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WITHDRAWAL SHEET

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Collection Name EXECUTIVE SECRETARIAT, NSC: COUNTRY FILE

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File Folder IRAN (2/28/82) (3)

FOIA F03-002/5 SKINNER

Box Number 36

728

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
178806	CABLE	020010Z FEB 82	1	2/2/1982	B1
178807	CABLE	270030Z JAN 82	1	1/27/1982	B1
178808	CABLE	280015Z JAN 82	1	1/28/1982	B1
178809	MEMO	DAVIS ROBINSON MEMO TO THE FILES RE FEB. 2 MEETING WITH ASST. ATTORNEY GENERAL MCGRATH ON IRAN-U.S. CLAIMS TRIBUNAL	3	2/2/1982	B1

D 9/17/2013 CREST NLR-748-36-42-3-9

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]
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TAB I

UNCLASSIFIED

DEPARTMENT OF STATE

Memorandum of Conversation

Place: Deputy Under Secretary Clark's Office
DATE: September 2, 1981
3:30 p.m.

SUBJECT: Responsibilities of the Departments of State and Justice with Respect to International Adjudications

PARTICIPANTS: Department of State:
Deputy Secretary William P. Clark
D - Mr. Richard Morris, Executive Assistant
D - Mr. Michael Zacharia, White House Fellow
L - Mr. Davis Robinson, Legal Adviser
L - Mr. James H. Michel, Deputy Legal Adviser

Department of Justice:
Deputy Attorney General, Mr. Edward Schmults

Mr. Schmults explained that there was within the Department of Justice some unease regarding the handling within the U.S. Government of the Iran-United States Claims Tribunal in The Hague. He expressed his understanding that some in the Department of Justice felt that arbitration in this international forum would involve "litigation" within the statutory responsibility of the Attorney General and that, therefore, the United States Government should be represented before the Tribunal by the Department of Justice rather than the Department of State. Mr. Schmults indicated that those in Justice who held this view advocated making an issue of this jurisdictional point.

Mr. Schmults stated that he and Attorney General Smith had considered the matter at length. He said that their deliberations had included consideration of distinctions that might be made between representation of U.S. nationals before the Tribunal and representation of direct interests of the U.S. Government. They had also considered the procedure resorted to by Attorney General Civiletti in purporting to "authorize" the State Department's Legal Adviser in 1979 to appear before the International Court of Justice as special counsel on behalf of the Attorney General. The conclusion reached in these deliberations, he said, was that the Department of Justice should not seek to take

L:DRRobinson:L:JHMichel:edk
(Drafting Office and Officer)

FORM 2-65 DS-1254

over representation of the United States before the Claims Tribunal.

However, Mr. Schmults continued, he and the Attorney General wished to reserve the right to assert jurisdiction over any major claims against the United States arising in the course of the Tribunal's proceedings. He mentioned the possibility of an Iranian claim for return of the Shah's assets as an example of such a major claim. He emphasized that the Justice Department's current acquiescence in the present representation of the United States by the State Department should not be construed as a waiver of the Justice Department's right to assert a statutory responsibility to represent the United States in such major cases.

Mr. Morris inquired as to whether Mr. Schmults was reserving the position with regard to cases before the Tribunal or only to cases that might come before the courts of the United States or some foreign nation. Mr. Schmults replied that he recognized that a distinction in this regard had been made by the State Department and that he had read the lengthy materials submitted by the former Legal Adviser to the Office of Legal Counsel. He concluded, however, that the Justice Department was reserving the right to assert a statutory right for the Attorney General to represent the United States before the Claims Tribunal.

At this point, after asking the Deputy Secretary if he might respond to Mr. Schmults' remarks, Mr. Robinson expressed his understanding of the long standing historical practice that supported the distinction made by the Department of State between "litigation" before national courts in the United States and abroad and "adjudications" before international tribunals, such as the International Court of Justice and arbitral tribunals. He indicated that, to the best of his knowledge, the Department of State and not the Department of Justice had from the early days of our history, been responsible for the latter category of disputes with a single exception of the Civiletti experience which had occurred at the instruction of President Carter and to which Mr. Schmults had previously alluded. Mr. Robinson added his understanding that the Secretary of State normally appointed the "agents" of the United States before international tribunals. Mr. Schmults indicated his view that if the statute giving the Attorney General

responsibility for supervising litigation were applicable then appointment of agents by the Secretary of State would be inappropriate, although such appointments could be made by the President.

At this point, Mr. Schmults observed that perhaps we were getting into the merits of the issue, prompting Mr. Morris to suggest that since the matter was not being placed at issue now and, indeed, Mr. Schmults had agreed to a continuation to the present allocation of responsibilities for the time being, it might be better to defer this discussion.

Mr. Schmults concluded that the Justice Department wished to be of all possible assistance to the Department of State in this matter and also wanted the Deputy Secretary to know of its reservation concerning major cases. He indicated that a letter expressing that reservation would be forthcoming either from Mr. Schmults to Judge Clark or from Attorney General Smith to Secretary Haig.

The Deputy Secretary expressed appreciation for Mr. Schmults' frankness in explaining the Justice Department's position and his offer of assistance and cooperation. Mr. Robinson confirmed the strong desire of the Office of the Legal Adviser to work closely with the Department of Jistice on Iran claims and other matters and emphasized that Justice assistance was desired as well as needed and would be greatly appreciated.

Concurrence:
D - Mr. Morris

U.S. Department of Justice
Office of the Deputy Attorney General

8126393

The Deputy Attorney General

Washington, D.C. 20530

September 10, 1981

Honorable William P. Clark
Deputy Secretary of State
U.S. Department of State
Washington, D. C. 20520

Dear Bill:

This will confirm our conversation of September 2, 1981 concerning the arbitration of claims before the Iran-United States Claims Tribunal ("Tribunal").

Pursuant to the Technical Agreements executed on August 17, 1981, four disputes, concerning interest generated by funds in the Security Account, payment of the fees to the Depositary, indemnification of the Depositary and the source from which settlements will be paid, have been submitted to the Tribunal for arbitration. As we discussed, the Department of State will present the positions of the United States to the Tribunal in connection with these issues and will continue to consult with the Department of Justice in the preparation and presentation of written and oral submissions to the Tribunal regarding these issues. In this regard, we ask that the Department of Justice be kept fully informed, in advance whenever possible, of decisions and developments concerning these and any similar issues which may arise before the Tribunal, so that we may be of assistance to the Department of State.

The United States is responsible for presenting claims of less than $250,000 of nationals of the United States against Iran to the Tribunal (except where claimants chose to represent themselves), and we understand that the Department of State will undertake the responsibility to present those claims with, we trust, the same degree of consultation and communication with the Department of Justice noted above with respect to the more general issues.

As I mentioned to you during our conversation, the principal purpose of my visit to your office was to indicate that the handling of the issues mentioned above should not be regarded as a precedent for the representation of the United States in any claim by one government against the other. If claims are made before the Tribunal against the United States,

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or if it becomes necessary for the United States to assert claims against Iran in the Tribunal, the Attorney General will want to discuss the matter with Secretary Haig. In such event, we believe the Attorney General would be responsible under the laws of the United States for representing the interests of the United States in the defense of or assertion of any such claim. So that we can raise this issue with the Department of State in a timely fashion, we would appreciate it if your representatives who are engaged in the matters now before the Tribunal will let us know promptly if any such claim appears to be imminent.

We appreciate the fine work that your Legal Adviser's Office is and has been doing in the handling of these difficult and absorbing matters. We wish to be as helpful as possible during this process. Please feel free to call on us for any assistance that we might be capable of providing.

Sincerely,

Edward C. Schmults

S/S 8126393

THE DEPUTY SECRETARY OF STATE

WASHINGTON

October 12, 1981

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Copies to:
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Dear Ed:

Thank you for your letter of September 10, confirming our September 2 conversation with regard to the arbitration of claims before the Iran-United States Claims Tribunal.

I can assure you that we will keep the Department of Justice fully informed of developments in adjudications before this international tribunal. We appreciate your offer of assistance and look forward to close cooperation between our two departments throughout this process.

As you know, I do not agree with the view you expressed that the Attorney General would be responsible under the laws of the United States for representing the interests of the United States before the Tribunal in the case of subsequent claims either brought against the United States or asserted by us. In our view, the present arrangements for representation of the United States before the Iran-United States Claims Tribunal are in accord with the uniform practice that has been followed in international arbitrations to which the United States has been a party. This representational function falls within the responsibilities of the Secretary of State, by law and at the direction of the President, for the conduct of the nation's foreign affairs. As you may be aware, funds are made available to the Department of State by Congress for the express purpose of participating in binational arbitrations.

That said, let me assure you that we intend to proceed in a spirit of cooperation to seek to utilize the talents and resources of both the State and Justice Departments in the important task of representing the United States before the Claims Tribunal. I hope you will let me know

The Honorable
Edward C. Schmults,
Deputy Attorney General,
Department of Justice.

if at any time you believe the interests of the Department of Justice are not being given every proper consideration. Should any issue come before the Tribunal which the Attorney General might wish to discuss with Secretary Haig, we would be pleased to seek a satisfactory resolution of your concerns.

Sincerely,

William P. Clark

cc: WH: Mr. Edwin Meese, III

Clearances:
NEA - Mr. Veliotes NV
EUR - Mr. T.M.T. Niles TN

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Office of the Attorney General
Washington, D. C. 20530

December 11, 1981

Honorable Alexander M. Haig, Jr.
Department of State
Washington, D.C. 20520

Dear Al:

As you know, on November 18, 1981 the Ministry of National Defense of the Islamic Republic of Iran filed a claim for money damages against the United States in the Iran-United States Claims Tribunal ("Tribunal") seeking an award in excess of $10.8 billion. This claim arises from the foreign military sales relationship between the United States and Iran prior to November 1979. The United States may also seek to file claims against Iran in the Tribunal for substantial money damages on behalf of various agencies and Iran may file other large claims against the United States.

As previously communicated to Bill Clark, we recognize that the State Department is actively handling representation of the interests of United States' nationals with regard to certain claims and issues already before the Tribunal. These most recent developments in the Tribunal, however, present quite a different matter. The newly-asserted claims will require representation of the United States Government, both as defendant and claimant, in complex multibillion dollar litigation. This is precisely the sort of litigation handled regularly on behalf of the United States by the litigating Divisions of the Department of Justice.

I know you will agree that we must vigorously protect the interests of the United States in this litigation, especially in view of its potential budgetary impact, by assembling the best combination of legal experience and resources available to the Government. I believe this objective can be best accomplished by the Department of Justice assuming primary litigation responsibility for representation of the United States in these new matters before the Tribunal, including affirmative and defensive claims, while working closely with your Legal Adviser's office. Department of Justice attorneys would, under my direction, have responsibility for preparing all filings for submission to the Tribunal in connection with these claims and for presenting the views of the United States to the Tribunal at all hearings on these claims. I have designated J. Paul McGrath, Assistant Attorney General for the Civil Division, to be responsible for the Department's activity in these matters.

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The foregoing allocation of the actual litigation responsibilities in this matter is not only appropriate, but is also incumbent upon the Department of Justice in view of our representational obligations under the laws of the United States.

I recognize that proceedings before the Tribunal will inevitably call into question vital foreign policy considerations which are of great importance to the State Department. For this reason, we would expect to work as closely as possible with your legal staff to assure at all times that the views expressed by Department of Justice attorneys in these matters fully reflected the foreign policy interests of the United States. The successful conduct of these important proceedings requires a continuation of the close and effective working relationship between our two Departments that has characterized previous efforts in this area. To that end, I have asked Assistant Attorney General McGrath to arrange an early meeting with those members of your legal staff whom you designate in order to begin the process of coordinating the representation of the United States in these matters.

I believe that the litigation expertise of Department of Justice attorneys, combined with the legal and policy insights of your staff, will lead to a successful conclusion of these important cases, the goal our two Departments share in this endeavor. If you have any questions or concerns, I would be pleased to meet with you to discuss them.

Sincerely,

Bill

William French Smith
Attorney General

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THE SECRETARY OF STATE

WASHINGTON

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December 28, 1981

Dear Bill:

I have received your letter of December 11, recommending that the Department of State transfer to your Department primary responsibility for representing the United States in certain matters in the international arbitration before the Iran-United States Claims Tribunal at The Hague. While I agree wholeheartedly that we must work together vigorously to protect the interests of the United States in the proceedings before the Tribunal, I cannot agree that this would best be accomplished by transferring responsibility for these matters to the Department of Justice.

As you know, the State Department, in coordination with other interested agencies (including the Justice Department), is supervising the representation of the United States in the entire range of issues before the Tribunal: the official claims mentioned in your letter; the smaller claims of U.S. nationals for which the U.S. Government has responsibility; the adaptation of the UNCITRAL rules of procedure to govern the Tribunal's handling of cases; the creation of administrative arrangements for the Tribunal (including funding, which is provided through the State Department); the negotiation of agreements concerning the status, privileges and immunities of the Tribunal and its personnel and the status of its actions under Dutch law; and questions of interpretation of the Algerian Declarations. Members of this Department are also currently engaged in important, sensitive negotiations with Iran on a variety of these issues, and are exploring the possibility of settlements of many issues between the two governments outside the Tribunal process.

Representation of the United States before the Tribunal will require a combination of diplomacy and legal advocacy in which positions will be taken on issues under negotiation or in arbitration on the basis of both foreign policy and legal considerations. Issues affecting official claims often affect claims of U.S. nationals; issues in arbitration will affect ongoing negotiations between the concerned governments.

The Honorable
William French Smith,
Attorney General.

ATS

The interrelated functions to be performed, in my view, fall squarely within the responsibilities of the Secretary of State, by law and at the direction of the President, for the conduct of foreign affairs. This is in accord with the uniform practice that has been followed in previous international arbitrations and other international legal proceedings to which the United States has been a party. Such proceedings have not been regarded as falling within the Attorney General's responsibilities concerning litigation.

In this context, it would seem that the best use of the talents of the Justice Department would not be achieved through a separate program near the end of the claims filing period. (Official claims against Iran will have to be in final form for translation and shipment to The Hague in less than two weeks.) Rather, I hope you would agree that it would be more productive to work within the existing procedures, which draw upon the skills of the Justice Department and other concerned agencies in seeking to promote our foreign policy and other national interests throughout this arbitral process.

We would welcome the identification of further ways in which the maximum benefit of the Justice Department's litigation expertise can be adapted and applied to this international arbitral process. I have asked Bill Clark to arrange a meeting with you to ensure that your interests and concerns are met within this framework.

Sincerely,

Alexander M. Haig, Jr.

Bill - We both can be manipulated on such issues - Be assured this is a matter of substance & contemporaneous significance to me

Have a good holiday.

N

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17

Office of the Attorney General
Washington, D. C. 20530

January 18, 1982

Honorable Alexander M. Haig, Jr.
Secretary of State
Department of State
Washington, D.C. 20520

Dear Al:

Thank you for your letter of December 28, 1981, concerning the responsibility for defending the claim for $10.8 billion brought by the Islamic Republic of Iran against the United States in the Iran-United States Claims Tribunal ("Tribunal"). I am afraid your letter indicates a fundamental misunderstanding of my position on this matter. This will make that position clear.

Under 28 U.S.C. §516 "[e]xcept as otherwise authorized by law, the conduct of litigation in which the United States . . . is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General." Similarly, 28 U.S.C. §519 provides: "[e]xcept as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States . . . is a party. . . ." */ In this matter no exception has been authorized.

The immense monetary claim by Iran against the United States is litigation to which the United States is a party, and there is no provision in law which would suggest a contrary interpretation simply because the two governments have agreed that they would bring any claims against each other in a Tribunal which is sitting outside of the United States. The fact that a foreign sovereign is a party to the litigation is not material. In fact, the Attorney General represented the United States before the International Court of Justice in 1980 in the case of United States v. Iran and the Solicitor General represented the United States in the litigation in the Supreme Court in Dames & Moore v. Reagan last summer in which the government of Iran was a party.

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*/ Additionally, 5 U.S.C. §3106 provides that "[e]xcept as otherwise authorized by law, the head of an Executive department . . . may not employ an attorney or counsel for the conduct of litigation in which the United States . . . is a party . . . but shall refer the matter to the Department of Justice."

In addition, it is clear that the United States would best be served by having Department of Justice lawyers handle this matter. The defense of this claim and the handling of other such claims require extensive litigation resources and the greatest litigation skills and experience. Such expertise is required not only because a great deal of money is involved, but also because the principal work that must be done requires litigation skills, including the gathering and compiling of complex facts, coordinating the development of arguments that will best support our position, preparation of evidence and exhibits and the actual presentation of the case orally and in writing to the Tribunal, including the examination and cross-examination of witnesses. This is the very essence of the business of the Department of Justice. By the very nature of our operation here we have a number of lawyers with strong skills of the types required, many of whom handled the massive amount of recent litigation involving Iran. Naturally, the Department of State's business is not litigation and the lawyers at State generally are not litigators and do not litigate. Moreover, they are currently overburdened with the extensive matters they are already handling before the Tribunal.

Let me assure you that the diplomatic concerns of your Department will be honored fully during the conduct of the defense of the Iranian claims. These are considerations that permeate much of the litigation matters that we handle. The character of the process is not significantly affected by the fact that foreign policy aspects may be involved. We are of course most sensitive to those aspects.

Since there is limited time to prepare the defense of these claims, it is imperative that we sit down promptly to discuss details of the process including the steps which may be necessary to assure full cooperation between our two Departments. Accordingly, I will be contacting you to arrange a meeting as soon as possible to discuss this matter.

Sincerely,

Bill

William French Smith
Attorney General

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TAB O

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THE SECRETARY OF STATE

WASHINGTON

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January 29, 1982

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Dear Bill:

Your letter of January 18 addresses once again the issue of which of us should be responsible for representation of the United States in international arbitration before the Iran-United States Claims Tribunal. You suggest in your letter that proceedings before international tribunals in which the United States is a party should be regarded as "litigation" within the meaning of statutes, giving the Attorney General authority for supervising "litigation." However, as my letter to you of December 28 indicated, it is my view that the functions involved in representing the United States before the Tribunal fall squarely within the responsibilities of the Secretary of State, by law and at the direction of the President, for the conduct of foreign affairs.

It is my understanding that the statutes to which you refer make no mention of disputes with other countries which the United States seeks to resolve before international tribunals, and that these statutes are codifications of earlier laws which expressly refer only to proceedings in the courts of the United States. I further understand that the legislative history of these statutes gives no indication that Congress intended to extend the Attorney General's supervisory authority to matters brought before international tribunals, which have historically been under the direction of the Secretary of State.*

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* With respect to proceedings in the local courts of foreign countries, this Department agreed many years ago to be represented by the Department of Justice, in the interests of efficiency and consistency, despite our long-standing independent statutory authority to retain local counsel for that purpose (presently found at 22 U.S.C. 2698).

The Honorable
William French Smith,
The Attorney General

As you know, by long tradition, the President has designated those who are to represent the United States before international tribunals, or, more frequently, has left their designation to the Secretary of State as part of his delegated responsibility for the conduct of foreign affairs. Over the years, successive Secretaries of State have appointed and instructed agents and counsel in hundreds of arbitrations and other international adjudications in which the United States has been a party. Congress has routinely appropriated funds to the Department of State for this purpose and recent appropriation acts have expressly provided that funds appropriated to this Department "shall be available for expenses of binational arbitrations arising under treaties or other international agreements. . . ."

Given this background, it seems clear that the statutes dealing with your responsibility for the supervision of "litigation" do not impair or curtail the authority of the President under the Constitution for the conduct of the Nation's foreign affairs, including the authority to decide who will represent the United States in the resolution of disputes with foreign governments by arbitration or otherwise. Your letter does not suggest anything to the contrary.*

It seems evident that the same considerations of efficiency and consistency which make it appropriate for the Attorney General to supervise litigation in domestic courts also make it imperative that the Secretary of State retain control over international disputes which the United States agrees to submit to arbitral and other international tribunals.

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* The designation by President Carter of Attorney General Civiletti to make an appearance at the initial hearing by the International Court of Justice in the Iran Hostages case is an example of Presidential authority in this regard. The Attorney General, whose presence was deemed by President Carter to give greater public prominence to the proceedings, was dispatched to The Hague just before the hearing began. There, he read to the Court several pages from the argument which had been prepared by the State Department's Legal Adviser, who then completed the presentation and conducted all further representation of the United States until the case was decided pursuant to his designation as U.S. agent by the Secretary of State.

Just as the United States should speak to domestic courts with a single voice, we should not divide responsibility for dealing with foreign governments in seeking the peaceful resolution of international disputes. This seems particularly important in dealing with claims before the Tribunal. As I pointed out in my letter of December 28, the same issues will arise in a multitude of settings -- in arbitration and in negotiation, in official claims and in private claims. It seems clear that a division of responsibility would confuse the Tribunal, disadvantage U.S. claimants, involve continual interagency disputes, and jeopardize the national interest.

With respect to skills and resources, the magnitude of this process obviously is straining our capabilities as it would yours. We would hope that we could call for assistance from your excellent staff whose outstanding abilities have already been demonstrated in the initial stages of the proceedings. However, the legal issues involved are primarily questions of international law and practice in which the necessary expertise lies in the Department of State.

It is vitally important that we dispose of this matter so that we can effectively deal with the many important issues that confront the United States in this arbitral tribunal. As previously indicated, I will continue to exercise my authority as delegated by the President and as long established by history, precedent and the law, to represent the United States before international tribunals. I will of course count on the continued support of the many resources of your great Department. I would hope that we can work together on that basis, as has historically been the case between our two departments.

Sincerely,

Alexander M. Haig, Jr.

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Title: Dept of Justice TAB 28

II

97TH CONGRESS
1ST SESSION

H. R. 4169

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10 (legislative day, SEPTEMBER 9), 1981
Read twice and referred to the Committee on Appropriations

AN ACT

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1982, and for other purposes, namely:

GENERAL PROVISIONS—DEPARTMENT OF STATE

None of the funds appropriated in this title shall be used (1) to pay the United States contribution to any international organization which engages in the direct or indirect promotion of the principle or doctrine of one world government or one world citizenship; (2) for the promotion, direct or indirect, of the principle or doctrine of one world government or one world citizenship.

~~Funds appropriated under this title shall be available for expenses of binational arbitrations arising under treaties of other international agreements, including international air transport agreements, and arbitrations arising under contracts authorized by law for the performance of services or acquisition of property abroad.~~

Funds appropriated under this title shall be available, except as otherwise provided, for salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980, (94 Stat. 2071; 22 U.S.C. 3901-4159); allowances and differentials as authorized by subchapter III of chapter 59 of 5 U.S.C.; services as authorized by 5 U.S.C. 3109; expenses as authorized by section 2(a), (c) and (e) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669); and hire of passenger or freight transportation.

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THE UNIVERSITY OF GEORGIA

SCHOOL OF LAW

ATHENS, GEORGIA 30602

January 22, 1982

Secretary Alexander M. Haig
Department of State
Washington, D. C. 20520

Dear Secretary Haig:

It has come to my attention that the Attorney General has raised a question about the conduct, on the part of the United States, of a case before an international tribunal sitting at The Hague.

The question is not a procedural one. It is not minor. It is of fundamental importance in the orderly and effective conduct of international relations.

The conduct of cases before international tribunals in which the United States is a party forms part of a larger continuum in which the national government is involved as it conducts relations with other governments and international institutions. The decisions whether and how to submit a disputed issue or issues to international arbitration or adjudication -- whether by the International Court of Justice or an ad hoc tribunal -- are decisions on matters of foreign policy, inevitably intertwined with many other foreign policy considerations. The same is true with the conduct of a case once it is before a tribunal and the questions whether and how settlement might be sought before termination of the case through an arbitral award or other adjudication. Again, the questions of how to give effect to an international tribunal's decision and whether and how adjustments ought later to be made between the governments concerned form part of the continuum that is the conduct of this country's international relations. In my view, it is essential that the Secretary of State, acting under the President's direction in the latter's discharge of his Constitutional responsibilities, exercise authority with respect to the entire continuum of the conduct of this country's international relations, including cases before international tribunals. The history and practice of the United States have regularly followed this pattern since the beginning of the Republic. Only disarray and mischief would result from dividing the traditional authority of the Secretary of State.

With personal best wishes,

Sincerely,

Dean Rusk

Dean Rusk

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Tab 2

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21 IRONMONGER LANE, LONDON EC2V 8JB

February 4, 1982

The Honorable
Davis R. Robinson,
The Legal Adviser,
The Department of State,
Washington, D.C. 20520

Dear Davis:

As a former Legal Adviser of the Department of State (1969-1972) and presently the Chairman and Senior Partner of a major international law firm (Sullivan & Cromwell), I believe strongly it would be contrary to the national interest for the representation of the United States before international tribunals to be transferred from the Department of State to the Department of Justice.

While I would certainly not oppose (and would in fact welcome) the Department of State seeking the assistance of the Department of Justice in representing the United States I feel that it is critical that the Secretary of State should retain control over international disputes which the United States submits to the World Court or other international arbitral tribunals. The settlement of international disputes has long been one of the principal responsibilities of the Secretary of State and to separate responsibility for the negotiation and settlement of disputes through diplomatic channels, whether bilateral or multilateral, and for their resolution by arbitration or international judicial settlement would lead to a dispersion of control which would not produce the best results for the United States. It might also I fear lead to reluctance on the part of the State Department to submit disputes to settlement before international tribunals and thus be contrary to the national interest in resolving appropriate international disputes in international forums on the basis of international law.

I think it is also important to recognize that the function of the International Court of Justice in the case

of disputes submitted to it for settlement is to decide such disputes in accordance with international law (Art. 38 of the Court Statutes) rather than the domestic law of one of the states and in doing so to follow the procedures set forth in the Statutes of the Court and its Rules (last revised April 14, 1978). Similarly, in most international arbitrations in which the United States is a party the basic law to be applied will be public international law and the procedures as provided in some international rules such as the UNCITRAL Rules or an ad hoc international agreement between the parties submitting the dispute to arbitration. In both cases I do not feel that the Civil Division of the Department of Justice has lawyers with the experience comparable to the Office of the Legal Adviser of the Department of State and the advisers from the international legal community which the Legal Adviser would use in such proceedings.

I think it would be very much contrary to the United States' interest to assume that the procedures and techniques which are most successful in litigation in a U.S. court under the Federal Rules of Procedures would be equally successful before an international court or international arbitral tribunal. To the contrary, insistence on exhaustive discovery and any technical points of evidence might well have an adverse effect on the World Court or an arbitral tribunal composed in large part of foreign nationals.

Moreover, just as in the case of conduct of litigation before a United States tribunal, it is important to know the views and personalities of particular judges, so it is in the case of disputes submitted to the International Court of Justice or international tribunals. Yet I doubt seriously whether any of the lawyers in the Justice Department's Civil Division know any of the Judges on the International Court of Justice. This to be contrasted with the members and former members of the Office of the Legal Adviser of the United States who are well known in the international legal community. For example, in the case of the United States, the United States Judges on the International Court in recent times have been Green H. Hackworth, for a long time The Legal Adviser of the Department of State; Philip Jessup, Professor of International Law at Columbia University Law School and Ambassador representing the United States in the United Nations; Hardy Dillard, Dean and Professor of international law at the University of Virginia Law School, former President of the American

Society of International Law and adviser to a number of Legal Advisers; Richard Baxter, Professor of International Law at Harvard Law School, Counsellor to the Legal Adviser during the first year of my first term of office as well as a member of the United States Law of the Sea Delegation; and the present United States Judge, Stephen Schwebel, a former Deputy Assistant Secretary of State and Deputy Legal Adviser as well as representative of the United States before the World Court.

I might also point out that the membership of the Institut du Droit International (the most prestigious international law academy consisting of some 125 members elected by the members) includes ten of the fifteen judges of the International Court of Justice as well as five former Judges. The United States members of the Institut include no member or former member of the Department of Justice but do include Ambassador Jessup, Stephen Schwebel, the present United States Judge and former Deputy Legal Adviser, myself, Professor Myers McDougal, a frequent adviser of the Office of the Legal Adviser, Professor Willis Reese, who has worked with the Office of the Legal Adviser in the negotiation of private international law conventions and served on the U.S. Delegation to The Hague Conferences on Private International Law as well as Professor Briggs, who worked closely with the Office of the Legal Adviser while representing the United States on the International Law Commission.

I might also point out that to my knowledge no member of the Department of Justice has had experience in arbitrations before the Court of Arbitration of the International Chamber of Commerce of which I am presently the Vice Chairman and before which former Deputy Legal Adviser Carl Salans is one of the most active counsel.

Insofar as the United States is concerned one of the founders and first President of the American Society of International Law, was Secretary of State Elihu Root while other presidents have included Secretary of State Charles Evans Hughes, former Legal Adviser Charles Cheney Hyde, former Legal Adviser Green Hackworth, as well as myself, Ambassador Dean, Undersecretary of State William D. Rogers and at the present time former Legal Adviser Monroe Leigh. Judge Stephen Schwebel was for a number of years the Executive Vice President and Director of the American Society of International Law.

In conclusion, I want to make it clear that as a former Legal Adviser and concerned citizen, I do think it most important that the Office of the Legal Adviser work on a cooperative basis with the Department of Justice and rely most particularly on the Department of Justice for the supervision and conduct of litigation involving international matters in United States courts. However, in the case of the representation of the United States before the World Court and international tribunals, I think it would be a great disservice to the United States to overturn the long tradition whereby the Secretary of State and the Office of the Legal Adviser and their appointees have represented the United States before international tribunals. I think that this move would not be in the best interest of effectively representing the United States before these tribunals and would be regarded by the international law community both in the United States and in the world generally, as a very definite step backward and as illustrating a lack of understanding and appreciation of the role and skill of United States international lawyers (many of whom I might point out have been active and loyal Republicans).

Sincerely,

John Stevenson

John R. Stevenson

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178809	MEMO DAVIS ROBINSON MEMO TO THE FILES RE FEB. 2 MEETING WITH ASST. ATTORNEY GENERAL MCGRATH ON IRAN-U.S. CLAIMS TRIBUNAL	3	2/2/1982	B1

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

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National Securi Council
The White House

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82 FEB 23 P5:06

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Jacque Hill	3	✓	
Judge Clark	4	✓	I
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Staff Secretary	5		A
Sit Room			

4

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Other

COMMENTS

Cross reference is NSC # 910

Please send Copy to Dick Morris.

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Office of the Attorney General
Washington, D. C. 20530

82 FEB 23 P5:06

February 23, 1982

Honorable Edwin Meese, III
Counsellor to the President
The White House
Washington, D.C. 20500

Re: Representation of the United States before the Iran-United States Claims Tribunal

Dear Ed:

I have your Memorandum of February 19, 1982, which refers to a disagreement between the Attorney General and the Secretary of State.

Unfortunately this Memorandum totally misstates the basis of the disagreement it purports to resolve--if in fact there is one. I have never objected to the Secretary of State's designation of the agent to represent the United States before this Tribunal. Nor has our discussion extended to the fundamental question of responsibility for representing the United States "before any international tribunal on any issue."

A more serious error in the Memorandum is its representation that my positions and arguments and the relevant facts in this matter have been considered by the President. They obviously have not been. I was wholly unaware that the matter had been referred to the White House, even though I had personally been discussing it with Secretary Haig for some time. Nor did the White House contact the Department of Justice in any manner prior to the issuance of this Memorandum. Accordingly, the manner in which this issue apparently was presented to the President is completely unacceptable to me.

For more than two years the Department of Justice and the Department of State have worked in close cooperation on the numerous troublesome issues that arose out of the Iranian hostage crisis and its resolution. This relationship has been almost totally free of dispute or disagreement. On the rare occasions when disagreement arose, we worked them out in a straight-forward manner.

The question of responsibility for litigating claims against the United States before the Tribunal has been the subject of correspondence and discussion between Secretary Haig and me. I have made clear my complete agreement that the Secretary of State is responsible for the conduct of foreign policy and that the bulk of the matters being dealt with by the Tribunal were within his authority. This includes the designation of the agent to represent the United States before the Tribunal.

However, it is my opinion that the litigation of claims against the United States is a statutory responsibility of the Attorney General, and that this responsibility is not limited to domestic courts. I also believe that the interests of the United States would best be served by having Department of Justice lawyers handle the $10 billion claim asserted by Iran before the Tribunal. The competence and vigor with which this complex claim is defended will have a substantial effect on our Government's ultimate financial liability. The Department of Justice has the best litigation resources and expertise for developing and presenting our case in this matter.

At a meeting with Secretary Haig earlier this month I thought we had agreed to an arrangement for Justice to manage the day to day litigation of these claims, subject to guidance from State as to all foreign policy matters. At a subsequent meeting between our representatives, however, the State Department's Legal Adviser insisted that he would manage the litigation. Thereafter in a telephone conversation with Secretary Haig I asked if it would be productive to meet again to attempt to resolve this misunderstanding. He suggested that I send a letter and he would advise whether a meeting would be desirable. My letter to Secretary Haig of February 16 reiterated that we should either meet again or that the Department of Justice would disclaim responsibility for litigation of the claims in question.

That was the posture when I received your February 19 Memorandum. At no time did Secretary Haig indicate that the matter had been referred to the White House. Indeed, with my letter - in the absence of an additional meeting - the issue would seem to have been settled.

In view of this history, I find it incredible that the decisions reflected in your Memorandum could be made without any contact whatever with the Department of Justice, and

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that your Memorandum would incorrectly represent that all relevant facts, positions and arguments urged by the Attorney General had been considered. The Memorandum is unnecessary because the particular dispute in question had already been resolved between Secretary Haig and me. Moreover, it attempts to resolve a broader issue without any of the consideration or deliberation required to support such an action. The fundamental issue of responsibility for representing the United States before international tribunals raises difficult legal issues involving the statutory authority of the Attorney General, 28 U.S.C. §§516-519, which have not been addressed outside the context of the Iran-United States Claims Tribunal.

The Memorandum should be withdrawn. I must say that I find no explanation or justification for the manner in which this matter has been handled.

Sincerely,

Bill

William French Smith
Attorney General

cc: Alexander M. Haig, Jr.
Secretary of State

Donald T. Regan
Secretary of the Treasury

Caspar W. Weinberger
Secretary of Defense

William P. Clark
Assistant to the President for
National Security Affairs

Craig L. Fuller
Assistant to the President
for Cabinet Affairs

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TO CLARK FROM SMITH, W DOCDATE 23 FEB 82

KEYWORDS: IRAN LEGAL ISSUES

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SUBJECT: SMITH RESPONSE TO MEESE MEMO OF FEB 19 RE REPRESENTATION OF US BEFORE IRAN - US CLAIMS TRIBUNAL

ACTION: PREPARE MEMO FOR CLARK ** DUE: 25 FEB 82 STATUS S FILES

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