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Collection Name KIMMITT, ROBERT: FILES

Withdrawer

SMF 7/7/2008

File Folder LEGAL: IRAN (3/19/1981-3/23/1981)

FOIA

M2008-113

Box Number

90301 RAC Box 9

FELIPPONE

12

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
54722	MEMO	DUPLICATE OF 54595 D 6/16/2010 M113/1	1	3/20/1981	B1
54724	MEMO	DUPLICATE OF 54598	2	3/16/1981	B1
54726	LETTER	DUPLICATE OF 54599	2	ND	B1
54728	LETTER	DUPLICATE OF 54600	1	3/31/1981	B1
54729	MEMO	DUPLICATE OF 54597 D 6/16/2010 M113/1	1	3/18/1981	B1
54730	MEMO	DUPLICATE OF 54596 D 6/16/2010 M113/1	1	3/18/1981	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

NSC/S PROFILE

UNCLASSIFIED

Legal - Iran
ID 8101351

RECEIVED 19 MAR 81 11

TO PRES

FROM GOLDWATER, BARRY M

DOCDATE 28 JAN 81

KEYWORDS: IRAN

TERRORISM

CO

SUBJECT: IRAN ON LIST OF TERRORIST NATIONS

ACTION: FOR RECORD PURPOSES

DUE:

STATUS C

FILES WH

FOR ACTION

FOR COMMENT

FOR INFO

KEMP

SCHWEITZER

KIMMITT

COMMENTS WH INTERIM REPLY ATTACHED

REF#

LOG

NSCIFID

(H / H)

ACTION OFFICER (S)

ASSIGNED

ACTION REQUIRED

DUE

COPIES TO

DISPATCH

W/ATTCH FILE

(C)

February 19, 1981

Dear Barry:

Please accept my sincere apology for the delay in responding to your very thoughtful letter of January 28 addressed to the President.

The President appreciated having your kind words of support and certainly shared in the great pride that all of us felt in the national welcome extended to our freed Americans. It is his hope that, in the years ahead, we will be able to make marked changes for the good of our Nation, and the good of the entire world.

You have also expressed your strong feelings that Iran should be viewed as a terrorist nation in order to prevent the transfer of military or other goods to that country. I have brought your concise, firm suggestions to the attention of the President's advisors on foreign matters so that they may be carefully examined in the course of the proceedings now taking place.

Again, thank you for writing.

With cordial regard, I am

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable Barry M. Goldwater, Jr.
U. S. House of Representatives
Washington, D. C. 20515

MLF:CMF:KIR:jm

cc: w/inc to Richard Allen - NSC - for appropriate handling

BA M. GOLDWATER, JR.
20TH DISTRICT OF CALIFORNIA

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION
COMMITTEE ON SCIENCE AND
TECHNOLOGY

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January 29, 1981

LIASON

JAN 29 1981

The Honorable Ronald W. Reagan
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

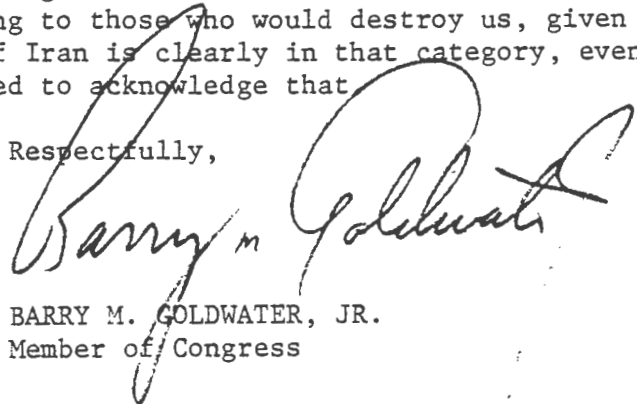
As I watched you greet the liberated Americans at the White House yesterday, I was proud of them, proud to be an American, and proud to call you my President. Thank you for the grace and dignity you and the First Lady lend every occasion, but even more, thank you for distilling and so accurately reflecting the gratitude in the hearts of every American for the sacrifice made by our people who came back from Iran, and for those who did not return alive.

In light of this great sacrifice, it is my fervant hope that you will instruct the Department of State to place Iran on the list of terrorist nations, thus blocking the sale of many military and other items to Iran from American business, that would help Iran in its war against Iraq, or, indeed, help Iran in any way.

Recognizing the difficult technical situation the Carter Administration left you in, and hoping that Iran will someday soon be governed by intelligent and reasonable people who will provide us with allies between the Soviet Union and the vital Persian Gulf, I nonetheless believe that Iran should be viewed, in theory and reality, as a terrorist nation.

Perhaps in recent years we have become too pragmatic, too cynical, as a nation, and now is the time to return to the ideals which launched us as a nation, and which held us in good stead for most of our history. Perhaps it is time to stop pandering to those who would destroy us, given any opportunity. The government of Iran is clearly in that category, even if the Carter Administration refused to acknowledge that.

Respectfully,



BARRY M. GOLDWATER, JR.
Member of Congress

Legal -- Iran

RECEIVED 19 MAR 81 11

TO PRES

FROM HANSEN, GEORGE

DOCDATE 02 FEB 81

KEYWORDS: IRAN

LEGAL ISSUES

TERRORISM

CO

SUBJECT: WORKING WHITE PAPER ON IRAN HOSTAGE CRISIS RE INVESTIGATION

ACTION: FOR RECORD PURPOSES

DUE:

STATUS C

FILES WH

FOR ACTION

FOR COMMENT

FOR INFO

KIMMITT

KEMP

SCHWEITZER

COMMENTS WH INTERIM REPLY ATTACHED

REF#

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(H / H)

ACTION OFFICER (S)

ASSIGNED

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COPIES TO

DISPATCH _____

W/ATTCH FILE _____

(C)

February 19, 1981

Dear George:

This will acknowledge your February 2 letter to the President enclosing a copy of your January 30 letter to Secretary of State Alexander Haig in which you raise many questions about the Iran hostage situation.

The President very much appreciated having the benefit of this important information, as well as your insightful comments on the serious events which led up to and followed the take-over of the American Embassy in Tehran. You may be certain that every bit of the material which you have provided will be properly reviewed in the on-going proceedings so that we can learn from the hostage ordeal, and ensure that such a disaster is not repeated in the future.

With cordial regard, I am

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable George Hansen
U. S. House of Representatives
Washington, D. C. 20515

MLF:CMP:KIR:jm

cc: w/inc to Richard Allen - NSC - for further handling

GEORGE HANSEN
SECOND DISTRICT, IDAHO

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MONETARY POLICY
VETERANS' AFFAIRS
COMPENSATION, PENSION, INSURANCE
AND MEMORIAL AFFAIRS
MEDICAL FACILITIES AND BENEFITS

Congress of the United States
House of Representatives
Washington, D.C.

February 2, 1981

**CONGRESSIONAL
LIAISON**

FEB 4 1981

The Honorable Ronald Reagan
President
The United States of America
The White House
Washington, D.C.

Dear Mr. President:

The attached letter of January 30, 1981 to Secretary of State Alexander Haig together with attachments constitutes a working "white paper" on the Iran hostage crisis. This material was prepared in response to (a) a request by the Office of the Secretary of State for details supporting the need for investigation of this ordeal and related matters, and (b) a suggestion by the former Minority Leader of the House of Representatives, John Rhodes, who was intimately involved in on-going efforts for crisis solution.

When this material is properly reviewed, I am convinced you will agree that there is no way this crisis can be relegated to history without careful investigation of alarming irregularities and disturbing questions.

Some of your key advisors during the election, in reviewing documents such as those I personally supplied to you, expressed grave concern with one commenting that this is "impeachable material." This concern was again expressed by high ranking transition officials who agreed there must be an investigation.

For fourteen months since the crisis began, and especially since my first trip to see the hostages in Tehran, I have continuously pressed for Congressional involvement and investigation. This has been supported by former hostages, hostage families, key Members of Congress, prominent elements of the media and a large number of concerned citizens. I have letters from virtually every involved leader in the past 96th Congress agreeing to the need for such action, especially now that the hostages are home; and this call has now been renewed by similar leaders of the new 97th Congress.

I respectfully suggest that it is vital that this investigation proceed immediately in order to put such a review in proper perspective because (as your Freedom of Information requests must attest) many journalists, some involved with the major media, are moving full-force into vital and sensitive areas concerning the inter-relationship between banking, medical and government actions in the handling of the Shah and the revolutionary climate in Iran which put us at the mercy of kid-nappers for 444 days.

The bottom line question has to be, "Why would provocative financial and political actions be taken without proper steps to protect American personnel and secret documents in Tehran?"

Evidence strongly suggests that American diplomats and Servicemen (ironically as the Biblical Daniel in Babylon) were arbitrarily, or even intentionally, cast into the "Lion's Den." These are among the questions which have arisen:

- 1) Did the U.S. State Department knowingly trigger lawless elements of Iran to take American Embassy personnel hostage?
- 2) Why did the U.S. State Department allow the former Shah into the United States for any reason without providing proper security for Embassy personnel in Tehran in the face of the Precht document and others which clearly and accurately predicted the consequences?
- 3) Why did the U.S. State and Treasury Departments prepare a freeze order to protect big bankers in anticipation of the former Shah's entry into the United States and not make reasonable security provisions to prevent the kidnapping of American Embassy personnel?
- 4) Did the knowledge of a possible freeze order on Iran's assets coupled with the arbitrary admission of the former Shah to the United States irresponsibly provide a means for lawless elements in Iran to exploit the possibility of American plans for a physical and financial restoration of the Shah to power and a trigger for their capture or our Tehran Embassy in retaliation?
- 5) Did certain financial interests in the United States with risky investments unduly and even dangerously influence American foreign policy even to the point of Logan Act violations? Did they, for instance, move to protect their financial interests by intentionally triggering the implementation of a previously-planned U.S. government freeze-order on Iran's assets by bringing the former Shah into the United States with knowledge that such a move would provoke an attack on the U.S. Embassy in Tehran?

My recovery of U.S. secret documents in Iran and discovery of a pre-existing freeze order along with an early exposure of the role of big banks and questionable use of double agents suggest that American Embassy personnel and this nation may well have been held hostage 444 days too long by an incompetent, if not corrupt, foreign policy.

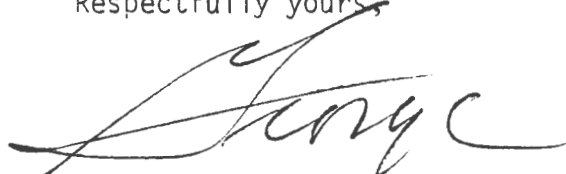
There can be no quick turn of the page on this terrible ordeal. America wants to know what happened and hopefully we can quickly move to provide answers.

Mr. President, there are also serious questions to be asked regarding Soviet intervention and terrorist activities, directly and through surrogates such as the P.L.O. and internal Iranian political factions including the militants who kidnapped and held Americans prisoner for 14 months. Certainly the Soviet policy reversal brought on by your presidency should have immediate attention -- the switch from alternate active and passive support of America's embarrassing entrapment in Iran to tactics, beginning with the release of the hostages, designed to expel us and our influence from the Persian Gulf area.

A very prominent Iranian official in my office this week informs me that there is an alarming growth of Communist strength in Iran taking advantage of (a) increasing infiltration of agents from related Soviet areas like Azerbaijan, (b) a climate of political instability and chaos, and (c) the past U.S. policy of unreliability and weakness. This official pointed out that the abusive and terroristic tactics of the kidnapers are not characteristic of Iranians, and demonstrate Soviet and P.L.O. training which is also oppressing and terrifying the people of Iran. He warns that many around Khomeini are Communists who pay lip service in their prayers but wait for his death to make their bid for power with hopes of utilizing arbitrary measures and treaty devices to invite Russian involvement and assistance.

All of this and the war and the energy situation need our urgent attention and a proper review of the hostage crisis is the only way to get the full picture. I strongly urge your assistance to accomplish this, that the hostage ordeal will not have been in vain. This study and your refreshing new approach to foreign policy will provide more adequate insurance against such disasters in the future.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "George Hansen". The signature is written in dark ink and is positioned above the typed name.

GEORGE HANSEN
Member of Congress

GVH:nbb

FRANK J. HAIG SEN
SENATOR, DISTRICT, IDAHO

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Congress of the United States
House of Representatives
Washington, D.C.

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January 30, 1981

The Honorable Alexander M. Haig
Secretary of State
Department of State
2201 C Street
Washington, D.C. 20520

Dear Mr. Secretary:

The hostages are home from Iran to a relieved and grateful people. Now is the time for introspection. We are all concerned that this devastating experience not be repeated, and the foreign policy comments and pronouncements from you and President Reagan since assuming office have been refreshingly meaningful and comforting.

Your current emphasis on the need to end Soviet-supported terrorism around the world is most welcome and crucial to real peace and human rights. In this context it is important that you know that knowledgeable sources in Iran informed me during the final days of the hostage negotiations that Soviet fear of the impending Reagan Presidency caused the necessary collapse among the militants making the hostage release possible.

Communist and PLO elements, comprising as much as 30 percent of the militant forces holding our hostages, were instructed to shift positions and support hostage-release due to concern that President Reagan would use the hostage problem as reason to significantly increase American presence in the Persian Gulf area -- something Moscow wanted desperately to prevent.

This move, plus the Russian radio broadcasts attempting to unnerve Iranians with false reports of an imminent American invasion, were designed to minimize U.S. presence and maximize fear and hatred of Americans to enhance Soviet prospects for exploitation in an anti-communist revolution-torn land sandwiched between Soviet-dominated Afghanistan and Soviet-armed Iraq. The existing situation is further impacted by support from communist and leftist

nations for both sides in the Iran-Iraq war attempting to assure a no-lose solution. This threat to Free World security cannot be ignored.

In addition, Mr. Secretary, I must bring to your attention shocking irregularities in State Department activities in the Iranian situation involving multinational financial interests which appear to have been a major cause of the American personnel in our Tehran Embassy being attacked and taken hostage on that tragic Sunday, November 4, 1979.

As a Senior Member of the House Banking and Finance Committee, I have for some time closely observed what appear to be gross manipulations of American foreign policy by certain big international banking interests which have placed the United States at the mercy of terrorists and blackmailers -- the Iran crisis being a real case in point. Here are basic facts and findings:

- 1) The Iranian Revolution revealed that certain big international banks had provided huge shaky and controversial loans to the Shah of Iran against the advice of their own legal counsel and without the required approval of the Iranian Parliament.
- 2) Iranian officials of the new Khomeini government threatened not to pay these "unconstitutional and illegal loans" and even to withdraw their assets to prevent bank retaliation.
- 3) Some of the big banks apparently decided to get President Jimmy Carter to bail them out with a freeze order which was being prepared in the State and Treasury Departments some six months before Iranians attacked the U.S. embassy and took Americans hostage.
- 4) Then, one of the big bankers, with full cooperation from State Department officials, supplied the trigger for getting the freeze order applied by bringing the former Shah into the United States, despite the strongest possible intelligence warnings that such action would precipitate an attack on our embassy in Tehran and the taking of hostages. The State Department, in reckless disregard of its own alarming "secret, eyes only" documents, played into the hands of lawless elements of the Iranian revolution without any real efforts to protect American personnel by such steps as reinforcing the guard or closing the embassy (as was done by Canada when a provocative act was deemed necessary).
- 5) The hand of the bankers remained obvious (a) as the U.S. State Department blundered in an attempt to return the former Shah to Mexico in a breach of protocol condemned by the Mexican Ambassador; (b) again in the movement of the former Shah to Panama; and (c) in the embarrassing contradiction of the White House orders as the former Shah fled to Egypt.

6) And finally, the big bankers again emerged as the key figures in the final hostage negotiations taking center stage from the diplomats just as I had long predicted would happen. As a result, it was not Iran's demands which were fulfilled to secure the hostages' release; the imprisoned Americans instead were ironically released after 444 days when the bankers were paid in full, including their shaky loans. As was stated in the February 2nd edition of Time Magazine, "Government officials participated very little in the discussions. There was no exchange between the government and us, said one moneyman. 'They took what we gave them.' " Interestingly, the less influential claimants had their liens voided and were subjected to the delays and less certain fate of an international claims commission arbitrarily designated by Presidential direction without Congressional action.

Mr. Secretary, the pre-hostage relationship between Iran and the United States was disturbed by the alleged excesses of SAVAK and its affiliates and reported disruption of CIA subsidies to the Mullahs, and by identified financial scandals, in addition to banking irregularities, such as those involving Lockheed and Textron kickbacks to Iranian officials. Then, during the hostage period we witnessed the embarrassing machinations of unscrupulous double and triple agents feeding information for pay to the White House, the Iranians and the former Shah's family. For months and months leftist French lawyer Christian Bourguet and leftist Argentinian exile Hector Villalon dangled Hamilton Jordan in futility while the President's own brother, Billy, was unbelievably fusing the White House to the Libyan leftist regime in another wild chase, for a handsome \$500,000 advance on a multi-million dollar oil royalty arrangement.

After deliberately sticking its neck into the kidnapers' noose, the United States government time and time again engaged in a succession of embarrassing plots and failures and continually sidestepped verified opportunities to honorably resolve the crisis and bring the hostages home. The hostages were apparently doomed by short-sighted politics and policies to remain until the big banks had been paid.

When a desperate out-going President and a destitute Iranian government became willing to settle at almost any cost, the plan developed, a plan which would have worked at the time of the 1980 General Election but for one overpowering reason -- the Iranian government still did not control the hostages. The militants, using the American prisoners as leverage to capture the Revolution, would not cooperate until the certainty of a Reagan Presidency collapsed the Communist faction finally forcing, after some uncertainty, the balance of the militants into an agreement with a mob-like factionalized government already tilted to the hard-liners.

Mr. Secretary, because of the hostage crisis, the United States suffered large losses to taxpayers, consumers, and business interests, as well as damage to our national security, our foreign policy and our military image -- all this

in addition to the terrible ordeal and anxiety of the hostages and their families and caring people everywhere.

Because of the hostage crisis, Iran learned the hard way that "crime does not pay" as they now find themselves in war and chaos, in bread and fuel lines, in bankruptcy and disgrace, and having some \$12 billion in assets shrink to \$3 billion cash available.

Because of the hostage crisis, the Soviet Union has gained great spin-off advantages in crushing Afghanistan and having an open field for exploitation in a weakened and fragmented Iran.

Because of the hostage crisis, the big banks were again relieved of suffering any real consequences for imprudent and even illegal business practices, instead transferring the misery and destruction to others and encouraging the terrible acts of terrorism we are now determining to stop, thanks to your firm new policies.

Mr. Secretary, I strongly urge you to call on the State Department's Inspector General and appropriate Committees of Congress to investigate this shocking Lilliputian ordeal which saw a militant band of "little people" tie-up the great Uncle Sam for 444 days.

I have pressed for such an investigation for fourteen months and am most grateful for your interest. America and Americans must never again be easy prey for terrorists and kidnappers.

So much must be reviewed beyond the cosmetic inspections advocated by some people on the reported and unquestionable mistreatment of the hostages. It is imperative that in-depth investigations be made into:

1) The conduct of U.S. Foreign Policy which (a) allows this nation, as in the case of Iran, to blunder into awkward, humiliating and even damaging situations, especially as influenced by powerful self-serving special interest groups; and (b) to arbitrarily, and even deliberately, refuse to consider obvious opportunities for early and honorable recovery.

2) (a) The advantages gained by the Soviet Union and Communist movement through the Iranian Revolution and capture of the American Embassy, personnel and documents, (b) the influence of leftists, the PLO and other terrorists and the Soviet Union on the hostage crisis and on the future of Iran and the Persian Gulf area, (c) the stability and composition of the present government of Iran and its future, considering reports of probable early collapse and the

ongoing possibility of Khomeini being dead or incapacitated.

- 3) The conduct of U.S. military operations as they apply to the planning and execution of special projects. The questions of timing, possibility of success and adequacy of training and equipment arising from the aborted rescue mission certainly must be addressed. The future must profit by lessons of the past and the experience of the planners and gallant volunteers who conducted the operation.
- 4) The conduct of long-range American relations with Iran and Persian Gulf area nations, especially in view of expanded Soviet activities and influence.
- 5) The conduct of embassy affairs, as experienced in the two Tehran takeovers of the U.S. Embassy, regarding the security of personnel, and the acquisition, processing, utilization, and protection of intelligence data and secret and sensitive documents.
- 6) (a) The conduct of U.S. foreign policy regarding Iran and the hostage crisis by the Executive Department as it relates to the Constitutional duties of this Congress to assure against extra-legal actions -- an example being the unilateral formation of an international claims commission. (b) The use in the hostage crisis of double agents and other covert devices of a shady and possible compromising nature.
- 7) The conduct of international financial interests in the Iranian situation, particularly as U.S. foreign policy and our national image have been affected by questionable bank loans, the kickback problems, and other financial relationships.

Mr. Secretary, we have been ravaged by militants who brutalized our people and who also exploit, suppress, and even destroy their own country. We should honor our commitments, but only in the same way as they delivered the hostages. It took 444 days for them to accumulate a responsible enough government to secure release of the captive Americans and we should take sufficient time in returning additional funds and assets to assure that it only goes to a government responsible to the people who are the rightful owners. We must ask which faction is the real government -- Khomeini, Bani Sadr, Rajai, the Revolutionary Council, the Majlis, the militants or someone else -- even if it takes 444 days. In the meantime, perhaps a more apparently responsible government will emerge.

It may also be in order for the United States government to file claims against the escrowed assets for taxpayer expenses in dealing with crisis and for compensation for the hostages and victims of the rescue mission and their families. I am, in the meantime, introducing legislation to provide proper reimbursement and compensation to these deserving citizens for their great sacrifice which I hope will have your support.

There are many proposals for recognizing or rewarding these hostages and the deceased members of the rescue mission, but I can think of no more legitimate

Page 6
January 30, 1981

recognition than the award of decorations for exceptional valor to those like Sgt. Lopez, whose heroics in protecting embassy personnel were so effective.

Again, Mr. Secretary, may I strongly encourage your support for an investigation of this tragic page in our history:

1) by your Agency.

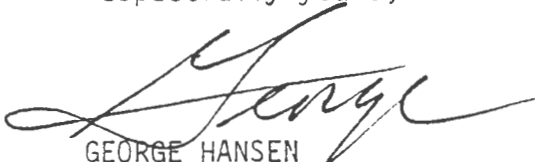
2) by the Defense Intelligence Agency on the basis of national security and the need to repair our intelligence system from the loss of sensitive data, equipment and strategic position caused by the Iranian Revolution.

3) by appropriate Committees of the Congress.

I am enclosing background material supporting my ongoing call for investigation of the Iran crisis. I feel there is strong evidence supporting such an investigation and stand ready to provide further information as you may require.

Until we find answers to the questions posed by the hostage crisis, we will be haunted by the plaintive cry of one of the freed Americans as he stood face-to-face with the former President and in tears asked, "Why did you leave us there so long?"

Respectfully yours,



GEORGE HANSEN
Member of Congress

GVH:at
Enclosure



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Ronald Reagan Library

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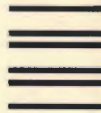
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**BOOK REVIEW
INTERFACE ONE**

*Reviewed by
Stuart S. Malawer*

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BOOK REVIEW

INTERFACE ONE. Edited by *Don Wallace, Jr., George Spina, Richard Rawson and Brian McGill*. Washington, D.C.: Institute for International and Foreign Trade Law, Georgetown University Law Center, 1980. Pp. 347. — LC 79-64743.

*Reviewed by Stuart S. Malawer**

No issue is more important to the future vision of international order than the ways in which the world will manage the output and distribution of goods and services. . . . Central to this issue will be the relationship of business to the management of public affairs. — Henry A. Kissinger (1977).¹

What is a nation to do when reminded so rudely, almost daily, that the economic power that was is no longer; that it no longer ensures its people of international advantages that were once theirs, and, indeed, is not sufficient to protect them from injurious domestic consequences caused by fair, and sometimes unfair, trade practices of foreign firms acting in collaboration with their governments? Can it adapt to a changing environment and still remain true to economic traditions? Can it meet the new challenge of foreign business-government competition by merely amending implementing agency regulations and without significantly modifying the basic legislation enacted generations ago?

* Stuart S. Malawer, *J.D.* (Cornell), *Ph.D.* (Pennsylvania), *Diploma* Hague Academy of International Law (Research Centre), Oxford University, 1972-1973 and Harvard Law School, 1974-1975. Dr. Malawer is currently Professor of Law, George Mason University Law School and Lecturer, George Mason University School of Business Administration. He is the author of the two-volume *FEDERAL REGULATION OF INTERNATIONAL BUSINESS — AN ANNOTATED SOURCEBOOK OF LEGISLATION, REGULATIONS AND TREATIES* published in 1980 by the Chamber of Commerce of the U.S. in cooperation with the International Law Institute, Georgetown University Law Center.

¹ Kissinger, *The Future of Business and the International Environment*, *THE FUTURE OF BUSINESS — GLOBAL ISSUES IN THE '80'S AND '90'S* 77 (M. Ways ed. 1980) [hereinafter cited as *FUTURE OF BUSINESS*]. See generally publications of the "Future of Business Project" and "U.S. Export Competitiveness Project" of the Center for Strategic and International Studies, Georgetown University for the interface between international business and foreign policies.

Interface One, edited and published by the International Law Institute of the Georgetown University Law Center, raises these general policy matters in its discussion of a technical legal problem: a proposed rule promulgated prior to the enactment of the Trade Agreements Act of 1979 under the former Antidumping Act of 1921, relating to imports from countries with controlled economies, a sensitive issue in East-West trade involving a determination of their fair value by considering the price of merchandise or its constructive value in a market-oriented state which has a level of comparable economic development.

In January 1978, the Treasury Department issued a proposed rule concerning imports from state-controlled-economy countries, providing for a "substitute test" and a "constructive test" in determining the value of goods coming from such countries. In August 1978, the rule was made final. Prior to that, in July of that year, the Department of State and Department of Treasury sponsored a conference in cooperation with the International Law Institute to evaluate the proposed rule and existing legislation. The mandate of the conference was to assess also the general problem of the United States regulation of imports from countries with mixed economies, those with pervasive government intervention in industry, for example, the European Communities and Japan. Thus, the conference and its published proceedings are entitled *Interface One*. The first conference convened by the sponsors concerned the regulation of trade between differing economic systems: specifically, how to treat imports from corporations owned by foreign governments ("state-owned enterprises") and those coming from enterprises in centrally-planned-economies ("state-controlled economies") — the latter being the crux of the conference and the proceedings.

The proceedings present the dimensions of the problem in an introductory paper. Three chapters discuss the existing situation in Western countries, the structure and operations in state-controlled-economies and state-owned enterprises, and existing United States law; shorter presentations concentrate on the proposed Treasury draft, East-West trade and Congress.

While the particular issue of the conference, the merits of finalizing the January 1978 proposal, is no longer with us, the

general problem remains, as well as three exceedingly interesting and interrelated issues which were raised in the conference.

In addressing the basic problem of the 1978 Treasury draft, two specific changes were raised in the conference and both deserve deeper evaluation: the substitution of "comparable industries" for the standard of "comparable economies" and the substitution of an "injury test" in lieu of all determinations of "fairness" as the basis for providing import relief; these new standards preclude the making of difficult, time-consuming and impractical moral judgments on foreign government practices. Also raised and deserving of serious consideration is the impact of American-based multinational firms' pricing policies on foreign markets and foreign dumping laws.

When considering modification and rationalization of available import remedies, the soundness of reliance on the concept of various standards of "injury" to United States industry and "unfairness" of foreign acts, in the terms of administrability and economic theory, as the basis for providing import relief, needs to be more closely scrutinized. The use of a statistical trigger price approach utilizing the increase in the quantity of imported goods ought also to be given serious consideration. These two suggestions made during the conference are given urgency when one recalls that the world of the 1980s and the SST is far different from that of the Model T.

The first issue raised implicitly by the conference, but not fully addressed, is, from a public policy and legal perspective, the formulation of empirically valid concepts, intellectual tools and philosophical approaches to adequately appreciate where the United States is today, where it should be going and how it is to get there. Such a basic conceptual inquiry raises questions of American economic values in the existing domestic environment and comprehension of the new and emerging multivarious components of the international trading system today. A second basic issue raised, but not addressed in any sustained manner, concerns the role of law in international trade regulation as promoting coherent policies and programs and precluding political uncertainty and, consequently, business and trade disincentives. A third

issue which emerged is the dire necessity of understanding the interrelationship of domestic politics and foreign trade, both in the United States and abroad. Foreign trade is not carried on in a political or economic vacuum; municipal legislation is not enacted in such; and foreign trade, domestic business and national welfare are interrelated — the existence of an interdependent, multinational economy is irrefutable, even if it is ill-perceived. "Free enterprise" today is "fierce business."

Clearly, many United States trade laws and federal regulations impacting on international business generally are atavistic and antiquated. There is little coherence; there is little underlying conceptual uniformity; there is little guidance for company behavior. The laws were drafted to serve inconsistent objectives without considering international business. Many were drafted at the turn of the century, when "free trade" was revered in economic theory as an impetus to industrial efficiency, not towards the end of the present century which has seen the growth of government-owned monopolies, centrally-planned economies and both foreign government and private international cartels. Such laws create only uncertainty in the market place.² The application of United States anti-trust legislation and corrupt practices rules are often disincentives to American business abroad, while federal tax laws are incentives to foreign direct and portfolio investment in the United States. Likewise, the countervailing duty and antidumping legislation, first enacted in an era of no state-controlled economies, state-owned enterprises or foreign government cartels, which is being utilized to regulate types of activities that did not exist at the time of its passage.

A reader of the proceedings of the conference is distinctly impressed with the desperate need for a *further* rethinking of policies, problems and promises of imports and exports and international trade generally. The United States economy is no longer a

² See R. FLAMMANG, U.S. PROGRAMS THAT IMPEDE U.S. EXPORT COMPETITIVENESS: THE REGULATORY ENVIRONMENT (1980). See also J. VOLPE, ASSESSING U.S. COMPETITIVENESS IN WORLD MARKETS (1979).

pure market economy. In assessing the position and policies the United States ought to adopt in the future, one needs to determine what business-government relationship it wants and needs to foster in order to counter injuries caused by imports and to encourage further competitiveness of American business today, both domestically and abroad. The necessity for a new structure of business-government relations is a problem of the 1980s; its solution holds the promises of renewed performance of United States industry and strength of the nation.

Mythology, as to what is or was in domestic and international business, must be confronted in a realistic manner. As recession and protectionist pressures rise in the United States, a satisfactory solution can be had in accurately assessing where we are today as a nation and what needs to be done and acting forthright. One needs to keep in mind, needless to say, that the public interest is certainly not identical to that of a particular firm or, perhaps, even of an entire industry.³ The interests of employees, communities and government are all significant. The public or national interest can only be properly assessed by conscientiously and rationally viewing these multi-variables free of rigid ideologies and philosophical notions. Nonetheless, choices ought to be made within a coherent and realistic framework grounded upon clear and concise normative principles rooted in our past, tempered by the present and guided by our view of the future in order to effectively transit from one economic and political system to another, yet unclear one.⁴ We need to strengthen the private sector by redefining the relation of government to it thus reinforcing our democratic society with a strong, essentially capitalistic, economic base.

In order to further assess accurately *Interface One*, one needs to

³ See generally, Marcuss and Butland, *Reconciling National Interest in the Regulation of International Business*, 1 NORTHWESTERN J. OF INT'L L. & BUS. 349 (1979).

⁴ The United States is in the midst of the most rapid and pervasive expansion of government involvement in business in modern times. The developments taking place in business-government relationships in the United States are so fundamental that they amount to a "second managerial revolution." . . . The distinction between the public and private sectors is becoming increasingly blurred. Weidenbaum, *The Future of Business/Government Relations in the United States*, THE FUTURE OF BUSINESS 48.

put into even clearer context the specific problem of imports from Communist countries. They represent only a small portion of imports when compared to those from state-owned enterprises and even a smaller percentage of total United States imports. Problems of assessing imports from various state-owned enterprises may well be more difficult to regulate than those from state-controlled economies, which vary relatively less than state-owned enterprises in their organizational and business aspects. Recent international business and economic research indicates several hypotheses that are significant concerning state-owned enterprises: the original motives for establishing state-owned enterprises have little to do with their subsequent operations; while state-owned enterprises are exhorted to increase exports, whether they will succeed at a higher rate than private firms is not clear, and significant constraints exist in that they are indisposed to make elaborate commitments to the requirements of foreign markets; despite special strengths of state-owned enterprises, they may find themselves operating at a disadvantage as compared with private multinational competitors.⁵ While it is not necessary to emphasize the following to sophisticated trade lawyers and public policy analysts, nothing is really lost in making the point once again, that before revising legislation and regulations or embarking upon new international agreements, accurate business and economic data ought to be collected and accurately evaluated; unfortunately, the Congress and federal agencies have begun this task only recently and in piecemeal fashion.

Congress needs to fashion more adequate import remedies and new legislation to preclude unnecessary hardship for American firms and to aid generally in reasserting the American economic position in world business. Perhaps the United States cannot recapture the "Pax-Americana" of the immediate post-War period, but it can arrest and reverse its descendency of the 1970s

⁵ Vernon, *The International Aspects of State-Owned Enterprises*, 10 *J. OF INT'L BUS. STUD.* 7, 11, 12-13 (1979). See generally, D. LAMONT, *FOREIGN STATE ENTERPRISE* (1979) and R. MAZZOLINI, *GOVERNMENT CONTROLLED ENTERPRISES: INTERNATIONAL STRATEGY AND POLICY DECISIONS* (1979).

and effectuate policies emphasizing the supply side of international business relations. Fiddling or tinkering with implementing regulations, which have their genesis in another age, cannot do. If legislation is to become more meaningful and if hard policy choices are to be made in meeting structural changes in international economic relations, cyclical industrial performance and industrial policy requirements concerning senescent and nascent industries, policies must be enacted by the Congress in the form of comprehensive legislative enactments. The Trade Agreements Act of 1979, implementing the MTN codes, the Export Administration Act of 1979 and the Trade Reorganization Plan of the same year, cannot be the end of international trade reform, but only the beginning of a continuous effort. Recent proposals for amending the Webb-Pomerene Act and providing for new and revitalized trading companies are only the beginnings.

Business needs encouragement, support and freedom from unnecessary regulatory disincentives, which are dysfunctional in the context of overriding national interests. Otherwise, it is impossible to meet successfully the ever-rising intervention and subvention of foreign governments in the world market place. Questions such as what is foreign intervention, what is unacceptable foreign government behavior and what is to be done raise very fundamental issues of economic and political values for private and public sector decisionmakers; these issues need to be fully confronted. Also to be fully confronted is the adversarial attitude of United States business towards its own government and other governments generally.⁶ The international economic pressures are in the direction of greater cooperation not conflict, and, perhaps, greater informality, in business-government relations in the United States.⁷

The International Law Institute of the Georgetown University Law Center has provided lawyers, economists and public policy analysts with an exceedingly well directed conference and pro-

⁶ Franko, *Multinationals: The End of U.S. Dominance*, 57 HARV. BUS. REV. 93, 99 (Nov.-Dec. 1978).

⁷ Vagts, *The United States and its Multinationals: Protection and Control*, 20 HARV. INT'L L. J. 235 (1979).

ceedings concerning both the underlying conceptual and policy problems and technical issues inherent in meeting *Le defi etrange* of imports to the United States. Just as the American multinational companies were perceived as challenging the international economic system in the 1950s and 1960s, when the storm and reach of multinationals seemed most ominous, it is now the challenge of foreign government-business cooperation, which emerged most clearly in the 1970s, that needs to be confronted. The 1980s will determine the full dimensions of the challenge and the U.S. response to it. National security today includes also the security in the enjoyment of our level of economic well-being. Political learning mandates that a strong economic base is fundamental to protecting security interests. The federal government needs to be mindful of this when structuring its relations with business and enacting legislation impacting on such relations.

The concluding chapter carefully and with insight accurately summarized the proceedings. The proceedings generally exhibit a high degree of technical precision that one has come to expect from this leading academic institute, which has been bridging the gap of foreign and United States trade law and public policies for over a generation. *Interface One* is a product of the collaboration of the federal government and a university research institute in addressing a contemporary public policy and legal issue incorporating foreign policy, industrial policy, business and economic issues. Such cooperation is needed more often, and, hopefully, this activity can be the model for objectively assessing all aspects of international trade in the future, as well as a model for future government-business relations in such trade.

23 MAR 1981

Legal - Fran JR

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March 18, 1981

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Mr. Richard Allen,
Asst. to the President for
National Security Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Allen:

Thank you very much for taking the time to write last March 10th in response to my article on imposed treaties and the Iranian Hostage Agreements.

I have been surprised about the very wide support the views I expressed, concerning the international illegality of the agreements, have received from many lawyers and foreign diplomats here in Washington. Support has come from the most unpredictable sources; from across the domestic and foreign political spectrum.

I have included with this letter some of my additional writings on imposed treaties and international law and politics. The enclosed article, "Impose a Treaty", treats the question of imposed treaties in the context of formulating American foreign policy in both the Arab-Israeli and Persian Gulf conflicts. Although written almost 1½ years ago, it still appears to be relevant.

Once again, thank you for your expression of interest.

With best regards,

Sincerely,

Stuart S. Malawer
STUART S. MALAWER

SSM/fk1

The Docket

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JANUARY 16, 1980

VOL. 5 NO. 2

By Dr. Stuart Malawer:

Impose A Treaty?

In the autumn of 1938 the Western democracies supported Nazi Germany in its actions to dictate and to impose the terms of the Munich Agreement on a small democratic nation. Leaders throughout the West forced the Czechoslovakian government to submit to the demands of one presenting what, at that time, was thought to be an invincible force, one which both Western and Communist nations were to meet on the battle field shortly thereafter. The Munich Agreement was favored by Roosevelt and signed by representatives from the United Kingdom, Germany and France, who viewed the agreement as lawful; and Czechoslovakia was allowed to accede to it

later. Although the terms of the Munich Agreement may have been, in fact, a viable solution to the problems at that time, the dictatorial procedures used precluded such a solution from ever being recognized as such.

As recently as the late 1950's, an august international body, the International Commission of Jurists, was hesitant in declaring a violation of customary international law when the People's Republic of China used military force, in 1951, to impose the "Seventeen Point Agreement" on Tibet. However, since then much has happened in the world of international law to preclude a similar finding today. By the time of the 1968 Soviet-Czechoslovakian

Treaty, most of the world's leaders denied the legality of imposed treaties and denounced the new Czechoslovakian treaty as illegal. The 1969 Vienna Convention of the Law of Treaties, open for signature that year, and the 1973 *Fisheries Case*, decided by the International Court of Justice, are two recent juridical developments proscribing the use of military force in treaty formation in general—but not in all situations.

Given the history of imposed treaties, recent international legal developments concerning them, and the recent history—or lack thereof—of negotiations concern-

(Continued on page 4)

Impose A Treaty On Mideast?

ing implementation of the 1976 Camp David Accords, the Carter Administration needs to consider the domestic and international political feasibility and legality of imposed treaties as a means of ending the deadly and world-threatening Arab-Israeli conflict.

The recent Egyptian-Israeli Agreements concluded at Camp David in 1978 and the subsequent protracted negotiations to implement them, the United States-Soviet Declaration of Principles Concerning a Geneva Conference on the Arab-Israeli conflict issued in October 1977, and the Senate's refusal to prohibit the Carter Administration's sale of fighter aircraft to Saudi Arabia evidence a new foreign policy. The policy in its basic terms is: The United States is willing to actively foster a Middle East negotiation process by the use of pressure, which involves the sale of military equipment, and to recommend principles governing the settlement of the conflict when the parties directly involved in the conflict are not able to negotiate an international agreement themselves.

At this point, one may not find it too objectionable when the United States' foreign policy in the Middle East is limited to merely fostering the negotiating process or making it more conducive to negotiations. However, when it becomes clear that such a limited role is not sufficient to foster a freely negotiated international agreement on substantive issues—as inevitably and historically it may not be—what will be the American foreign policy then? Will it be one of merely demanding the parties to negotiate, or one demanding their acceptance of substantive peace terms drafted by the Department of Defense and the National Security Council? Some precedent already exists

in Dulles' policy of coining the Israelis into the 1956 Sinai withdrawal.

And what happens if both parties do not consent to the demands. Will the United States attempt to dictate those terms by imposing a treaty including them? Terms deemed by the Administration, undoubtedly, to be just, equal, and in the best national interest of all parties. And how are those terms to be imposed. By the threat or use of military force utilizing American naval and ground forces? Should the threat of actual withholding of military weapons be considered valid? Should such an agreement be imposed unilaterally by the United States, or shall it include the Soviet Union, the other Powers, the General Assembly or the Security Council? Should it include military and economic guarantees, including the permanent stationing of American or other forces in the area?

While much thought has gone into assessing the substantive issues of the Middle East conflict, there does not seem to have been the same degree of thought concerning the means, the logical and realistic extension of the means only so recently hinted at, to be used in arriving at an international treaty which all parties would consider legitimate, as to the issues addressed, and valid, in terms of its means of conclusion. Such a course of action, a treaty imposed by the United States with the threat or use of military force, has already been openly suggested in many parts of the Arab world.

The United States has a range of strategic interests that need to be carefully assessed: access to a secure oil supply; stable oil prices and minimal exchange-rate fluctuations; a favorable international balance of payments and trade;

a favorably military posture in the Middle East; containment of Soviet expansionism in Africa, the Eastern Mediterranean, and Asia; protection and enhancement of the trade and investment of American multinationals; and a host of other concerns, including the support of a most viable Western democracy and reliable military ally, and the staying-power of existing moderate Arab governments in that coup-prone part of the world, which are governing non-Western, agrarian and authoritarian societies.

Israel's interests in its survival, military bases and economic trade, as well as the non-homogenous Arab world's interests, need to be reconciled for viable peace terms to be proffered. Needless to say, American interests themselves are often inconsistent; yet, these will need to be ordered and arrayed against the interests of the parties directly involved in the conflict and those of our allies and friends, and other countries worldwide.

The United States may find it necessary to impose a treaty, or be instrumental in doing so, on Israel, Jordan or Lebanon. Of course, sometime in the future it may also find it necessary to impose one on any one of several other Arab states in order to ensure the industrialized world access to Persian Gulf oil if another embargo is attempted, or if the Persian Gulf states fall into destructive dynastic warfare, internal or inter-nation, which most likely will have very little to do with the Arab-Israeli conflict. Recent developments in Iran only forecast what may be the Balkanization of the Persian Gulf states in the final two decades of the twentieth century.

The responsibility of an American administration for imposing a treaty in the Middle East, or

nothing less than gargantuan. The task would be monumental in terms of reconciling our own diverse national interests, survival and history in structuring the particular multivarious terms of a peace settlement. It would affect the deepest aspects of our national psyche and the Western World's conscience. The specific situation which will necessitate the imposition of a treaty, whatever it will be, may be the only event which will be more appalling than its remedy.

Imposing a peace treaty with the threat of economic and military force by a state not directly involved as a military antagonist, let alone an international organization, in order to prevent new military hostilities, does not have many historical analogues. The use of treaties to serve the purpose of managing conflict, that is, to prevent the outbreak of new military hostilities or to impose a solution in a juridical form on a region falling into international anarchy, which threatens the destruction of world society as it exists currently, is a use whose time has arrived or, perhaps, has returned.

In simplest terms, one may state that under various international circumstances a treaty may need to be imposed, and one may be lawfully imposed if done correctly. However, if history holds any lessons, treaties that are not freely consented to are abrogated as soon as the military position of the parties changes. Needless to say, whenever a treaty becomes too burdensome, most states will complain about it, but if such a treaty were lawfully concluded, than a pretext for its termination is removed; indeed, lawful formation, in and of itself, is a motivating factor in faithfully observing and enforcing a treaty. The proper procedural means of fostering

importance, one with which the Carter Administration has shown little indication of fully understanding. This problem should be addressed at this time and not when it is too late.

A decision to impose an international treaty and its imposition, which most likely would involve the use of military force, would be an event of significant historical proportions. Thus, such an American policy decision ought to be exceedingly well assessed and subject to a soul-searching debate. This debate ought not to be one confined to the recesses of the world's chanceries alone, but one openly and frankly held in the chambers of the Congress and involving an open discourse with the Administration. The debate would undoubtedly involve making policy decisions involving excruciating considerations. While neither the United States nor Israel favors an imposed settlement at this time, events move swiftly, and either or both of these democracies may deem it necessary. The moral, political, legal and military implications of such an action are enormous; concomitantly, so should the deliberations in the United States be carefully undertaken. Regardless of the Executive's broad authority to act unilaterally in foreign affairs, a national consensus in the United States is required. A strong Administration with the resolve of the American nation is necessary for this unique and historical undertaking.

STUART S. MALAWER, J.D.,
Ph.D.

Professor of Law

Dr. Malawer is the author of *Imposed Treaties and International Law* (1977) and *Studies in International Law* (1977), both published by Wm. S. Hein & Co.,

**IMPOSED TREATIES
AND
INTERNATIONAL LAW**

by
STUART S. MALAWER,
J.D., Ph.D., Dipl.

Foreword by
R. R. Baxter,
Harvard Law School



definition of aggression adopted by the General Assembly has its inherent ambiguities, papers over differences, and is, in the view of many important states, applicable only to the peace-keeping activities of the Security Council under the Charter. It is in any event a definition of aggression and not of the legality of the threat or use of force in international relations.

The area of doubt and controversy about imposed treaties has thus not been eliminated but merely transformed by new norms of international law. The question of what is an "imposed treaty" remains and must be subjected to continuing analysis by international lawyers. To that analysis this study by Professor Malawer is a most valuable contribution—throwing light, as it does, on the history of the doctrine of "imposed treaties," the dimensions of the problem, and possible solutions to it. It is difficult to disagree with his conclusion that "Political decisions are needed to clarify the legal status of the rule and to develop it further."

R. R. Baxter
*Manley Hudson Professor of Law,
 Harvard Law School*

Cambridge, Massachusetts

9 June 1977

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STUDIES IN
INTERNATIONAL
LAW

by
STUART S. MALAWER
J.D., Ph.D., Dipl.

Preface by
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