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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name EXECUTIVE SECRETARIAT, NSC: COUNTRY FILE

Withdrawer

KDB 7/18/2016

File Folder IRAN (2/28/82) (1)

FOIA

F03-002/5

Box Number 36

SKINNER

727

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
178803	REPORT	RE COMMENTS OF STATE DEPT. LEGAL ADVISOR ON ATTORNEY GENERAL'S 2/23/82 LETTER TO E. MEESE	8	2/28/1982	B1
178804	REPORT	CHRONOLOGY OF JUSTICE DEPARTMENT EFFORTS TO GAIN CONTROL OVER U.S. PARTICIPATION IN INTERNATIONAL LEGAL PROCEEDINGS	8	ND	B1

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

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
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THE WHITE HOUSE

WASHINGTON

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ENCLOSURE(S)

7/12/16 CDB

~~CONFIDENTIAL ATTACHMENT~~

February 28, 1982

MEMORANDUM

TO: Edwin Meese, III

FROM: William P. Clark *File*

SUBJECT: Rebuttal of Attorney General Letter of February 23, 1982 -- Representation of U.S. before U.S.-Iranian Claims Tribunal

Attached is the rebuttal of the Legal Adviser of the Department of State to matters asserted in the Attorney General's letter of February 23 to you.

This document is intended as a factual rather than an argumentative statement. It does not purport to draw conclusions, but rather to permit conclusions to be drawn by readers of both this document and the Attorney General's letter. The memo recites that the Secretary of State has authorized this communication.

In the interest of putting this matter to rest, neither the Attorney General nor the persons noted as receiving copies of the Attorney General's letter has received a copy of this document. Neither State nor this office will disburse copies.

Should you feel there to be a need for communicating further with the Attorney General and others, it is my understanding that you may use any of these materials.

CONFIDENTIAL ATTACHMENT

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178803 REPORT

8 2/28/1982 B1

RE COMMENTS OF STATE DEPT. LEGAL ADVISOR
ON ATTORNEY GENERAL'S 2/23/82 LETTER TO E.
MEESE

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- A. Meese Memorandum of February 19, 1982.
- B. Attorney General Smith's Letter to Mr. Meese of February 23, 1982.
- C. Attorney General Smith's Letter to Secretary Haig of February 16, 1982.
- D. Chronology of Justice Department Efforts to Gain Control Over U.S. Participation in International Legal Proceedings.
- E. Attorney General Civiletti's Letter to Legal Adviser Owen of December 9, 1979.
- F. Legal Adviser Owen's Letter to Assistant Attorney General Harmon of March 7, 1980.
- G. Attorney General Civiletti's Letter to Legal Adviser Owen of April 21, 1980.
- H. Attorney General Smith's Letter to Secretary Haig of May 7, 1981.
- I. Memcon of September 2, 1981, Meeting between Deputy Secretary Clark and Deputy Attorney General Schmults.
- J. Deputy Attorney General Schmults' Letter to Deputy Secretary Clark of September 10, 1981.
- K. Deputy Secretary Clark's Letter to Deputy Attorney General Schmults of October 12, 1981.
- L. Attorney General Smith's Letter to Secretary Haig of December 11, 1981.
- M. Secretary Haig's Letter to Attorney General Smith of December 28, 1981.
- N. Attorney General Smith's Letter to Secretary Haig of January 18, 1982.
- O. Secretary Haig's Letter to Attorney General Smith of January 29, 1982.
- P. Department of Justice Cables to U.S. Agent in The Hague.

- Q. State Department Appropriations Legislation.
- R. Former Secretary Rusk's Letter to Secretary Haig of January 22, 1982.
- S. Former Legal Adviser Stevenson's Letter to Legal Adviser Robinson of February 4, 1982.
- T. Memcon of Meeting between Assistant Attorney General McGrath and Legal Adviser Robinson of February 2, 1982.



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THE WHITE HOUSE

WASHINGTON

February 19, 1982

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL

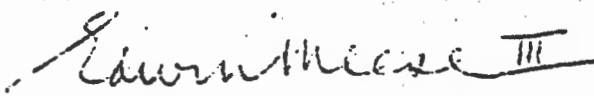
SUBJECT: Representation of the United States before the
Iran-United States Claims Tribunal

Issue: The Attorney General and the Secretary of State disagree on departmental authority for the designation of agents to represent the United States before international tribunals. Although the immediate disagreement concerns representation of the United States against claims in excess of \$10 billion asserted by Iran before the Iran-U.S. Claims Tribunal, the dispute is more fundamental, and could encompass claims asserted by or against the United States before any international tribunal on any issue.

Decision: The President, being aware of relevant facts and having considered the stated positions and arguments urged by the Attorney General and by the Secretary of State, has concluded that for foreign policy reasons the best interests of the United States require that the Secretary of State, subject to the President's prerogative, will continue to designate agents to represent the United States and will continue to control proceedings before international tribunals.

The President is aware of the Attorney General's practice of providing assistance to the Secretary when requested in particular proceedings before international tribunals, and approves such practice.

FOR THE PRESIDENT:


EDWIN MEESE, III
COUNSELLOR TO THE PRESIDENT

cc: William P. Clark



Office of the Attorney General

Washington, D.C. 20530

TAB B

15

February 23, 1982

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

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

Dear Ed:

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

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

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

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

me in S: 2/23/82
1720

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

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

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

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

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

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

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

Sincerely



William French Smith
Attorney General

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

Donald T. Regan
Secretary of the Treasury

Caspar W. Weinberger
Secretary of Defense

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

Craig L. Fuller
Assistant to the President
for Cabinet Affairs



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



TAB C CM
19

Act 1

February 16, 1982

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

Handwritten signature: Davis

Dear Al:

Davis:

See me. AMH - 2/18

~~Following our February 1 breakfast meeting, I asked Paul McGrath, the Assistant Attorney General in charge of our Civil Division to meet with your Legal Adviser, Davis Robinson, to work out the details for handling litigation matters before the Iran-United States Claims Tribunal upon the basis of our discussion, namely that the State Department would be responsible for all foreign policy issues and decisions, and the Justice Department would be responsible for managing the litigation.~~

~~To my surprise, your representatives have continued to insist that all litigation before the Claims Tribunal is a foreign policy matter and that the State Department would insist on managing all aspects of it. They stated that preparing the United States' case, including the presentation of evidence and legal arguments to the Tribunal, was all a matter of foreign policy and therefore had to be controlled by the State Department. If, as I hope, these are not your views, perhaps we should have another meeting with Messrs. McGrath and Robinson.~~

~~Of course, the Department of Justice will be pleased to continue providing such advice concerning these proceedings as may be requested by the State Department. As you know, Justice Department attorneys have cooperated in various aspects of the Tribunal work, including preparation for the Tribunal's resolution of the "four issues" case and recent negotiations with Iran. These attorneys will continue to be available for assistance on these matters to the extent their other obligations permit. In addition, your people should feel free to continue to request our advice on questions that arise in any other aspects of the proceedings.~~

~~As you know, I feel quite strongly that this complex proceeding exposes the United States to potential financial liability of such magnitude that it should be managed by this government's principal litigators. However, if it is impossible to arrange to have the litigation responsibility lodged where we believe it belongs, we must confine our~~

participation to advice and consultation whenever it may be sought. Under these circumstances, we must, as I am sure you will understand, disclaim responsibility for the representation of the United States in these proceedings.

Sincerely,

Bill

William French Smith
Attorney General

—★—

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178804 REPORT

8

ND

B1

CHRONOLOGY OF JUSTICE DEPARTMENT
EFFORTS TO GAIN CONTROL OVER U.S.
PARTICIPATION IN INTERNATIONAL LEGAL
PROCEEDINGS

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