Angermueller, and then to Messrs. Carswell, Mundheim, and Owen in Washington.

Mr. Angermueller and I then drew up a proposal which came to be known as Plan C, designed to cover all claims against Iran, both liquidated and nonliquidated, by all categories of creditors and claimants. Basically, Plan C called for using the frozen European deposits to pay off the frozen assets in a settlement fund where nonliquidated claims would be processed through a domestic settlement procedure, possibly before the Foreign Claims Settlement Commission.

On May 20th, I received word that Iran was prepared to proceed on the basis of the principles we had discussed, and on June 5th, in Kronberg, Germany, I laid Plan C on the table.

We worked steadily on Plan C for the next six months, meeting every few weeks in Paris, London, Bermuda, Germany, New York, Washington, and even at my home in Chappaqua, New York. I reported to the U.S. government after each of the Iranian meetings.

I can summarize this unusual process without exaggeration by saying that it was the most challenging, yet difficult, often frustrating and exhausting job I have had in over 20 years of professional experience. It often seemed that we were trying to push a pool of water uphill, but we managed to keep the process going, and finally reached the point where all the legal documentation to implement Plan C had actually been drafted. It was a package several inches thick.

Then, on November 14th, in Dusseldorf, the German lawyers returned from Tehran and informed me that Iran had recently decided it would not accept Plan C. Iran had decided not to pay off the bank loans in full. To put that particular meeting in the context of the overall time frame, you will recall that the conditions for -- on the Iranian side -- release of the hostages, were announced on the 2nd of November, and the attorneys that I was meeting with were in Tehran at that time. They had been out there for about two weeks. And we had been in some very indirect contact with them during the time they were there. But it was impossible to discuss issues of substance in that framework.

And we agreed to meet in Germany as soon as they returned from that trip, so that the 14th of November was the first time on which they had the ability to relay to me the information that the basic concept of Plan C, which we had been working on to that point for about 5-1/2 months, namely, paying off the bank loans in full, was rejected.

This not only scuttled Plan C; it also changed the ground rules. Plan C had called for complete repayment of bank debt. Since we believed no bank would object to getting all its loans fully paid off, we had felt we could negotiate for all in confidence. But we couldn't negotiate part payment on behalf of others.

I informed the Iranian lawyers that while we might try to develop a new plan, we would now have to consult with other banks. They agreed.

We started right to work on Plan D. This called for using frozen foreign deposits to bring all bank debts current, continuing the Iranian loans under express guarantees by the government of Iran and its Central Bank, and establishing cash collateral deposits to cover part of the unpaid loan balances. At the same time, we also began informing the other 11 banks that held the bulk of the frozen deposits overseas of our past negotiations, and of our new proposed Plan D.

I presented Plan D to the Iranian lawyers at a meeting in London on December 11th. It was refined through a series of shuttle negotiations back and forth to Europe every few days. There were meetings with other banks in New York, with Iranian negotiators in Germany, and with the U.S. government.

These sessions continued through December 31. In the meantime, we had hired independent public accountants, Peat, Marwick, to collect the necessary financial data confidentially from the 12 banks, and to prepare the data processing necessary to carry out the plan. To speed matters further, we invited the Iranian representatives to New York. A series of virtually round the clock meetings began on January 8th.

Early in these sessions, we scheduled a series of meetings where Bank Markazi's London solicitor meet [sic] separately with each bank to negotiate interest on the overseas deposits, a matter that had to be resolved, but which we believed could not be approached collectively.

On Saturday, January 10th, we worked over the final draft of Plan D with Iranian counsel well into the night. We had also been providing the Iranian representatives with computer printouts of the financial data as we received it from Peat, Marwick. We seemed finally to be at the point of agreement.

Then, Sunday afternoon, January 11th, an Iranian official informed me that Plan D was completely unacceptable. No details were given. The meeting broke on a note of despair.

I must say that during the time we were involved in this process, there were a lot of times when you seemed to be getting to some point, and everything would break down and you would feel you had to start all over again. And we had marched up the hill and rolled down many, many times over this six-month period. But the intention always was to try to keep the process going, keep the talks going, hope that the piece that we were working on might fit in overall negotiations that either might be or later on were undertaken between the two governments, that finally worked out through the Algerian intermediaries.

But the timing of that break on January 11 was certainly, for our part in the process, or mine personally, the low note, because there just wasn't any time left. Everybody knew at that time that the ability of the administration to implement any kind of a deal was running out fast. This was an extremely complicated process we were working on, and the thought of trying to put together a whole new deal, when we didn't even have the parameters of what their problems were on the deal we had been working on into the night, the night before, seemed to me almost impossible.

But we got the 12-bank group together again, and within 24 hours, we made a modified Plan D which we felt would be acceptable to Iran. I presented this modified plan Monday night, January 12th, to the Iranian lawyers. Although I stayed in constant communication with them, we received no substantive response to the proposal. On the 13th, I stressed the need for a prompt response by the next day to get the machinery in place to effect the payments as the government negotiations in Algeria would require, and to carry out the banks' proposals.

In the hope of a settlement, part of our team had left for London to get pieces of the settlement apparatus in place.

Thursday afternoon, January 15th, Messrs. Carswell and Cutler called to tell me a new proposal had been received from Iran through the Algerian intermediaries. I went immediately to Washington and was briefed on the Iranian proposal. To my surprise, it reverted to the essential principles of our

original Plan C, the one that called for full repayment of bank debt.

I informed Mr. Angermueller and the representatives of the other 11 banks of these developments and that a meeting was set for 11 a.m. the next day at the U.S. State Department. The activities that followed that meeting in the State Department have been widely reported.

Although the decision had been reached, the massive work of implementing it remained to be done -- and to be done under extreme pressure.

We split into various working teams of bankers and lawyers operating in London, New York, and Algeria. I remained in Washington.

And as you know, the financial transaction that triggered the release of the hostages met its deadline the morning of January 20th.

In closing, let me say that I am very grateful to have had the opportunity to play a role in the Iranian hostage accords, and will always be proud of the contributions Citibank and Shearman & Sterling made in these extraordinary events.

Thank you, Senator.

Senator Garn: Thank you very much.

the Iran-U.S. Claims Tribunal Against Iran.

As provided in the Algiers Declarations and the technical agreements of August 17, 1981, the Government of Iran is obliged to replenish the Security Account whenever it falls below \$500 million. Under the terms of the technical agreements, the central bank of Iran, Bank Markazi, is also expressly obliged to replenish the Account.

The technical agreements provide that certain issues pertaining to the operation of the Security Account will be submitted to the Tribunal for resolution. The United States will ask the Tribunal to determine whether the interest on the Security Account should remain in the Account or be transferred to Iran. The United States and Iran will jointly ask the Tribunal to determine how the management fees for the Account should be allocated between the Federal Reserve Bank of New York and Bank Markazi, what their respective responsibilities should be for indemnifying N.V. Settlement Bank of the Netherlands and De Nederlandsche Bank, and whether funds in the Account should be available to pay claims settled by the parties directly concerned.

2. Rules of Procedure

In accordance with the provisions of the Claims Settlement Agreement, claims of U.S. nationals against Iran must be submitted to the Tribunal between October 20, 1981, and January 19, 1982. The Tribunal previously issued Administrative Directive No. 1 providing preliminary guidance for claimants concerning the manner of submitting claims. See Public Notice 784 (48 FR 37416, July 20, 1981). The Tribunal will meet at The Hague beginning September 14 to formulate more detailed rules of procedure to supplement and modify the UNCITRAL rules which are generally applicable to the submission and resolution of claims. Claimants and other interested persons who would like to offer suggestions concerning the form and substance of the rules to be adopted by the Tribunal are invited to make their views known to the Administrator for Iranian Claims at the earliest possible date. The Department will endeavor to convey these suggestions to the Tribunal before the rules are adopted and to provide an opportunity for subsequent comments to be received by the Tribunal.

3. Registration and Settlement of Claims of Less Than \$250,000

Every person subject to U.S. jurisdiction with claims against Iran that arose before April 15, 1980 was initially

required to report all such claims to the Department of the Treasury by May 15, 1980. See section 535.516 of the Iranian Assets Control Regulations (45 FR 23408, April 19, 1980).

Subsequent to the signing of the Algiers Declarations on January 19, 1981, and the establishment of the Iran-U.S. Claims Tribunal, U.S. nationals with claims against Iran that fall within the Tribunal's jurisdiction and have a value, in the aggregate, of less than \$250,000 were required to register those claims with the Department of State by May 8, 1981. See Public Notice 749 (48 FR 19893, April 1, 1981) and Public Notice 753 (48 FR 25026, May 4, 1981). The information submitted in connection with the registration of these claims is to be used by the Department in seeking to conclude an agreement with Iran providing for the settlement of all such claims in return for a lump-sum payment by Iran. If such an agreement is reached, claims covered by the agreement will be adjudicated by a domestic agency of the United States Government, and the lump-sum payment will be distributed in accordance with that agency's determinations.

In an effort to provide all claimants in this category with the fullest possible opportunity to register their claims against Iran, and because the lump-sum settlement negotiations had not yet begun, the Department subsequently announced that it had been able to accept registrations received after May 8 and would continue to do so until the settlement negotiations had begun. The Department stated that the final deadline would not be earlier than July 31, 1981. See Public Notice 763 (48 FR 36277, July 14, 1981).

The Department has now completed its compilation of claims registered to date and has submitted information concerning these claims to the Government of Iran for the purpose of initiating the settlement negotiations. The Department anticipates that these discussions will begin within the next few weeks. Once they have begun, it may be impossible for the Department to take into account any additional unregistered claims. Claimants who have not registered their claims by that time may be excluded from sharing in the proceeds of a lump-sum settlement and from having their claims presented to the Tribunal.

Accordingly, U.S. nationals with claims of less than \$250,000 who have not yet registered their claims with the Department of State should register them immediately with the Administrator for Iranian Claims, Office of the Legal Adviser, Department of

(Public Notice 772)

Claims Against Iran

This notice concerns claims of U.S. nationals against Iran within the jurisdiction of the Iran-U.S. Claims Tribunal established by the Claims Settlement Agreement signed at Algiers on January 19, 1981. Specifically, it addresses: (1) The establishment of the Security Account from which awards of the Tribunal will be funded; (2) the rules of procedure applicable to claims filed before the Tribunal; (3) the registration and settlement of claims of less than \$250,000; and (4) the settlement of claims of \$250,000 or more.

For further information, contact David P. Stewart, Administrator for Iranian Claims, Office of the Legal Adviser, Department of State, Washington, D.C. 20520, Telephone (202) 632-5040.

1. Establishment of the Security Account

Arrangements were concluded on August 17, 1981, for the establishment of the Security Account at N.V. Settlement Bank of the Netherlands. The Account is to be used for the sole purpose of securing the payment of, and paying, claims of U.S. nationals against Iran, as provided in the Claims Settlement Agreement. The technical agreements establishing this account were signed in Amsterdam by the Federal Reserve Bank of New York as Fiscal Agent of the United States; Bank Markazi Iran; Banque Centrale d'Algerie as escrow agent; De Nederlandsche Bank N.V., the central bank of the Netherlands; and N.V. Settlement Bank of the Netherlands, which will act as the depository. Pursuant to these agreements and the Algiers Declarations of January 19, 1981, the United States transferred to Iran on August 18 certain Iranian assets in U.S. banking institutions in the United States, including approximately \$2.038 billion in bank deposits, \$13.2 million in non-bank funds, and a limited amount of securities. Of this amount, \$1 billion has been deposited in the Security Account for the funding of awards to be made by

State, Washington, D.C. 20520.
Telephone [202] 632-5040. The
Department expects that it will be
unable to take into account claims
registered after *September 30, 1981*.

If lump-sum settlement negotiations
with Iran do not achieve an early
agreement, the Department will submit
to the Iran-U.S. Claims Tribunal the
claims of less than \$250,000 that have
been registered with the Department. In
that event, the Department will provide
a standardized statement of claim form
for use by claimants whose claims have
a value, in the aggregate, of less than
\$250,000.

4. Settlement of Claims of \$250,000 or More

The Claims Settlement Agreement of
January 19, 1981, provided for a six-
month period during which the United
States and Iran would promote the
settlement of claims by the parties
directly concerned. As previously
announced, this period has been
extended to October 19, 1981.

The Department has received
information indicating that a substantial
number of claimants with claims of
\$250,000 or more have been invited by
the Government of Iran to enter into
discussions in Vienna or elsewhere for
the purpose of agreeing on settlement
terms prior to October 20, 1981.
Claimants engaging in such discussions
are encouraged to advise the
Department of the general progress of
such discussions, and in particular of
any problems which might usefully be
addressed on a government-to-
government level for the purpose of
promoting the settlement of claims
during this period. Claimants with such
information should contact the
Administrator for Iranian Claims.

David P. Stewart,

*Administrator for Iranian Claims. Office of
the Legal Adviser.*

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