

The Iranian Hostage Treaty

Lecture Talking Points

The seizure of the American Embassy on November 4, 1979, precipitated a crisis between Iran and the United States, which ultimately involved Iran's threat to withdraw its assets from this country, a declaration of a national emergency and the blocking of Iranian assets, the breaking of diplomatic relations, and the loss of American military lives.

- On January 19, 1981, the United States and Iran peacefully resolved many of their outstanding disputes. An overall agreement was reached for the release of the hostages, the settlement of claims and the return of blocked Iranian property.

444 000

reverts at state

① Oil

5-6 in BD

Strategic

Persian Gulf

Inflation

Sanctions

World - Soviet / Pak. 1213

Sanctuary

Penetration - (Hostages)

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

1944

~~Minneapolis~~
~~Professor~~

Dear Sleim
Prof

Angela
Stonington

Minister (Bab)
Hossein

Relationship with the Muslim World
Tension & its value

Document
January
Start

Disruption of Iran
Disruption of Iran
U.S. Position
Chirif Sahel

- Treasury promulgated Iranian Assets Control Regulation which licensed claimants to institute judicial proceedings against Iran and permitted prejudgment attachment of Iranian assets but prohibited judgments and actual payments.
- These licenses were issued with the full understanding they could be modified or revoked at any time.
- To resolve the crisis, the President revoked all licenses for attachments and ordered the transfer of Iranian assets to the Federal Reserve Banks in New York - actions taken during a declared national emergency.
- The President's Constitutional authority to settle claims necessarily includes the power to dispose of attachments of foreign property which purport to secure those claims in domestic litigation (U.S. vs. Schooner Peggy).

No. Coaps: Gov must have the Power

The right to pre-judgment attachments of another's property is not a constitutional right, but rather solely a state created right - as such, it remains subordinate to our international obligations pursuant to executive agreements.

Why this Power?

*Treaty?
unBlocked
attaching*

- Termination of attachments against Iranian assets causes no compensable loss. At the time of the blocking order, claimants had no interest in assets that Iran was then threatening to withdraw from this country. The President blocked these assets, preventing Iran from removing them. As a result of that action, and Treasury's license, those assets could be attached, where such an attachment would otherwise be valid. But the license for the attachments, and thus the attachments themselves, were conditional, Orvis v. Brownell, and invocation of that condition precludes a finding that a compensable interest has been taken.

- In sum, the President's actions restored all claimants to their status as of November 14, 1979, when they had a putative claim against Iran, but Iran had control of its own assets. To the extent that Iran may now exercise its right to withdraw its funds, that is not a taking by the United States.

Moreover, for the same reasons that suspension of claims against Iran causes no immediate loss to claimants, termination of their attachments likewise causes no immediate loss. Additionally, at whatever point in the future plaintiff establishes its claim, there may well be new Iranian assets in this country based on renewed trade between Iran and the United States. And finally, even if there are no new assets in the United States, the Agreement with Iran specifically provides United States nationals with the right to enforce awards of the Tribunal

in any country where Iranian assets can be found. In these circumstances, speculation as to future losses is an insufficient basis to restrain the transfers the President has lawfully ordered.

The Hostage Act:

- I think it is also important to point out that the President had a second statutory basis for his actions in connection with the hostage agreement, the 1868 Hostage Act. Simply put, this statute empowers the President in a situation where American citizens are unjustly deprived of their liberty by a foreign government to use such means (short of war) as are "necessary and proper" to bring about the release of the hostages. The "necessary and proper" language in the statute derives from the "necessary and proper" language in Article I of the Constitution and thus constitutes a very broad delegation of discretionary power to the President dealing with a hostage situation.

Conclusion:

- For the reasons I have just stated, while I am not an expert in either the field of international or constitutional law, I am convinced that the President had both the constitutional and the statutory power both to negotiate the U.S. - Iran Hostage Agreement he did, and to take those actions which were taken by Executive Order to effectuate the United State's share of that Agreement.

Danger

Why?

President Carter's initial Executive Order in response to the hostage crisis, issued on November 14, 1979 which "blocked" or "froze" all Iranian assets in this country and held by U.S. banks was issued in part under the authority of I.E.E.P.A. as were the later Executive Orders which he issued as part of the U.S.-Iran hostage agreement.

(Why? - No Progress! Threats of Trial & Execution: Halted)

- Those Executive Orders, you will know from your reading, unfroze the Iranian assets and provided for their transfer to escrow accounts and to the Iranians, as well as nullified any outstanding attachments against the assets.
- A later Executive Order issued by President Reagan in February of this year also based in part on his authority under I.E.E.P.A. directs that all claims against Iranian assets (with the exception of those excluded under terms of the agreement) be presented to the Iran-United States Claims Tribunal and suspends all actions for judicial or equitable relief in U.S. Courts until such claims are presented to the Tribunal.

Remedies: Military Respect

- *Tried to fix economy*
- *Halted Military Assistance*
(From us & others.)
- *Non oil purchases*
- *Tried to get others to help*
- *Credit: Prices*

*Dangerous
Bomb Lynching*

- These Executive Orders, first freezing and then unfreezing Iranian assets in this country illustrate both the importance and the flexibility of the President's statutory powers under I.E.E.P.A. This does not mean, however, that the President's actions with respect to the hostage agreements will not be challenged. To the contrary, one such challenge is even now being litigated in the Second Circuit.

- However, I am convinced that challenges to the President's actions under I.E.E.P.A. in this instance will not be successful for the following reasons.

- While the Act itself is relatively new and has not been the subject of a major test, it is not a new concept, but rather a recodification of a section of a long-lived statute called the trading with the Enemy Act (T.W.E.A.).

- The powers granted to the President in Section 1702 of I.E.E.P.A. are the same powers which former Presidents have enjoyed under Section 5(b) of the T.W.E.A. and, while there have been many judicial challenges to the T.W.E.A., it nonetheless survived every attack on its constitutionality and was interpreted by the Courts as being a very broad delegation of power to the President.

- The broad construction which the Courts have given to I.E.E.P.A.'s predecessor, Section 5(b) of the T.W.E.A. is illustrated by the Custom Appeals Court opinion that the Court finds that the language of the statute - language which is virtually identical to the language of Section 1702 of I.E.E.P.A. - constitutes a very broad delegation of powers to the President.
- In fact, the Court carefully explains that Congress could not have intended otherwise because the President has to have the flexibility to deal effectively with national emergencies. Yoshida thus illustrates that one thing which Courts will focus on when reviewing a President's actions under a statute like I.E.E.P.A. is that the statute is specifically designed to cope with emergency situations - situations in which extraordinary measures may be necessary.
- You will also have noted that the Court in Yoshida focuses on the distinction between delegations of power dealing with domestic affairs versus powers for dealing with foreign affairs. On this point, the Court quotes the U.S. Supreme Court's opinion in Curtiss-Wright recognizing that legislation in the international field must often give more freedom and discretion to the President than would be appropriate in the domestic area in order to avoid embarrassment in our international relations.

- Further, it has been upheld in the Courts that the Executive Branch, may make such settlements of claims as it deems appropriate and allows the President to sacrifice certain claims for overriding foreign policy reasons.
- Indeed, the diplomatic ability of the U.S. to negotiate a settlement with a foreign nation would be effectively undermined if a foreign nation could not be assured that a settlement understood to be final and binding would in fact be respected by U.S. Courts.
- In times of emergency in our relations with a foreign nation these statutes give the President the necessary powers to:
 - block foreign property.
 - keep blocked property free of any interests that could present its alternate disposition.
 - marshal these assets to facilitate a claims settlement agreement.
- Note: Neither the language nor the legislation history of the Foreign Sovereign Immunities Act of 1976 (FSIA) purport to restrict the President's Constitutional authority to settle claims. Essentially, FSIA withdrew from the Executive its role in making binding immunity decisions with respect to suits against foreign governments. Withdrawing that authority is fundamentally different from limiting the President's authority to settle a broad range of claims affecting our foreign relations.

Pending Court Cases:

- When the crisis first broke out the government froze Iranian assets and issued licenses to nationals who had claims against Iran to protect them from loss.

- The President's act in connection with the hostage crisis were also reasonably related to the nature of the emergency. The means used by the President, i.e., economic pressure through freezing Iranian assets and later an economic trade off for release of the hostages - related directly to the realities of the situation in Iran. I believe that economic pressure was one of the most effective and only means of bringing about the safe release of the hostages.

History:

- It might be helpful to try to put the Iran-U.S. Agreement in historical perspective.
- The Agreement with Iran is only the latest in a historical practice of claims settlements . . . People's Republic of China.
- Historically, claims settlement negotiations have culminated in a variety of dispositions, including binding arbitration.
- From the earliest days of the Republic, the Supreme Court has recognized that such agreements are binding upon the Courts (U.S. vs. Schooner Peggy).
- Typically, rather than renounce claims of American nationals, the Executive has used two primary methods to settle such claims, and has often done so through Executive Agreement:
 - first, lump sum payments in full settlement of American claims.
 - second, agreed to settle claims through the establishment of arbitration mechanisms -- and made arbitration binding, exclusive and non-reviewable.

- Finally, the Yoshida opinion is of interest to our consideration of President Carter's exercise of power under I.E.E.P.A. because of its detailed discussion of the standard of review applicable to tests of a President's powers under emergency legislation.
- On this subject, the Court notes that the traditional test is whether the President's actions were reasonably related to the powers delegated by the Act and to the emergency giving rise to his actions. Or, as the Court explains, it is the nature of the powers which determine what the President can do while the nature of the emergency restricts the means of execution, i.e., how he does it.
- In my opinion, application to this two-fold test to President Carter's actions in connection with the U.S. - Iran Hostage Agreement yields the inescapable conclusion that the President was acting well within his statutory authority under I.E.E.P.A.
- Clearly, the powers delegated to the President under Section 1702 specifically allow both the "blocking" and later the "unblocking" of transfers of Iranian property - since the Act specifically empowers the President to "prohibit" transfers of such property and to "nullify or void" interests in such property. Furthermore, the President's actions fall within the purpose of the statute which is to allow the President to make certain types of economic responses to an "unusual and extraordinary" threat to the U.S. National Security.

six to nine months. Of that amount, \$.50 of every dollar transferred will go to Iran, the rest to a special security escrow account which will be used to pay arbitration awards on claims by U.S. companies and individuals. This account is supposed to grow to \$1 billion as frozen assets are released and to be replenished by Iran so that its funds do not drop below \$500 million.

- Claims Settlement Agreement

Agreement provides for claims against frozen assets to be withdrawn and to be submitted for arbitration. The agreement sets up a security account as part of a Claims Settlement Agreement. That agreement provides for the establishment of an Iran - United States Claims Tribunal. The Tribunal consists of three Iranian members, three U.S. members and three to be picked from other countries. The Claims Tribunal will serve as an arbiter of three types of claims:

- 1) Claims of U.S. nationals (individuals and corporations) against Iran and of Iranian nationals against the U.S.
- 2) Official claims between the U.S. government and Iran involving contracts of sale of goods and services.
- 3) Disputes over the meaning of the agreement itself.

ICJ

- Specifically, that agreement provides the following:
- The basic agreement was a simple quid pro quo: Iran returned the hostages in exchange for U.S. restoration of its financial ~~status~~ status pre-November, 1979.

- The agreement provided that the release of the hostages and the unfreezing of Iranian assets would occur simultaneously.

- Financial Aspects

- Provides generally for return of approximately \$12 billion in Iranian assets frozen on November 14, 1979, \$7.9 billion of Iranian assets were transferred into escrow account of the Algerian Central Bank at the Bank of England.
- When the amount in that account reached \$7.9 billion the Iranians began procedures to release the hostages.
- At the moment the hostages cleared Iranian airspace, the money was transferred from the Algerian account into a series of other accounts.
 - ° \$3.7 billion was transferred to private American banks to pay off Iranian loans.
 - ° \$1.4 billion was transferred to an escrow account to be used to pay future Iranian bank debts.
 - ° \$2.9 billion was transferred directly to Iran.
- The agreement also provided for the transfer of about \$4 billion in frozen assets to the Bank of England in

What is not included are:

- Claims arising out of the seizure of the Embassy.
- Claims involving binding contracts which provided for dispute resolution in Iranian courts.

- Non-Economic Provisions

- The U.S. pledged not to intervene in Iranian internal affairs either politically or militarily.
- The U.S. agrees to revoke all trade sanctions directed against Iran since November 4, 1979.
- The U.S. agreed to withdraw claims pending against Iran before the International Court of Justice.
- The U.S. agreed to non-prosecution of its claims and to bar claims by U.S. nationals, including those arising out of the embassy seizure.
- U.S. agrees to take certain actions to help effectuate the return of the Shah's assets to Iran.

- To implement this agreement, the President
 - terminated attachments against the blocked assets.
 - nullified all attachments and judgments.
 - order the termination of claims through binding arbitration.
 - directed the transfer of assets to Iran.

(Note: There are presently pending in the U.S., 400 suits against Iran, involving several billion dollars.)

Substantive

III

- To fulfill the U.S. commitment under this agreement, the President issued a series of Executive Orders pursuant to his authority under the International Emergency Economic Powers Act. (IEEPA).
- On February 24, 1981, President Reagan suspended all claims which may be presented to the Iran-U.S. Claims Tribunal under terms of the agreement.

Presidential Authority: (constitutional)

- While the Constitution confers certain authority to act in the field of foreign affairs on Congress as well as the President (eg. the power to declare war, to provide and regulate the armed services, to appropriate funds for defense, to ratify treaties), it has long been recognized by both the Congress and the Courts that the President is the primary actor in the conduct of this country's foreign affairs.

- To some extent, the President's leading role in the field of international affairs is molded by necessity - the area of international relations requires continued up-to-date information on what is happening abroad, it also requires consistency, and on occasion, the ability to act quickly and if necessary, secretly to carry on the foreign policy of this nation. Furthermore, the President's role as chief foreign policy spokesperson is inextricably tied to his role as Commander-In-Chief of this nation's armed forces.

*Must Speak
to Act
w/ Full
Voice*

- While the President's powers in the international relations area are to some extent based on practical necessity, the Constitution provides ample support for his powers in this area. First of all, Article II confers several specific powers necessary to the conduct of foreign affairs on the Presidency - the power to receive representatives of foreign governments, the power to nominate U.S. representatives to foreign governments, and the power to conclude treaties with foreign governments with the *advice & consent* of the Senate.

- But where you ask, those of you who have recently looked at Article II, does the President derive the constitutional authority to execute agreements with foreign countries that are not treaties, i.e., executive agreements?

- The answer is that the Constitution does not specifically grant that power to the President but his power to make such agreements has nevertheless been recognized as an implied power of the Presidency in the ~~few~~ cases which have considered this issue directly. Judicial recognition of the President's power to negotiate executive agreements with foreign nations is exemplified by the Belmont and Pink cases which I asked you to read in preparation for today's lecture.
- While the Supreme Court in those opinions, does not directly state the constitutional authority from which the President's power to make such agreements derives, the Court clearly recognizes that the power exists, that it includes the power to settle claims and that negotiation of such agreements is solely within the competence of the Presidency.
- Returning to the question of the constitutional source of the President's power to negotiate executive agreements, there are several sources from which it may derive. First, there is the President's power as Commander-In-Chief of the armed forces. In that role, the President has the power to make agreements affecting peace as well as to deal with questions of war, thus he may negotiate armistices and other types of peace-keeping agreements.

Statutory Authority

- In addition to his constitutional powers in the area of foreign affairs, the President also has statutory authority to take certain types of action in the area of international economic affairs. Specifically authorized are actions with respect to property in which a foreign government has an interest and which is subject to the jurisdiction of the United States.
- A 1977 statute, the International Emergency Economic Powers Act (I.E.E.P.A.) (50 U.S.C. 1701 et. seq.) empowers the President in the face of an unusual and extraordinary threat to the national security, foreign policy, or economy of this nation to regulate transactions and transfers of property of a foreign country subject to the jurisdiction of the United States.
 - Specifically, this act allows the President to investigate, regulate, direct and compel, nullify and void, and prevent or prohibit transaction involving property of a foreign country, once he has declared a national emergency.
- As such, the statute represents a very broad delegation of power to the President in the area of regulation of international economics.

*Torches
w/ the Enemy
Act - Response
Declaration
of Belligerency*

- Second, there is the President's power as Chief Executive of the nation and the powers that can be implied from that role. It is this power which is often cited as the source of the President's constitutional authority to be this nation's sole negotiator in foreign affairs. Similarly this power has been invoked to authorize the President to settle claims held by private citizens against other nations.
- In sum, Presidents have been negotiating executive agreements including agreements which settle the claims of U.S. nationals against foreign governments for years. Courts have recognized that the President has the power to make such agreements under the Constitution. And no executive agreement has ever been struck down as unconstitutional. For these reasons, I believe that there can be no doubt that the President has the power to negotiate the U.S.-Iran Hostage Agreement.

THE DECLARATIONS OF ALGIERS

I. The Declarations of Algiers

A. Background

The Declarations were the result of four months of intensive negotiation. Because Iran refused direct contact, it was necessary to negotiate through an intermediary government. Fortunately, the Popular and Democratic Government of Algeria was acceptable to both sides and was willing to assume the intermediary role. Algeria became fully engaged, devoting the full attention of its Foreign Minister and a senior negotiating team. There were great complexities to this three-way negotiating process. There were movement problems, problems of differing languages and legal systems and problems of time required for each exchange. The Algerian negotiating team made numerous trips to Teheran and Washington. Because it was taking about two weeks to complete each cycle of offer and counter-offer, Deputy Secretary Christopher moved to Algiers on 1/8 and remained there until the end.

Algeria played a critical role in explaining each side's position to the other and in closing gaps between them. The Algerian team was also able to verify the status of all 52 hostages.

B. Main Points of the Declarations

1. Basic principle - when Iran releases hostages, US restores Nov 1979 financial status quo insofar as practicable.

2. Elements

a. Iran restores freedom of hostage.

- b. US releases Iran's frozen assets
- c. Claims resulting from hostage seizure and assets freeze are dropped.
- d. Iran's agreed debts to US lenders are paid.
- e. International arbitration replaces existing legal actions on all other preexisting economic claims.

3. The Basic Agreement

a. The Hostage release and the unfreezing of assets would be simultaneous.

b. Of Iran's \$11-12 billion of frozen assets, about \$8 billion would be placed in escrow before hostages released.

This 8 billion breaks down as follows:

Deposits in overseas

branches of US Banks \$ 5.5

Gold, securities and

other assets in Federal

Reserve. \$ 2.5

c. When the hostages are released, this \$8 billion would be applied as follows:

\$3.67 billion to pay off loans from US and other banks

1.42 billion to remain in escrow to secure payment of disputed claims between US banks and Iran.

2.88 billion to Iran

TOTAL \$7.97

d. Remaining frozen assets (over \$3 billion) would be unfrozen, and attachments on these assets dissolved.

e. The underlying economic claims would be submitted to

international arbitration by a Iran-US claims tribunal.

f. Of these US assets, \$1 billion would be placed in another escrow fund to secure payment of arbitration awards against Iran. As awards are paid, Iran would be obligated to refresh the fund so that it does not drop below \$500 million.

g. Iran would be free to initiate litigation in US courts to recover assets of former Shah and his family alleged to belong to Iran. US would agree to assist by freezing any such assets pending outcome of litigation, by requiring reports from holders, and in other ways. Ultimate determination would be left to US courts under applicable US law.

II. The Closing

The "Closing" involved three governments, four central banks, twelve US commercial banks and literally hundreds of officials and lawyers in Washington, New York, London, Algiers and Teheran. Throughout the closing period, beginning on the evening of January 18 and continuing into the late morning of January 20, President Carter directed the US closing team. He and his advisers were in virtually constant communication with team members in the Treasury, State and Justice Departments and with Deputy Secretary Christopher and his team in Algiers. The main steps in the Closing are described below:

A. Signing of the Declarations and Related Undertakings

1. President Carter signs statement of adherence and nine executive orders.

2. President Carter and Secretary of State Muskie authorize Deputy Secretary Christopher to sign Declarations and Related

undertakings in Algiers.

3. Government of Algeria notifies US and Iran that both are ready to sign.

4. Secretary of State delivers statement of adherence and copies of 5 executive orders to Algerian Embassy in US which advises Algiers.

5. Iran's Minister of State, Nabavi, signs separate counterparts of Declarations and Related undertakings on behalf of Prime Minister Rajai of Iran in Teheran in presence of Algerian negotiating team which advises Algiers.

6. Christopher signs Declaration and related Undertakings in Algiers.

7. Algeria notifies US and Iran that each has adhered and proclaims the two Declarations of Algiers. (2:17 a.m. EST 1/19)

B. Signing of the Escrow Agreement and related documents.

(These documents required signatures by the US, Iran and three central banks - Federal Reserve, Central Bank of Algeria (the escrow agent) and Bank of England.)

1. Christopher signs in Algiers for US at same time he signs Declarations on 1/19.

2. Iran signs separate counterpart in Teheran at about 3 a.m. on 1/19 in presence of Algerian negotiating team. However, Iran refuses to approve or sign attached annex containing detailed instructions defining responsibilities of escrow agent and also containing text of Bank Markazi's instructions to US deposit banks to pay over deposits to Federal Reserve for transfer in escrow.

3. Iran's failure to approve or sign attached annex causes concern to US deposit banks and issue is subject of further negotiations.

4. These negotiations continue throughout 1/19 and into the early morning of 1/20. Iran denounces US banks for "underhanded" maneuver in proposed text of Bank Markazi instructions.

5. The disputed instructions include conventional statement that transfer of specified deposit amounts to Federal Reserve will release deposit banks from further liability. But since Bank Markazi's records of deposits are incomplete as result of freeze and aftermath of Iran's revolution, Markazi's figures do not tally with US bank figures. Markazi therefore wants to reserve right to dispute correct amounts after transfer.

6. US deposit banks agree and submit corrective language. But Markazi declines to approve language or submit satisfactory language of its own. Meanwhile, Iran continues to attack the instructions as underhanded. Entire closing hangs in balance.

7. During the night of 19/20, a solution emerges, as follows:

a. The US deposit banks and the US agree to detach Markazi instructions as an annex to the Escrow Agreement, and to accept separate instructions if language is adequate.

b. Markazi's English solicitor prepares modification of US bank draft that Markazi agrees to accept. Says at 10 p.m. 1/19 it will be transmitted immediately by telex if US banks approve. US and US banks tell him to begin transmitting.

c. From 10 p.m. to 3:15 a.m., telex of instructions is

prepared test-checked and finally sent at 3:00 EST, giving instructions to 12 banks to transfer precise amounts of deposits, broken down by principal and interest, aggregating \$5.5 billion to the Federal Reserve.

d. When the full telex was received, Secretary of the Treasury Miller delivered an Executive Order to the US bank officials present in his office, together with a Treasury instruction to pay over the frozen deposits in overseas branches to the Federal Reserve in New York.

e. The full telex as transmitted contained numerous material typographical errors including one in the initial identifying code number, although the terminal code number is correct. Under normal precautionary procedures for such transactions - this was the largest private transfer in history - all the errors required further correcting of the telex until the text was perfect. This would have taken several hours more.

f. The telex was being received in the office of the London solicitor for the 12 US deposit banks. Lawyers and officials of all 12 banks, the Federal Reserve and the Treasury were present. They were connected by open telephone lines to their counterparts at the Treasury Department in Washington and their counterparts at the US Embassy in Algiers.

g. The US bank officers and lawyers conferred to decide whether the imperfect telex was satisfactory for such a large transfer, but could not reach unanimity. At 3:45 a.m., Secretary Miller, who was at the Treasury end of the open lines, gave verbal instructions to the US banks to make the transfers, and on the

basis of this legal direction, they agreed to do so. By 4:10 a.m. the US banks transferred most of the \$5.5 billion to the Federal Reserve Bank of New York. The Federal Reserve Bank of New York then transferred the entire amount to its account in the Bank of England. (Two hours earlier, the Fed had completed the transfer of its own Iranian funds to its Bank of England account.) The balance of the \$5.5 billion (consisting of securities and foreign currency deposits) was transferred by 5:20 a.m. EST.

h. With \$7.977 billion now on deposit in the Fed's account in the Bank of England, these funds were ready for transfer to the escrow account of the Algerian Central Bank at the Bank of England. But that transfer could not be made until the Escrow Agreement had been signed by the Algerian Central Bank and the Federal Reserve and until a related Depository Agreement had been signed by the Algerian Central Bank and the Bank of England.

i. At this point (4 to 5 a.m. EST on 1/20) a further snag developed. Since Iran had refused to approve and sign the Annex to the Escrow Agreement containing the Technical Instructions, the Algerian Central Bank, mindful of its intermediary role, also declined to sign the Annex, and insisted that it be removed from the Escrow Agreement. The Annex contained provisions important to the Federal Reserve Bank of New York. The Fed's representative in Algiers decided to consult his superiors in Washington.

j. In a series of telephone conferences lasting over an hour, President Anthony Solomon of New York Fed decided on the advice of his counsel to authorize the signing of the Escrow Agreement. At 6:18 EST on 1/20, the Escrow Agreement and the

Depository Agreement were fully signed in Algiers.

k. The New York Fed then transferred \$7.977 billion dollars from its account in the Bank of England to the escrow account of the Algerian Central Bank. This transfer was completed at 6:45 a.m. EST on 1/20.

l. The Bank of England then certified to the Algerian Central Bank that the escrow account had been opened and contained \$7.977 billion. Because this had to be done by open telephone line from the Bank in London to its Deputy Governor in Algiers, and then painstakingly verified, typed, proofread and signed, the formal certificate was not delivered until 8:04 a.m.

m. At 8:06 a.m., the Algerian Central Bank certified to Iran and the US that the escrow account contained \$7.977 billion.

C. The Delivery of the Hostages.

1. The Declarations of Algiers provide that when the Algerian Central Bank certifies that not less than \$7.955 billion has been placed in the Escrow Account, "Iran shall immediately bring about the safe departure of the 52 US nationals detained in Iran."

2. Iran received this certificate at 8:06 a.m. EST on 1/20.

3. At 12:33 p.m. EST, the first aircraft was allowed to take off. At 12:42 p.m. EST, the second aircraft was allowed to take off. The planes departed Iranian airspace approxi-

mately one hour later, and proceeded over Turkey to Athens. After a refueling stop, they arrived in Algiers at 7 p.m. EST on 1/20. In a ceremony combining diplomatic correctness with high emotion, Foreign Minister Ben Yahia of Algeria turned over the 52 hostages to Deputy Secretary of State Christopher shortly after 8 p.m. EST.

4. The hostages will remain at Weisbaden for several day, and will then be flown to the US to rejoin their families. Every effort will be made to smooth their return to a normal life. As one of his last official acts, President Carter signed an Executive Order appointing a Commission on Hostage Compensation, to consider and recommend an appropriate form of legislation to compensate the hostages and their families for the ordeal they have endured. President Carter has appointed four of the nine Commission members, leaving the appointment of the other five and the designation of the Chairman to President Reagan. The four appointees are:

Henry Bellmon of Oklahoma

Cyrus Vance of New York

Robert Giaimo of Connecticut

Patricia Harris of the District of Columbia

D. Funds Move From the Escrow

1. At 1:35 p.m. EST on 1/20, the Government of Algeria certified to the US and Iran that the 52 US nationals had safely departed from Iran.

2. About 2 p.m. EST, on the instructions of the Algerian Central Bank, the Bank of England disbursed \$3.67 billion to the Federal Reserve Bank of New York, (which then disbursed the funds to the Agent banks for the loan syndicates), and \$2.88 billion to

Iran. The balance of \$1.42 billion remains in escrow pending settlement or arbitration of disputes between US banks and Iran concerning the remaining amounts owed.

February 18, 1981

MEMORANDUM FOR MR. CUTLER

Attached is a memorandum dated today on the legality of the U.S.-Iran Hostage Agreement. It has been reviewed by and incorporates the comments of Bill Lake.

Lester Nurick

Attachment

cc: Bill Lake
Rod Heller
Sam Stern



MINNESOTA HISTORICAL SOCIETY

Copyright in the Walter F. Mondale Papers belongs to the Minnesota Historical Society and its content may not be copied without the copyright holder's express written permission. Users may print, download, link to, or email content, however, for individual use.

To request permission for commercial or educational use, please contact the Minnesota Historical Society.



www.mnhs.org