

**Statement of
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U.S. Department of State
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Chairman Duffy, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am the Assistant Legal Adviser for International Claims and Investment Disputes at the Department of State, where I have worked to defend the United States against Iran at the Hague Tribunal for nearly 30 years. Over that time we have won many cases. We lost some. And sometimes we decided to settle. I am here today to explain as best I can in this setting the settlement that was announced in January.

As Mr. Backemeyer explained, this was only a partial settlement of a very large case. The rest of that case is ongoing at the Hague Tribunal. Because of that, I am limited in what I can discuss in this public setting. As he explained, Iran and its lawyers are vigilant in scouring the public record for statements or information that they can use against us in these arbitrations. In fact I can recall being in the Hague Tribunal many times and hearing Iran quote extensively from things that witnesses and members of Congress said in hearings, trying to use that to their advantage. These are multi-billion dollar claims against the United States. So for some of your questions, I may need to defer the question to a closed setting, like the one we did for House and Senate staff earlier this week.

To provide some background, the United States and Iran entered into the Algiers Accords in 1981, which created the Iran-U.S. Claims Tribunal at The Hague to address claims of nationals and the governments. The agreement was entered into by the Carter Administration, it was endorsed by the Reagan Administration, and it was debated by both houses of Congress. In the first 20 years of the Tribunal process, it focused primarily on resolving claims of U.S. nationals for debt, contract, expropriation and other measures affecting property rights. U.S. citizens and companies have received over \$2.5 billion in awards and settlements through that process.

Significant government-to-government claims were also filed at the Tribunal. The majority and certainly the largest were by Iran against the United States,

including Iran's large contract claims arising out of its former Foreign Military Sales ("FMS") Program.

Like other FMS customers, Iran paid money into a Trust Fund that was used to facilitate prompt payments to the U.S. contractors working on Iranian contracts. By January 1979, Iran had already been struggling to make the necessary payments on its more than 1,000 outstanding FMS contracts. In February 1979 Iran and the United States concluded a Memorandum of Understanding (MOU) providing for the cancellation of many remaining purchases. The two sides worked to implement the MOU and wind down Iran's FMS program over the ensuing months. After the hostages were taken at the U.S. Embassy in November 1979, these efforts essentially ceased.

The dispute over the FMS Trust Fund and interest, which resulted in the settlement in January of this year, was part of Iran's FMS claims that it filed with the Tribunal in 1982. So you can imagine the scale of it and the money involved: it is a multi-billion dollar breach-of-contract dispute covering 1,126 huge military sales contracts.

Before the settlement in January, other parts of the FMS claims were decided or settled some time ago. Indeed, settlement discussions over technical legal matters have been held in this channel for decades, typically led by the State Department Legal Adviser and the Iranian Presidential Legal Adviser. My estimate is that since the early 1980s, through the Reagan, Bush and Clinton Administrations, some 40 rounds of claims meetings occurred at this level. Indeed, the prior settlements with Iran of other portions of the FMS claims occurred during the first Bush Administration.

For example, in 1989, the United States and Iran settled an Iranian claim for military spare parts for \$7.5 million, which was paid from the Judgment Fund. In 1990, the Parties entered into a partial settlement for \$200 million from the Trust Fund; this is the same Trust Fund that was the subject of a final settlement in January. And in 1991, the Parties settled Iran's claim for titled FMS assets for \$278 million, which was paid from the Judgment Fund. Apart from the FMS claims, there were other significant settlements between the parties, including in 1990 when the United States received \$105 million from Iran in settlement of certain U.S. national claims and U.S. government claims. These settlements, and in particular the FMS settlements, were reached at key moments in those cases – such as before key hearings or when they were on the verge of going to decision.

In the past two years, as the proceedings at the Tribunal have been advancing, we revisited the possibility of settlement of Tribunal claims through 2014 and 2015. These discussions led to settlement of small claims that were the subject of ongoing hearings. They involved architectural drawings, which were transferred to the Tehran Museum of Contemporary Art, and for fossils, which are now in the possession of Iran's Ministry of the Environment.

In the spring of 2015, after years of extensive briefing, Iran pressed the Tribunal to schedule comprehensive hearings in these remaining FMS claims. The Tribunal ordered both Parties to file their respective proposals for the structure of hearings. Iran filed its proposal on November 11, 2015. Iran was also pressing for a preliminary ruling on issues including the outstanding balance of the FMS Trust Fund and interest since 1979. They sought interest based on a provision in the 1979 MOU calling for unexpended FMS funds associated with Iran's program to be placed in an interest-bearing account.

With the settlements over the smaller claims concluded in December 2015, and with hearings in the FMS claims on the horizon, we were able to achieve this most recent settlement, which finally and fully resolves Iran's claim for funds in the FMS Trust Fund, as well as its claim for interest since 1979. As we publicly announced in January, pursuant to this settlement, Iran received the balance of \$400 million in the FMS Trust Fund, as well as roughly \$1.3 billion representing a compromise on the interest. The Trust Fund balance of \$400 million was paid from Iranian funds that were deposited in the Trust Fund itself in connection with the FMS Program. The payment for the compromise on interest was provided out of the Judgment Fund, as was the case for the largest prior settlement of the FMS claims during the Bush Administration.

If Iran's claim for the Trust Fund balance and interest had gone to decision in the Hague Tribunal, the United States could well have faced significant exposure in the billions of dollars. Iran was of course seeking very high rates of interest for a period of over three decades. We were able to secure a favorable resolution on the interests and avoid the potential for a much larger award against us. The details of why we settled for this amount are litigation-sensitive: getting into that explanation would get at other issues still pending at the Tribunal. Iran's lawyers would try to use my words, or maybe even some of your words, against us to help their case.

But what I can say here today is that I believed that this settlement was the best thing for the United States. It was the best way to avoid a possible decision from the Tribunal ordering us to potentially pay a lot more.