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File Folder IRAN I (03/01/1987-03/31/1987)

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21

ID Doc Type	Document Description	No of Pages	Doc Date	Restrictions
52335 MEMO	DRAFT - ROBERT OAKLEY, D. BARRY KELLY, PAUL STEVENS TO FRANK CARLUCCI, RE: REIMBURSEMENT OF IRAN: STATE OF PLAY AT HAGUE TRIBUNAL, EDITED	3	3/10/1987	B1
52336 MEMO	ROBERT OAKLEY TO FRANK CARLUCCI, RE: REIMBURSEMENT TO IRAN	2	1/13/1987	B1
52337 MEMO	ROBERT OAKLEY TO FRANK CARLUCCI, RE: UPDATE ON IRANIAN CLAIMS TRIBUNAL	1	1/16/1987	B1
52338 MEMO	COPY OF # 52336 WITH LONG ANNOTATION	2	1/13/1987	B1
52339 CABLE	#042049Z MAR 87	3	3/4/1987	B1
52340 CABLE	#072354Z MAR 87	2	3/7/1987	B1

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THE WHITE HOUSE
WASHINGTON

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Lynn Pascoe -

Please cable for OOB NIACT Immediate
attention to the President of the Iran
US Claims Tribunal care of the Embassy
in the Hague.

Bob Pearson

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Rec'd in 5/5 - I
on 1/13 at
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January __, 1987

Professor Karl-Heinz Bockstiegel
President, Iran-United States Claims Tribunal
Parkweg 13
The Hague

Dear Mr. President:

As you are aware, representatives of the Federal Reserve Bank of New York ("New York Fed") and Bank Markazi Iran have held a series of meetings pursuant to the Tribunal's Interlocutory Award of August 20, 1986 in Case No. A/15 (I-G). The purpose of these meetings has been, as directed by that Award, to resolve the technical issues involved in the transfer to Iran of certain Iranian funds currently held by the New York Fed. The United States has every intention of continuing those meetings, with the objective of reaching agreement on the outstanding technical issues, and of implementing in good faith the Tribunal's Interlocutory Award.

During the course of these discussions, officials of the Government of Iran not directly involved in the discussions have made a series of statements suggesting that the return of these Iranian funds to Iran is a precondition to the release of American hostages in Lebanon. These statements have made it unacceptable to the U.S. Government to complete the transfer of the funds in question without further action by the Tribunal to make clear that no linkage exists between compliance with the Tribunal's orders and the detention of innocent hostages contrary to international law.

The American people cannot be placed in a position where their Government's compliance with Tribunal orders will appear to be acquiescence to extortion and terrorism. The United States is not willing to pay any sum for the release of hostages, or to surrender any of its rights and privileges under the Algiers Accords, in exchange for the exercise by Iran of its influence in obtaining the release of hostages. Indeed, the United States is not prepared even to appear to have done so.

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It is contrary to international law for any State to take hostages or assist others in doing so, and States may not withhold reasonable steps to promote the release of hostages for the purpose of extracting political concessions. If Iran has any means of using its influence to bring about the release of American hostages, it should do so at once, without demanding as a precondition any steps by the U.S. Government concerning matters before the Tribunal.

The Algiers Accords expressly require that Iran and the United States resolve their differences under the Accords through arbitration based on "respect for law." The Tribunal must not allow this principle to be undermined by implications that implementation of any of the Tribunal's awards is connected in any way to acts which are blatant violations of international law.

For these reasons, the United States respectfully requests that the Tribunal take action, based on its continuing jurisdiction over Case No. A/15 (I-G) and its jurisdiction to consider questions of interpretation or performance of the relevant parts of the Algiers Accords, to remedy this situation. Specifically, the United States requests the Tribunal to make clear that implementation of the A/15 (I-G) Award (and all other Tribunal decisions) is not to be linked to the unlawful taking and detention of hostages; to order Iran to clarify for the record its understanding and position on this issue; and to direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient funds are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal. These funds are, as we have said repeatedly, Iranian property; but we will not surrender them in a context that makes our obedience to Tribunal orders appear to be a form of acquiescence to improper extrajudicial Iranian demands.

The U.S. request is attached.

Respectfully submitted,

John R. Crook
Agent of the United States

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BEFORE THE
IRAN-UNITED STATES CLAIMS TRIBUNAL
The Hague
The Netherlands

The Islamic Republic of Iran,)	
)	
Claimant,)	
)	Case No. A/15 (I-G)
v.)	Full Tribunal
)	
The United States of America,)	
)	
Respondent.)	

REQUEST OF THE UNITED STATES

The United States respectfully requests the Iran-United States Claims Tribunal to take action, based on its continuing jurisdiction over Case No. A/15 (I-G) and its jurisdiction to consider questions of interpretation and performance of the relevant parts of the Algiers Accords, to remedy the unacceptable situation created by recent statements of high-level officials of the Islamic Republic of Iran linking the conduct of the United States in this and other matters pending before the Tribunal with the fate of American citizens unlawfully seized and held as hostages in Lebanon.

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At the outset of this application, the United States wants to make clear its commitment to comply with the decisions of this Tribunal, including in particular its Interlocutory Award in Case No. A/15 (I-G) of August 20, 1986. That Award directed the two Parties to negotiate in good faith with a view to arrive at an agreement on: (i) the determination of the claims pending against Dollar Account No. 1 and of the amount that should consequently be kept in this account in order to pay such claims; (ii) the amount of the funds presently held in Dollar Account No. 1 that is not needed to pay the remaining claims pending against this Account; and (iii) the terms of a reconciliation of accounts leading to a release and discharge of the United States in the administration of Dollar Account No. 1. The Award provided that, should the Parties be unable to arrive at such an agreement in the four months following the issuance of the Award, they may apply to the Tribunal, individually or jointly, to resolve the remaining difficulties.

The United States and Iran have held three sets of meetings, since the handing down of this Award, covering the full range of issues specified by the Tribunal. For its part, the United States has provided Iran with a complete set of documents needed to complete these discussions. The New York Fed has provided complete documentation of all credits and debits to the Account, along with detailed explanations of investment practices. Substantial progress has been made

exists. Accordingly, we request that the Tribunal make clear that implementation of the A/15 (I-G) Award (and all other Tribunal decisions) is not to be linked to the unlawful taking and continued detention of hostages, and order Iran to clarify for the record its understanding and position on this issue.

For the same reasons, the United States also requests the Tribunal to direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient amounts are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal. The United States will see to it that the funds so transferred are made subject to the Tribunal's order. But the United States believes, for the reasons explained below, that the Tribunal should order the transfer of these funds to Iran only after it has fully considered the matters raised by the United States, has obtained an Iranian response, and is satisfied that such transfer is warranted. Finally, the Tribunal should take other appropriate steps to deal with these improper statements by high-level Iranian officials.

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I. THE TRIBUNAL HAS THE AUTHORITY AND DUTY TO CONSIDER THIS APPLICATION.

The present request of the United States arises out of efforts to implement the Tribunal's Interlocutory Award in Case No. A/15 (I-G), issued August 20, 1986. That Award directed the two Parties to negotiate in good faith with a view to arriving at an agreement on certain technical issues, for the ultimate purpose of effecting the transfer to Iran of funds remaining in Dollar Account No. 1 after sufficient amounts were reserved for legitimate outstanding claims. The Award provided that either Party might apply at a later date to the Tribunal for the resolution of any difficulties which could not be resolved by negotiation. The Tribunal's continuing jurisdiction over the implementation of this Award is further evidenced by the fact that it was an "Interlocutory" rather than a "Final" award in recognition that the obligation of the United States to transfer these funds rested on certain contingencies, including not only the resolution of technical issues but also compliance by Iran with its obligations under the Accords.* Accordingly, the Tribunal has the authority and duty to consider any matters relating to the manner of the transfer of the funds in question which cannot be resolved by agreement between the Parties.

*Interlocutory Award at 31; see also Concurring Opinion of Judge Bahrami at 3-4; Concurring Opinion of Judge Mostafavi at 2.

The United States believes that the two Parties can resolve expeditiously by negotiation the question of the amount which should be kept in the Account to pay outstanding claims, the remaining amount to be transferred, and the terms of the necessary release and discharge of the United States in the administration of the Account; accordingly, the United States does not request that the Tribunal attempt at this time to resolve these matters. However, for the reasons described below, the United States believes that statements by high-level officials of the Iranian Government have made it unacceptable and improper for the United States to transfer the remaining funds without further action by the Tribunal. The Tribunal has the authority and duty in such a situation to direct the manner of transfer and to grant other relief necessary to ensure that such transfer occurs under conditions that are consistent with the letter and purpose of the Algiers Accords. Indeed, the Tribunal's decision in this case was expressly premised on Iran's performance of its own obligations.

Further, the Tribunal has jurisdiction under paragraph 17 of the General Declaration and Articles II(3) and VI(4) of the Claims Settlement Declaration over any question of interpretation of performance of any provision of the General Declaration, and of interpretation or application of the Claims Settlement Declaration. Accordingly, the Tribunal has the authority and duty to consider the contentions of the United States, as described below, that the Iranian actions in question are inconsistent with the letter and purpose of the

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II. REQUIRING THE UNITED STATES TO TRANSFER THESE FUNDS WOULD NOT, WITHOUT REMEDIAL ACTION BY THE TRIBUNAL, BE PROPER OR CONSISTENT WITH THE ACCORDS AND THE TRIBUNAL'S AWARD.

This Tribunal is well aware of the circumstances that led to the Algiers Accords, and to the creation of this body. On November 4, 1979, Iranian revolutionaries seized the U.S. Embassy and many U.S. hostages. The U.S. Government froze Iranian assets in reaction to this blatant violation of international law. The Algiers Accords were negotiated to obtain the release of the hostages, and to create a method for unfreezing the Iranian assets and settling all claims.

The Accords were based on two fundamental principles. First, the Accords required Iran to release the Americans imprisoned as hostages, thereby ending the pressure which Iran had sought to place on the United States through their detention; for its part, the U.S. was to release Iranian funds in accordance with the Accords. Second, both parties agreed that, in forsaking the activities of hostage taking and freezing of assets, their disputes would instead be resolved in arbitrations before this independent Tribunal, in accordance with "respect for law" as set forth in Article V of the Claims Settlement Declaration. These two principles reflect enduring values that have been recognized throughout human history: hostage taking is an unacceptable form of international

conduct; and when nations agree to resolve their differences through arbitration, the decisions that result must be based on law and not on improper pressures or threats. The public statements of the highest officials of Iran indicate that these principles have been violated.

The U.S. has never sought to introduce the element of hostages into this Tribunal's considerations. It will not do so now. Iran, however, has introduced this element into the Tribunal process, and the U.S. cannot pretend it has not heard the implied threats of Iranian leaders concerning our hostages in Lebanon. Nor can this Tribunal ignore such threats. Statements conditioning the fate of innocent American hostages on our conduct in this forum threaten to undermine the judicial character of this Tribunal's action.

Iran has claimed to have a special relationship and substantial influence with the group that holds American and other hostages in Lebanon, and uses that influence to its own advantage. On June 26, 1986, for example, just after two French hostages were released in Lebanon, Deputy Foreign Minister Javad Larijani publicly acknowledged in an interview with the Tehran Times "that Iran played a 'constructive and vital role' in the release" of the two French hostages. Moreover, he said, Iran had done so "because of French policy 'change'". He noted that Iran could do the same

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for British hostages in Lebanon, "with the same condition that London should change its policy towards the Islamic Republic." Minister Larijani explained that Iran had "ideological links with certain political groups in Lebanon who understand our role in regional and international politics and follow us in certain ways."

Iran has pursued the same policy against the U.S. in conjunction with, among other things, the technical discussions being held pursuant to this Tribunal's Interlocutory Order in this case. Following the first meeting of U.S. and Iranian representatives on October 30, 1986, Iranian Majlis Speaker Ali Akbar Rafsanjani made several public statements clearly linking release of the U.S. hostages in Lebanon with the U.S. Government's transfer of Dollar Account No. 1. The consistent theme of these speeches has been that Iran would exercise its influence over the Lebanese Shi'ite "revolutionaries" holding the hostages only if the U.S. Government would unfreeze *

*There are, of course, no Iranian assets in the U.S. that are "frozen" in the sense that term is used in connection with the Accords. The Executive Orders that froze Iranian assets in the U.S. during the hostage crisis were lifted by Executive Orders pursuant to the Accords, including the assets held by the New York Fed at the time the Accords were signed. Pursuant to paragraph 2(A) of the Undertakings, \$3.667 billion of the previously frozen funds was then transferred back to the New York Fed, the residue of which is at issue in this case.

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Iranian assets held by U.S. banks and military assets that are also the subject of Tribunal cases. Translations of several of these speeches, as reported by Iranian news agencies and published in the Foreign Broadcast Information Service Daily Report (South Asia) ("FBIS") or other media sources, are attached in Annex I.

For example, Speaker Rafsanjani made a significant speech to the weekly Friday prayers session at Tehran University* on November 4, the anniversary of the seizure of the U.S. Embassy and U.S. hostages in 1979. While he claimed that Iran had no responsibility for the U.S. hostages in Lebanon, the overall scheme of his presentation, and many specific statements he made, created an unmistakable link between U.S. agreement to acquiesce in Iranian and terrorist demands, and the release of U.S. hostages. First, Speaker Rafsanjani strongly indicated Iran's support for the taking of U.S. and French hostages by terrorists groups in Lebanon:

The issue that the United States faces in Lebanon today is the issue of U.S. hostages. The United States is feeling degraded and U.S. and French leaders feel degraded, and despite the fact that each day they promise their nations that they will free the hostages, each day their problems are increased. All this is due to the awakening of the people of the region and the Muslims that are in Lebanon. Today in Lebanon, which in the past was an American safehouse, its people are so brave and courageous that they capture U.S. spies and say, "Release our prisoners in Israel, or in Kuwait, or in France;" or they say, "Do not engage in more treacherous acts so that we might leave you alone."

*The Tehran University Friday prayer service has become a standard occasion for the enunciation of Iranian public policy by high-level Government officials. Speaker Rafsanjani recently has served as substitute leader of the prayers.

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Speaker Rafsanjani then claimed that the seizure of the TWA 847 hostages caused the release of Lebanese prisoners held in Israel. He said that:

in an official interview, I explained the views of the Islamic Republic and said that in our view they [the Lebanese] should release the aircraft in exchange for a U.S. and Israeli guarantee of the freedom of prisoners. When we came back to Iran the aircraft was released and a number of Lebanese prisoners were also freed. Now see the U.S. desperation from there onward.

He suggested that Iran "would take steps to help" if the U.S. proved its sincerity "by releas[ing] our property it keeps there and allow it to be sent to Iran."

Speaker Rafsanjani then described the "fiasco" of the effort by the U.S. to sell arms to Iran in exchange for hostages. He did not, however, argue that the U.S. was incorrect in seeking Iran's assistance in obtaining the freedom of U.S. hostages. To the contrary, he stated that Iran had influence over "Islamic forces" holding hostages and that Iran would exercise it under certain conditions, just as he did in the TWA-847 case:

From here we tell the American and French people - I am not addressing governments, but nations - if your governments prove to us in practice that they are not fighting against us, if they prove in practice that they do not engage in treason against us, if they prove in practice that they do not confiscate our assets through bullying tactics, that America does not confiscate our property there, and that France does not without reason block our money in its banks, if they prove these facts in practice then the Islamic Republic in a humane gesture is prepared to announce its views to its friends in Lebanon. Our friends also know our views.

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Our views are as follows: The demands of the oppressed Muslims of Lebanon should be satisfied. . . Therefore, if you satisfy their demands and prove to us, as you claim, that you are not hostile to us, that you have no hostility toward us, and that even though you are hostile to us you do not act in a hostile manner toward us - if you prove these things, we, too, in a humane gesture will express our views to our friends in Lebanon and other places, as we did in the case of the TWA aircraft.

On November 8, in another sermon to the Friday prayers meeting at Tehran University, Speaker Rafsanjani identified Iran's demands for intervening in the hostage situation as being "the release of our funds and property in the United States." In a sermon on November 28, Rafsanjani stated:

There is no need for direct talk, you [U.S.] return our assets held unlawfully by you in your country and all paid for long ago and then expect something from us. The return of our assets is good proof and requires no negotiation. And we declare that to use our prestige with the Lebanese Muslim fighters. If they get what they want, our mediation too, will be effective and the hostage problem will thus be resolved.

Any doubt that Speaker Rafsanjani's remarks included Dollar Account No. 1 was clarified in his December 18 sermon, when he stated:

that once the U.S. Government should release the entirety of Iranian assets in the U.S. banks and elsewhere, the Islamic Government would then intercede with the Shi'ite groups in Lebanon for the release of the American hostages in that country.

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On November 13, 1986, Prime Minister Hoseyn Musavi made a public statement specifically endorsing Speaker Rafsanjani's position. As reported by the Iranian Republic News Agency:

The prime minister, who was speaking after a meeting of the Political Council of the government, said that as the Majlis Speaker Jojjat-ol-Eslam Akbar Hashemi-Rafsanjani had stated at the Friday Prayers ceremony last week, it is possible that certain groups in Lebanon may heed to some of the views of Iran. However, as long as the U.S. continues to illegally seize Iranian weaponry, no one should expect us to mediate on issues such as the American hostages in Lebanon.

On that same day, Iran's Ambassador to the United Nations, Seyyed Rajai'e-Khorassani, joined in what was obviously a conscious, national policy of attempted intimidation. At a United Nations new conference, Ambassador Khorassani predicted that the U.S. Government's unfreezing of Iranian assets and arms would "promote the conditions" for the freeing of U.S. hostages in Lebanon. He said that "what we are interested in is to receive what we think the United States owes us."

At the conclusion of the December 18 sermon, Rafsanjani stated:

We repeat what we have already stated. What is possible for us and the United States is for America to unfreeze our frozen assets. This was an illegal act of bullying and banditry. The United States must return our assets. Once the United States takes this step, then we would ask our Shi'ite brethren in Lebanon to free the U.S. hostages, as we do have some prestige amongst them.

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Most familiar to the Tribunal may be the statement of an Iranian Embassy spokesman in The Hague on December 31. The spokesman expressed optimism that the U.S. Government would soon transfer the bulk of Dollar Account No. 1, and then told reporters:

The Speaker of the Iranian Parliament, Ali Akbar Hashemi Rafsanjani, has mentioned that if the Americans do what they have to do, it can positively affect the feeling of those people [holding the hostages in Lebanon].

These repeated connections between U.S. compliance with Iranian demands and the fate of the U.S. hostages in Lebanon finally led to a storm of commentary and protest in the United States. Once again, many Americans noted, Iran was using hostages -- this time in the hands of friends over whom it has great influence -- to coerce American conduct irrespective of the rights of the United States. This has created a situation in which U.S. compliance with the Tribunal's order would be regarded by some as a surrender by the U.S. to Iran's improper demands.

The public controversy generated apparently led Iranian officials to fear that their statements had in fact been a tactical error. This could explain Prime Minister Musavi's statement in Tehran on December 31 "that the banking negotiations within the framework of the Algiers Accord are by no means connected to the American hostages in Lebanon" Without further explicit clarification by Iran to this Tribunal, these later suggestions cannot wipe out the effects and appearance created by the repeated connections made by

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Iranian officials during November and December 1986 between U.S. compliance with Iran's demands and the fate of the U.S. hostages.

It is clear that the taking and holding of innocent hostages is contrary to international law. As the International Court of Justice stated succinctly in the Case concerning United States Diplomatic and Consular Staff in Tehran (the "Hostages Case"):

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as the fundamental principles enunciated in the Universal Declaration of Human Rights.

(Hostages Case, 1980 I.C.J. 3, 42.) The U.N. International Convention Against the Taking of Hostages (adopted by the United Nations General Assembly Dec. 17, 1979) affirms in its preamble that "the taking of hostages is an offence of grave concern to the international community" and subjects hostage-takers to prosecution or extradition. Even in times of armed conflicts, it is a violation of international law to take civilians hostage (Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 34, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287; Conventions Relative to the Protection of War Victims, Aug. 12, 1949, Common Art. 3, 6 U.S.T. 3114, 3217, 3316, 3516, T.I.A.S. Nos. 3362, 3363, 3364, 3365, 75 U.N.T.S. 31, 85, 135, 287).

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Hostages Case, the ICJ found that it was the Iranian Government's "endorsement" and "approval . . . and the decision to perpetuate" the continued detention of the U.S. hostages by Iranian militants that violated international law (Hostages Case, 1980 I.C.J. at 35, 42). If Iran has any reasonable means to use its "prestige" to effect the release of American hostages, it should do so at once, without demanding as a precondition any steps by the U.S. Government concerning matters before the Tribunal. In fact, its repeated statements clearly signal to its friends in Lebanon that they should not release American hostages until the U.S. has satisfied Iran's demands. This is a message that Iran is under a legal and moral obligation to negate.

The deliberate manipulation of the lives and safety of such hostages by one party to the Algiers Accords to induce the other Party to take some action with respect to the Tribunal also violates the letter and spirit of the Algiers Accords. In this case, as one example, Iran submitted its claim to the Tribunal pursuant to paragraph 17 of the General Declaration, which provides for submissions of disputes "to binding arbitration . . . in accordance with the provisions of the Claims Settlement Agreement." Article V of that Claims Settlement Declaration requires that all decisions be made on the basis of "respect for law". As noted above, the Accords themselves were designed to bring about the release of American

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3) That the Tribunal direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient amounts are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal.

4) That the Tribunal take all other appropriate steps to grant effective relief in this matter.

Respectfully submitted,

John R. Crook
United States Agent

Abraham D. Sofaer
Legal Adviser, Department of State
United States of America

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52337	MEMO	1	1/16/1987	B1
	ROBERT OAKLEY TO FRANK CARLUCCI, RE: UPDATE ON IRANIAN CLAIMS TRIBUNAL			

The above documents were not referred for declassification review at time of processing
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NATIONAL SECURITY COUNCIL

January 13

TO: Barry Kelly
~~Steve Danzansky~~

FROM: Bob Oakley

May I please have your urgent concurrence
on this package.

~~TED~~ ~~Angela~~
FYI.

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52338	MEMO COPY OF # 52336 WITH LONG ANNOTATION	2	1/13/1987	B1

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January __, 1987

Professor Karl-Heinz Bockstiegel
President, Iran-United States Claims Tribunal
Parkweg 13
The Hague

Dear Mr. President:

As you are aware, representatives of the Federal Reserve Bank of New York ("New York Fed") and Bank Markazi Iran have held a series of meetings pursuant to the Tribunal's Interlocutory Award of August 20, 1986 in Case No. A/15 (I-G). The purpose of these meetings has been, as directed by that Award, to resolve the technical issues involved in the transfer to Iran of certain Iranian funds currently held by the New York Fed. The United States has every intention of continuing those meetings, with the objective of reaching agreement on the outstanding technical issues, and of implementing in good faith the Tribunal's Interlocutory Award.

During the course of these discussions, officials of the Government of Iran not directly involved in the discussions have made a series of statements suggesting that the return of these Iranian funds to Iran is a precondition to the release of American hostages in Lebanon. These statements have made it unacceptable to the U.S. Government to complete the transfer of the funds in question without further action by the Tribunal to make clear that no linkage exists between compliance with the Tribunal's orders and the detention of innocent hostages contrary to international law.

The American people cannot be placed in a position where their Government's compliance with Tribunal orders will appear to be acquiescence to extortion and terrorism. The United States is not willing to pay any sum for the release of hostages, or to surrender any of its rights and privileges under the Algiers Accords, in exchange for the exercise by Iran of its influence in obtaining the release of hostages. Indeed, the United States is not prepared even to appear to have done so.

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It is contrary to international law for any State to take hostages or assist others in doing so, and States may not withhold reasonable steps to promote the release of hostages for the purpose of extracting political concessions. If Iran has any means of using its influence to bring about the release of American hostages, it should do so at once, without demanding as a precondition any steps by the U.S. Government concerning matters before the Tribunal.

The Algiers Accords expressly require that Iran and the United States resolve their differences under the Accords through arbitration based on "respect for law." The Tribunal must not allow this principle to be undermined by implications that implementation of any of the Tribunal's awards is connected in any way to acts which are blatant violations of international law.

For these reasons, the United States respectfully requests that the Tribunal take action, based on its continuing jurisdiction over Case No. A/15 (I-G) and its jurisdiction to consider questions of interpretation or performance of the relevant parts of the Algiers Accords, to remedy this situation. Specifically, the United States requests the Tribunal to make clear that implementation of the A/15 (I-G) Award (and all other Tribunal decisions) is not to be linked to the unlawful taking and detention of hostages; to order Iran to clarify for the record its understanding and position on this issue; and to direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient funds are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal. These funds are, as we have said repeatedly, Iranian property; but we will not surrender them in a context that makes our obedience to Tribunal orders appear to be a form of acquiescence to improper extrajudicial Iranian demands.

The U.S. request is attached.

Respectfully submitted,

John R. Crook
Agent of the United States

At the outset of this application, the United States wants to make clear its commitment to comply with the decisions of this Tribunal, including in particular its Interlocutory Award in Case No. A/15 (I-G) of August 20, 1986. That Award directed the two Parties to negotiate in good faith with a view to arrive at an agreement on: (i) the determination of the claims pending against Dollar Account No. 1 and of the amount that should consequently be kept in this account in order to pay such claims; (ii) the amount of the funds presently held in Dollar Account No. 1 that is not needed to pay the remaining claims pending against this Account; and (iii) the terms of a reconciliation of accounts leading to a release and discharge of the United States in the administration of Dollar Account No. 1. The Award provided that, should the Parties be unable to arrive at such an agreement in the four months following the issuance of the Award, they may apply to the Tribunal, individually or jointly, to resolve the remaining difficulties.

The United States and Iran have held three sets of meetings, since the handing down of this Award, covering the full range of issues specified by the Tribunal. For its part, the United States has provided Iran with a complete set of documents needed to complete these discussions. The New York Fed has provided complete documentation of all credits and debits to the Account, along with detailed explanations of investment practices. Substantial progress has been made

toward the resolution of these issues, particularly in the identification of outstanding claims and the mechanism for their satisfaction. The United States expects that, if Iran acts reasonably and in good faith, these negotiations will be completed shortly.

At issue is the disposition of the Iranian funds remaining in Dollar Account No. 1 after sufficient amounts are reserved for payment of all outstanding legitimate claims. While the United States is fully prepared to surrender control over these remaining funds in an appropriate manner, recent statements by high-ranking Iranian officials have created a situation in which compliance with the Tribunal's order could be perceived as capitulation to illegal and extortionate suggestions. Examples of these statements are set forth in Section II below, and available texts are attached in Annex I. The United States does not in any way attribute these statements to Iranian officials who have participated in the bilateral discussions and Tribunal proceedings in the A/15 (I-G) case; to our knowledge, those individuals have acted properly. Nonetheless, these statements were made by high-level persons with commanding political authority in the Iranian Government.

These suggestions make it improper and unacceptable for the United States to transfer the funds at issue without further action by the Tribunal to make clear that no such linkage

exists. Accordingly, we request that the Tribunal make clear that implementation of the A/15 (I-G) Award (and all other Tribunal decisions) is not to be linked to the unlawful taking and continued detention of hostages, and order Iran to clarify for the record its understanding and position on this issue.

For the same reasons, the United States also requests the Tribunal to direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient amounts are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal. The United States will see to it that the funds so transferred are made subject to the Tribunal's order. But the United States believes, for the reasons explained below, that the Tribunal should order the transfer of these funds to Iran only after it has fully considered the matters raised by the United States, has obtained an Iranian response, and is satisfied that such transfer is warranted. Finally, the Tribunal should take other appropriate steps to deal with these improper statements by high-level Iranian officials.

I. THE TRIBUNAL HAS THE AUTHORITY AND DUTY TO CONSIDER THIS APPLICATION.

The present request of the United States arises out of efforts to implement the Tribunal's Interlocutory Award in Case No. A/15 (I-G), issued August 20, 1986. That Award directed the two Parties to negotiate in good faith with a view to arriving at an agreement on certain technical issues, for the ultimate purpose of effecting the transfer to Iran of funds remaining in Dollar Account No. 1 after sufficient amounts were reserved for legitimate outstanding claims. The Award provided that either Party might apply at a later date to the Tribunal for the resolution of any difficulties which could not be resolved by negotiation. The Tribunal's continuing jurisdiction over the implementation of this Award is further evidenced by the fact that it was an "Interlocutory" rather than a "Final" award in recognition that the obligation of the United States to transfer these funds rested on certain contingencies, including not only the resolution of technical issues but also compliance by Iran with its obligations under the Accords.* Accordingly, the Tribunal has the authority and duty to consider any matters relating to the manner of the transfer of the funds in question which cannot be resolved by agreement between the Parties.

*Interlocutory Award at 31; see also Concurring Opinion of Judge Bahrami at 3-4; Concurring Opinion of Judge Mostafavi at 2.

The United States believes that the two Parties can resolve expeditiously by negotiation the question of the amount which should be kept in the Account to pay outstanding claims, the remaining amount to be transferred, and the terms of the necessary release and discharge of the United States in the administration of the Account; accordingly, the United States does not request that the Tribunal attempt at this time to resolve these matters. However, for the reasons described below, the United States believes that statements by high-level officials of the Iranian Government have made it unacceptable and improper for the United States to transfer the remaining funds without further action by the Tribunal. The Tribunal has the authority and duty in such a situation to direct the manner of transfer and to grant other relief necessary to ensure that such transfer occurs under conditions that are consistent with the letter and purpose of the Algiers Accords. Indeed, the Tribunal's decision in this case was expressly premised on Iran's performance of its own obligations.

Further, the Tribunal has jurisdiction under paragraph 17 of the General Declaration and Articles II(3) and VI(4) of the Claims Settlement Declaration over any question of interpretation of performance of any provision of the General Declaration, and of interpretation or application of the Claims Settlement Declaration. Accordingly, the Tribunal has the authority and duty to consider the contentions of the United States, as described below, that the Iranian actions in question are inconsistent with the letter and purpose of the

Algiers Accords, and that requiring the United States to transfer those funds under current circumstances would not, without appropriate remedial action by the Tribunal, be consistent with the Accords.

Finally, the Tribunal, as an institution required to render decisions only on the basis of law, has inherent authority to protect the integrity of its own processes. This is a well established principle in every nation's judicial system. In the United States, for example, courts have been found to have such "powers as are essential to the existence of the court and necessary to the orderly and efficient exercise of jurisdiction" and to do "all things that are reasonably necessary for the administration of justice within the scope of their jurisdiction." 20 Am.Jur. 2d Courts Sec. 78, 79 (1965). See Wells V. Gilliam, 196 F. Supp. 792 (F.D. Vir. 1961); United States v. Diapulse Manufacturing Corp. of America, 262 F. Supp. 728 (D. Conn. 1967). Similarly, international arbitrations must satisfy minimum standards of due process. See generally Carlston, The Process of International Arbitration 31-61 (1946). Moreover, as the umpire in the Lehigh Valley Railroad case made clear, "in international arbitration it is of equal importance that justice be done and that appearances show clearly to everyone's conviction that justice was done." German/United States Mixed Claims Commission, Decision and Opinion 1175, 1176-77 (1936).

II. REQUIRING THE UNITED STATES TO TRANSFER THESE FUNDS WOULD NOT, WITHOUT REMEDIAL ACTION BY THE TRIBUNAL, BE PROPER OR CONSISTENT WITH THE ACCORDS AND THE TRIBUNAL'S AWARD.

This Tribunal is well aware of the circumstances that led to the Algiers Accords, and to the creation of this body. On November 4, 1979, Iranian revolutionaries seized the U.S. Embassy and many U.S. hostages. The U.S. Government froze Iranian assets in reaction to this blatant violation of international law. The Algiers Accords were negotiated to obtain the release of the hostages, and to create a method for unfreezing the Iranian assets and settling all claims.

The Accords were based on two fundamental principles. First, the Accords required Iran to release the Americans imprisoned as hostages, thereby ending the pressure which Iran had sought to place on the United States through their detention; for its part, the U.S. was to release Iranian funds in accordance with the Accords. Second, both parties agreed that, in forsaking the activities of hostage taking and freezing of assets, their disputes would instead be resolved in arbitrations before this independent Tribunal, in accordance with "respect for law" as set forth in Article V of the Claims Settlement Declaration. These two principles reflect enduring values that have been recognized throughout human history: hostage taking is an unacceptable form of international

conduct; and when nations agree to resolve their differences through arbitration, the decisions that result must be based on law and not on improper pressures or threats. The public statements of the highest officials of Iran indicate that these principles have been violated.

The U.S. has never sought to introduce the element of hostages into this Tribunal's considerations. It will not do so now. Iran, however, has introduced this element into the Tribunal process, and the U.S. cannot pretend it has not heard the implied threats of Iranian leaders concerning our hostages in Lebanon. Nor can this Tribunal ignore such threats. Statements conditioning the fate of innocent American hostages on our conduct in this forum threaten to undermine the judicial character of this Tribunal's action.

Iran has claimed to have a special relationship and substantial influence with the group that holds American and other hostages in Lebanon, and uses that influence to its own advantage. On June 26, 1986, for example, just after two French hostages were released in Lebanon, Deputy Foreign Minister Javad Larijani publicly acknowledged in an interview with the Tehran Times "that Iran played a 'constructive and vital role' in the release" of the two French hostages. Moreover, he said, Iran had done so "because of French policy 'change'". He noted that Iran could do the same

for British hostages in Lebanon, "with the same condition that London should change its policy towards the Islamic Republic." Minister Larijani explained that Iran had "ideological links with certain political groups in Lebanon who understand our role in regional and international politics and follow us in certain ways."

Iran has pursued the same policy against the U.S. in conjunction with, among other things, the technical discussions being held pursuant to this Tribunal's Interlocutory Order in this case. Following the first meeting of U.S. and Iranian representatives on October 30, 1986, Iranian Majlis Speaker Ali Akbar Rafsanjani made several public statements clearly linking release of the U.S. hostages in Lebanon with the U.S. Government's transfer of Dollar Account No. 1. The consistent theme of these speeches has been that Iran would exercise its influence over the Lebanese Shi'ite "revolutionaries" holding the hostages only if the U.S. Government would unfreeze *

*There are, of course, no Iranian assets in the U.S. that are "frozen" in the sense that term is used in connection with the Accords. The Executive Orders that froze Iranian assets in the U.S. during the hostage crisis were lifted by Executive Orders pursuant to the Accords, including the assets held by the New York Fed at the time the Accords were signed. Pursuant to paragraph 2(A) of the Undertakings, \$3.667 billion of the previously frozen funds was then transferred back to the New York Fed, the residue of which is at issue in this case.

Iranian assets held by U.S. banks and military assets that are also the subject of Tribunal cases. Translations of several of these speeches, as reported by Iranian news agencies and published in the Foreign Broadcast Information Service Daily Report (South Asia) ("FBIS") or other media sources, are attached in Annex I.

For example, Speaker Rafsanjani made a significant speech to the weekly Friday prayers session at Tehran University* on November 4, the anniversary of the seizure of the U.S. Embassy and U.S. hostages in 1979. While he claimed that Iran had no responsibility for the U.S. hostages in Lebanon, the overall scheme of his presentation, and many specific statements he made, created an unmistakable link between U.S. agreement to acquiesce in Iranian and terrorist demands, and the release of U.S. hostages. First, Speaker Rafsanjani strongly indicated Iran's support for the taking of U.S. and French hostages by terrorists groups in Lebanon:

The issue that the United States faces in Lebanon today is the issue of U.S. hostages. The United States is feeling degraded and U.S. and French leaders feel degraded, and despite the fact that each day they promise their nations that they will free the hostages, each day their problems are increased. All this is due to the awakening of the people of the region and the Muslims that are in Lebanon. Today in Lebanon, which in the past was an American safehouse, its people are so brave and courageous that they capture U.S. spies and say, "Release our prisoners in Israel, or in Kuwait, or in France;" or they say, "Do not engage in more treacherous acts so that we might leave you alone."

*The Tehran University Friday prayer service has become a standard occasion for the enunciation of Iranian public policy by high-level Government officials. Speaker Rafsanjani recently has served as substitute leader of the prayers.

Speaker Rafsanjani then claimed that the seizure of the TWA 847 hostages caused the release of Lebanese prisoners held in Israel. He said that:

in an official interview, I explained the views of the Islamic Republic and said that in our view they [the Lebanese] should release the aircraft in exchange for a U.S. and Israeli guarantee of the freedom of prisoners. When we came back to Iran the aircraft was released and a number of Lebanese prisoners were also freed. Now see the U.S. desperation from there onward.

He suggested that Iran "would take steps to help" if the U.S. proved its sincerity "by releas[ing] our property it keeps there and allow it to be sent to Iran."

Speaker Rafsanjani then described the "fiasco" of the effort by the U.S. to sell arms to Iran in exchange for hostages. He did not, however, argue that the U.S. was incorrect in seeking Iran's assistance in obtaining the freedom of U.S. hostages. To the contrary, he stated that Iran had influence over "Islamic forces" holding hostages and that Iran would exercise it under certain conditions, just as he did in the TWA-847 case:

From here we tell the American and French people - I am not addressing governments, but nations - if your governments prove to us in practice that they are not fighting against us, if they prove in practice that they do not engage in treason against us, if they prove in practice that they do not confiscate our assets through bullying tactics, that America does not confiscate our property there, and that France does not without reason block our money in its banks, if they prove these facts in practice then the Islamic Republic in a humane gesture is prepared to announce its views to its friends in Lebanon. Our friends also know our views.

*Our word
or
the Speakers?*

Our views are as follows: The demands of the oppressed Muslims of Lebanon should be satisfied. . . Therefore, if you satisfy their demands and prove to us, as you claim, that you are not hostile to us, that you have no hostility toward us, and that even though you are hostile to us you do not act in a hostile manner toward us - if you prove these things, we, too, in a humane gesture will express our views to our friends in Lebanon and other places, as we did in the case of the TWA aircraft.

On November 8, in another sermon to the Friday prayers meeting at Tehran University, Speaker Rafsanjani identified Iran's demands for intervening in the hostage situation as being "the release of our funds and property in the United States." In a sermon on November 28, Rafsanjani stated:

There is no need for direct talk, you [U.S.] return our assets held unlawfully by you in your country and all paid for long ago and then expect something from us. The return of our assets is good proof and requires no negotiation. And we declare that to use our prestige with the Lebanese Muslim fighters. If they get what they want, our mediation too, will be effective and the hostage problem will thus be resolved.

Any doubt that Speaker Rafsanjani's remarks included Dollar Account No. 1 was clarified in his December 18 sermon, when he stated:

that once the U.S. Government should release the entirety of Iranian assets in the U.S. banks and elsewhere, the Islamic Government would then intercede with the Shi'ite groups in Lebanon for the release of the American hostages in that country.

On November 13, 1986, Prime Minister Hoseyn Musavi made a public statement specifically endorsing Speaker Rafsanjani's position. As reported by the Iranian Republic News Agency:

The prime minister, who was speaking after a meeting of the Political Council of the government, said that as the Majlis Speaker Jojjat-ol-Eslam Akbar Hashemi-Rafsanjani had stated at the Friday Prayers ceremony last week, it is possible that certain groups in Lebanon may heed to some of the views of Iran. However, as long as the U.S. continues to illegally seize Iranian weaponry, no one should expect us to mediate on issues such as the American hostages in Lebanon.

On that same day, Iran's Ambassador to the United Nations, Seyyed Rajai'e-Khorassani, joined in what was obviously a conscious, national policy of attempted intimidation. At a United Nations new conference, Ambassador Khorassani predicted that the U.S. Government's unfreezing of Iranian assets and arms would "promote the conditions" for the freeing of U.S. hostages in Lebanon. He said that "what we are interested in is to receive what we think the United States owes us."

At the conclusion of the December 18 sermon, Rafsanjani stated:

We repeat what we have already stated. What is possible for us and the United States is for America to unfreeze our frozen assets. This was an illegal act of bullying and banditry. The United States must return our assets. Once the United States takes this step, then we would ask our Shi'ite brethren in Lebanon to free the U.S. hostages, as we do have some prestige amongst them.

Most familiar to the Tribunal may be the statement of an Iranian Embassy spokesman in The Hague on December 31. The spokesman expressed optimism that the U.S. Government would soon transfer the bulk of Dollar Account No. 1, and then told reporters:

The Speaker of the Iranian Parliament, Ali Akbar Hashemi Rafsanjani, has mentioned that if the Americans do what they have to do, it can positively affect the feeling of those people [holding the hostages in Lebanon].

These repeated connections between U.S. compliance with Iranian demands and the fate of the U.S. hostages in Lebanon finally led to a storm of commentary and protest in the United States. Once again, many Americans noted, Iran was using hostages -- this time in the hands of friends over whom it has great influence -- to coerce American conduct irrespective of the rights of the United States. This has created a situation in which U.S. compliance with the Tribunal's order would be regarded by some as a surrender by the U.S. to Iran's improper demands.

The public controversy generated apparently led Iranian officials to fear that their statements had in fact been a tactical error. This could explain Prime Minister Musavi's statement in Tehran on December 31 "that the banking negotiations within the framework of the Algiers Accord are by no means connected to the American hostages in Lebanon" Without further explicit clarification by Iran to this Tribunal, these later suggestions cannot wipe out the effects and appearance created by the repeated connections made by

Iranian officials during November and December 1986 between U.S. compliance with Iran's demands and the fate of the U.S. hostages.

It is clear that the taking and holding of innocent hostages is contrary to international law. As the International Court of Justice stated succinctly in the Case concerning United States Diplomatic and Consular Staff in Tehran (the "Hostages Case"):

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as the fundamental principles enunciated in the Universal Declaration of Human Rights.

(Hostages Case, 1980 I.C.J. 3, 42.) The U.N. International Convention Against the Taking of Hostages (adopted by the United Nations General Assembly Dec. 17, 1979) affirms in its preamble that "the taking of hostages is an offence of grave concern to the international community" and subjects hostage-takers to prosecution or extradition. Even in times of armed conflicts, it is a violation of international law to take civilians hostage (Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 34, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287; Conventions Relative to the Protection of War Victims, Aug. 12, 1949, Common Art. 3, 6 U.S.T. 3114, 3217, 3316, 3516, T.I.A.S. Nos. 3362, 3363, 3364, 3365, 75 U.N.T.S. 31, 85, 135, 287).

States may not support or direct such taking of hostages by third parties, nor may they withhold reasonable steps to promote the release of such hostages for the purpose of extracting concessions from the State of which the hostages are nationals. This basic principle of international law is reflected in the International Convention Against the Taking of Hostages, which makes it an offense not only to take hostages but also to participate as an accomplice of anyone "who seizes or detains and threatens to kill, to injure or to continue to detain" a hostage in order to compel a third party "to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage"*/ Similarly, in the

*/ Article 1 of the Convention provides in full:

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking hostages ("hostage-taking") within the meaning of this Convention.
2. Any person who:
 - (a) attempts to commit an act of hostage-taking, or
 - (b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Hostages Case, the ICJ found that it was the Iranian Government's "endorsement" and "approval . . . and the decision to perpetuate" the continued detention of the U.S. hostages by Iranian militants that violated international law (Hostages Case, 1980 I.C.J. at 35, 42). If Iran has any reasonable means to use its "prestige" to effect the release of American hostages, it should do so at once, without demanding as a precondition any steps by the U.S. Government concerning matters before the Tribunal. In fact, its repeated statements clearly signal to its friends in Lebanon that they should not release American hostages until the U.S. has satisfied Iran's demands. This is a message that Iran is under a legal and moral obligation to negate.

The deliberate manipulation of the lives and safety of such hostages by one party to the Algiers Accords to induce the other Party to take some action with respect to the Tribunal also violates the letter and spirit of the Algiers Accords. In this case, as one example, Iran submitted its claim to the Tribunal pursuant to paragraph 17 of the General Declaration, which provides for submissions of disputes "to binding arbitration . . . in accordance with the provisions of the Claims Settlement Agreement." Article V of that Claims Settlement Declaration requires that all decisions be made on the basis of "respect for law". As noted above, the Accords themselves were designed to bring about the release of American

hostages taken in violation of international law. (Hostages Case, 1980 I.C.J. at 44-45.) Exploitation of the plight of hostages to secure further transfers of funds contradicts the fundamental purpose of the Accords. The abuse of the Tribunal and its proceedings for these purposes compromises its integrity and viability, and such abuses should not be tolerated by the Tribunal.

Under these circumstances, the Tribunal must understand that the United States would find it fundamentally improper and unacceptable to complete the transfer of funds without remedial action by the Tribunal to make clear that no such linkage exists between Tribunal proceedings and the fate of hostages. To compel the United States to complete that transfer without such action would be inconsistent with the Algiers Accords and the fundamental premises of the Tribunal's operations.

III. APPROPRIATE RELIEF SHOULD BE GRANTED.

For the reasons stated above, the Tribunal must take appropriate action to remedy the unacceptable situation created by the public statements of high-level Iranian officials so that its Interlocutory Award (and future Tribunal decisions) can be promptly implemented in accordance with the letter and spirit of the Algiers Accords. Therefore, the United States requests the following relief:

1) That the Tribunal declare that the implementation of the A/15 (I-G) award (and all other Tribunal decisions) may not be linked to the unlawful taking and detention of hostages, and that no action in the context of issues before the Tribunal (including the transfer of funds in Dollar Account No. 1) may be made, directly or indirectly, a precondition to the taking of reasonable measures to assist in the release of such hostages.

2) That the Tribunal order Iran to clarify for the record its understanding and acceptance of the above, and to explain the statements of its high-ranking officials referred to above.

3) That the Tribunal direct that, following the resolution of the technical issues which are the subject of the ongoing negotiations, the Iranian funds remaining (after sufficient amounts are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal.

4) That the Tribunal take all other appropriate steps to grant effective relief in this matter.

Respectfully submitted,

John R. Crook
United States Agent

Abraham D. Sofaer
Legal Adviser, Department of State
United States of America

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