(footnotes deleted, except FN29)

Supreme Court of the United States

Curtis REID, Superintendent of the District of Columbia Jail, Appellant,
v.
Clarice B. COVERT.
Nina KINSELLA, Warden of the Federal Reformatory for Women, Alderson, West Virginia, Petitioner,
v.
Walter KRUEGER.

Nos. 701, 713.

Argued Feb. 27, 1957.
Decided June 10, 1957.

Mr. Justice BLACK announced the judgment of the Court and delivered an opinion, in which The CHIEF JUSTICE, Mr. Justice DOUGLAS, and Mr. Justice BRENNAN join.

These cases raise basic constitutional issues of the utmost concern. They call into question the role of the military under our system of government. They involve the power of Congress to expose civilians to trial by military tribunals, under military regulations and procedures, for offenses against the United States thereby depriving them of trial in civilian courts, under civilian laws and procedures and with all the safeguards of the Bill of Rights. These cases are particularly significant because for the first time since the adoption of the Constitution wives of soldiers have been denied trial by jury in a court of law and forced to trial before courts-martial.

In No. 701 Mrs. Clarice Covert killed her husband, a sergeant in the United States Air Force, at an airbase in England. Mrs. Covert, who was not a member of the armed services, was residing on the base with her husband at the time. She was tried by a court-martial for murder under Article 118 of the Uniform Code of Military Justice (UCMJ). The trial was on charges preferred by Air Force personnel and the court-martial was composed of Air Force officers. The court-martial asserted jurisdiction over Mrs. Covert under Article 2(11) of the UCMJ, which provides:

> 'The following persons are subject to this code:
>
> '(11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, ***4** all persons serving with, employed by, or

accompanying the armed forces without the continental limits of the United States * * *.'

**1224 Counsel for Mrs. Covert contended that she was insane at the time she killed her husband, but the military tribunal found her guilty of murder and sentenced her to life imprisonment. The judgment was affirmed by the Air Force Board of Review, 16 CMR 465, but was reversed by the Court of Military Appeals, 6 USCMA 48, because of prejudicial errors concerning the defense of insanity. While Mrs. Covert was being held in this country pending a proposed retrial by court-martial in the District of Columbia, her counsel petitioned the District Court for a writ of habeas corpus to set her free on the ground that the Constitution forbade her trial by military authorities. Construing this Court's decision in United States ex rel. Toth v. Quarles, 350 U.S. 11, 76 S.Ct. 1, 100 L.Ed. 8, as holding that 'a civilian is entitled to a civilian trial' the District Court held that Mrs. Covert could not be tried by courtmartial and ordered her released from custody. The Government appealed directly to this Court under 28 U.S.C. s 1252, 28 U.S.C.A. s 1252. See 350 U.S. 985, 76 S.Ct. 476, 100 L.Ed. 852.

In No. 713 Mrs. Dorothy Smith killed her husband, an Army officer, at a post in Japan where she was living with him. She was tried for murder by a court- martial and despite considerable evidence that she was insane was found guilty and sentenced to life imprisonment....

We hold that Mrs. Smith and Mrs. Covert could not constitutionally be tried by military authorities.

I.

[1] At the beginning we reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely ***6** a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land....

The rights and liberties which citizens of our country enjoy are not protected by custom and tradition alone, they have been jealously preserved from the encroachments ***7** of Government by express provisions of our written Constitution.

Among those provisions, Art. III, s 2 and the Fifth and Sixth Amendments are directly relevant to these cases. Article III, s 2 lays down the rule that:

'The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any

State, the Trial shall be at such Place or Places as the Congress may by Law have directed.'

The Fifth Amendment declares:
'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; * * *.'

And the Sixth Amendment provides:
'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed * * *.'

The language of Art. III, s 2 manifests that constitutional protections for the individual were designed to restrict the United States Government when it acts outside of this country, as well as here at home. After declaring that all criminal trials must be by jury, the section states that when a crime is 'not ****1226** committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.' If ***8** this language is permitted to have its obvious meaning, s 2 is applicable to criminal trials outside of the States as a group without regard to where the offense is committed or the trial held. From the very first Congress, federal statutes have implemented the provisions of s 2 by providing for trial of murder and other crimes committed outside the jurisdiction of any State 'in the district where the offender is apprehended, or into which he may first be brought.' The Fifth and Sixth Amendments, like Art. III, s 2, are also all inclusive with their sweeping references to 'no person' and to 'all criminal prosecutions.'

This Court and other federal courts have held or asserted that various constitutional limitations apply to the Government when it acts outside the continental United States. While it has been suggested that only ***9** those constitutional rights which are 'fundamental' protect Americans abroad, we can find no warrant, in logic or otherwise, for picking and choosing among the remarkable collection of 'Thou shalt nots' which were explicitly fastened on all departments and agencies of the Federal Government by the Constitution and its Amendments. Moreover, in view of our heritage and the history of the adoption of the Constitution and the Bill of Rights, it seems peculiarly anomalous to say that trial before a civilian judge and by an independent jury picked from the common citizenry is not a fundamental right....

II.

[2] At the time of Mrs. Covert's alleged offense, an executive agreement was in effect between the United States and Great Britain which permitted United States' military courts to exercise exclusive

jurisdiction over offenses committed in Great Britain by American servicemen or their dependents. [FN29] For **1230 its part, the United States agreed that these military courts would be willing and able to try and to punish all offenses against the laws of Great Britain by such persons. In all material respects, the same situation existed in Japan when Mrs. Smith *16 killed her husband. Even though a court-martial does not give an accused trial by jury and other Bill of Rights protections, the Government contends that article 2(11) of UCMJ, insofar as it provides for the military trial of dependents accompanying the armed forces in Great Britain and Japan, can be sustained as legislation which is necessary and proper to carry out the United States' obligations under the international agreements made with those countries. The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution.

FN29. Executive Agreement of July 27, 1942, 57 Stat. 1193. The arrangement now in effect in Great Britain and the other North Atlantic Treaty Organization nations, as well as in Japan, is the NATO Status of Forces Agreement, 4 U.S. Treaties and Other International Agreements 1792, T.I.A.S. 2846, which by its terms gives the foreign nation primary jurisdiction to try dependents accompanying American servicemen for offenses which are violations of the law of both the foreign nation and the United States. Art. VII, ss 1(b), 3(a). The foreign nation has exclusive criminal jurisdiction over dependents for offenses which only violate its laws. Art. VII, s 2(b). However, the Agreement contains provisions which require that the foreign nations provide procedural safeguards for our nationals tried under the terms of the Agreement in their courts, Art. VII, s 9. Generally, see Note, 70 Harv.L.Rev. 1043.
Apart from those persons subject to the Status of Forces and comparable agreements and certain other restricted classes of Americans, a foreign nation has plenary criminal jurisdiction, of course, over all Americans-- tourists, residents, businessmen, government employees and so forth--who commit offenses against its laws within its territory.

Article VI, the Supremacy Clause of the Constitution, declares: 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *.'

There is nothing in this language which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in Article VI make it clear that the reason treaties were not limited

to those made in 'pursuance' of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important peace treaties which concluded the Revolutionary ***17** War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights--let alone alien to our entire constitutional history and tradition--to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined....

There is nothing in State of Missouri v. Holland, 252 U.S. 416, 40 S.Ct. 382, 64 L.Ed. 641, which is contrary to the position taken here. There the Court carefully noted that the treaty involved was not inconsistent with any specific provision of the Constitution. The Court was concerned with the Tenth Amendment which reserves to the States or the people all power not delegated to the National Government. To the extent that the United States can validly make treaties, the people and the States have delegated their power to the National Government and the Tenth Amendment is no barrier.

In summary, we conclude that the Constitution in its entirety applied to the trials of Mrs. Smith and Mrs. ***19** Covert. Since their court-martial did not meet the requirements of Art. III, s 2, or the Fifth and Sixth Amendments we are compelled to determine if there is anything within the Constitution which authorizes the military trial of dependents accompanying the armed forces overseas.

III.

It is true that the Constitution expressly grants Congress power to make all rules necessary and proper to govern and regulate those persons who are serving in the 'land and naval Forces.' But the Necessary and Proper ***21** Clause cannot operate to extend military jurisdiction to any group of persons beyond that class described in Clause 14--'the land and naval Forces.' Under the grand design of the Constitution civilian courts are the normal repositories of power to try persons charged with crimes against the United States. And to protect persons brought before these courts, Article III and the Fifth, Sixth, and Eighth Amendments establish the right ****1233** to trial by jury, to indictment by a grand jury and a number of other specific safeguards. By way of contrast the jurisdiction of military tribunals is a very limited and extraordinary jurisdiction derived from the cryptic language in Art. I, s 8, and, at most, was intended to be only a narrow exception to the normal and preferred method of

trial in courts of law. Every extension of military jurisdiction is an encroachment on the jurisdiction of the civil courts, and, more important, acts as a deprivation of the right to jury trial and of other treasured constitutional protections. Having run up against the steadfast bulwark of the Bill of Rights, the Necessary and Proper Clause cannot extend the scope of Clause 14....

Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny. And under our Constitution courts of law alone are given power to try civilians for ***41** their offenses against the United States. The philosophy expressed by Lord Coke, speaking long ago from a wealth of experience, is still timely:

'God send me never to live under the Law of Conveniency or Discretion. Shall the Souldier and Justice Sit on one Bench, the Trumpet will not let the Cryer speak in Westminster-Hall.'

In No. 701, Reid v. Covert, the judgment of the District Court directing the Mrs. Covert be released from custody is affirmed.

Affirmed.

In No. 713, Kinsella v. Krueger, the judgment of the District Court is reversed and the caseis remanded with instructions to order Mrs. Smith released from custody.

Reversed and remanded.

Supreme Court of the United States

DAMES & MOORE, Petitioner,
v.
Donald T. REGAN, Secretary of the Treasury, et al.

No. 80-2078.

Argued June 24, 1981.
Decided July 2, 1981.

[In 1976, Congress passed the Foreign Sovereign Immunity Act (FSIA), conferring jurisdiction on the federal courts over causes of action in commercial claims against foreign government-owned entities. Many American companies had such claims against Iranian entities after the revolution, and some had even received a judgment. Nevertheless, under the Algiers Accords, a presidential executive agreement, the United States agreed to terminate those claims in U.S. courts and to submit them instead to an ad hoc international arbitration in the Hague. This effectively overrode FSIA and eliminated state law-based

causes of action. The Supreme Court approved the agreement and enforced the President's orders issued to carry it out. Justice Renquist delivered a unanimous opinion:)

The parties and the lower courts, confronted with the instant questions, have **2981 all agreed that much relevant analysis is contained in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952). ...

Although we have in the past found and do today find Justice Jackson's classification of executive actions into three general categories analytically useful, we should be mindful of Justice Holmes' admonition, quoted by Justice Frankfurter in *Youngstown, supra, at* 597, 72 S.Ct., at 890 (concurring opinion), that "[t]he great ordinances of the Constitution do not establish and divide fields of black and white." *Springer v. Philippine Islands*, 277 U.S. 189, 209, 48 S.Ct. 480, 485, 72 L.Ed. 845 (1928) (dissenting opinion). Justice Jackson himself recognized that his three categories represented "a somewhat over-simplified grouping," 343 U.S., at 635, 72 S.Ct., at 870, and it is doubtless the case that executive action in any particular instance falls, not neatly in one of three pigeonholes, but rather at some point along a spectrum running from explicit congressional authorization to explicit congressional prohibition. This is particularly true as respects cases such as the one before us, involving responses to international crises the nature of which Congress can hardly have been expected to anticipate in any detail....

IV

Although we have concluded that the IEEPA constitutes specific congressional authorization to the President to nullify the attachments and order the transfer of Iranian assets, there remains the question of the President's authority to suspend claims pending in American courts. Such claims have, of course, an existence apart from the attachments which accompanied them. In terminating these claims through Executive Order No. 12294 the President purported to act under authority of both the IEEPA and 22 U.S.C. § 1732, the so-called "Hostage Act." [FN7] 46 Fed.Reg. 14111 (1981).

FN7. Judge Mikva, in his separate opinion in *American Int'l Group, Inc. v. Islamic Republic of Iran*, 211 U.S.App.D.C. 468, 490, 657 F.2d 430, 452 (1981), argued that the moniker "Hostage Act" was newly coined for purposes of this litigation. Suffice it to say that we focus on the language of 22 U.S.C. § 1732, not any shorthand description of it. See W. Shakespeare, Romeo and Juliet, Act II, scene 2, line 43 ("What's in a name?").

We conclude that although the IEEPA authorized the nullification of the attachments, it cannot be read to authorize the suspension of

the claims. The claims of American citizens against Iran are not in themselves transactions involving Iranian property or efforts to exercise any rights with respect to such property. An *in personam* lawsuit, although it might eventually be reduced to judgment and that judgment might be executed upon, is an effort to establish liability and fix damages and does not focus on any particular property within the jurisdiction. The terms of the IEEPA therefore do not authorize the President to suspend claims in American courts. This is the view of all the courts which have considered the question. *Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority*, 651 F.2d, at 809-814; *American Int'l Group, Inc. v. Islamic Republic of Iran*, 211 U.S.App.D.C., at 481, n. 15, 657 F.2d, at 443, n. 15; ***676***The Marschalk Co. v. Iran National Airlines Corp.*, 518 F.Supp. 69, 79 (SDNY 1981); ****2985***Electronic Data Systems Corp. v. Social Security Organization of Iran*, 508 F.Supp. 1350, 1361 (ND Tex. 1981).

The Hostage Act, passed in 1868, provides:

"Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress." Rev.Stat. § 2001, 22 U.S.C. § 1732.

We are reluctant to conclude that this provision constitutes specific authorization to the President to suspend claims in American courts. Although the broad language of the Hostage Act suggests it may cover this case, there are several difficulties with such a view. The legislative history indicates that the Act was passed in response to a situation unlike the recent Iranian crisis. Congress in 1868 was concerned with the activity of certain countries refusing to recognize the citizenship of naturalized Americans traveling abroad, and repatriating such citizens against their will. See, *e. g.*, Cong. Globe, 40th Cong., 2d Sess., 4331 (1868) (Sen. Fessenden); *id.*, at 4354 (Sen. Conness); see also 22 U.S.C. § 1731. These countries were not interested in returning the citizens in exchange for any sort of ransom. This also explains the reference in the Act to imprisonment "in violation of the rights of American citizenship." Although the Iranian hostage-taking violated international law and common decency, ***677** the hostages were not seized out of any refusal to recognize their American citizenship--they were seized precisely *because of* their American citizenship. The legislative history is also somewhat ambiguous on the question whether Congress contemplated Presidential action such as that involved here or rather simply reprisals directed against the offending foreign country and *its* citizens. See, *e. g.*, Cong.

Globe, 40th Cong., 2d Sess., 4205 (1868); *American Int'l Group, Inc. v. Islamic Republic of Iran, supra*, at 490-491, 657 F.2d, at 452-453 (opinion of Mikva, J.).

Concluding that neither the IEEPA nor the Hostage Act constitutes specific authorization of the President's action suspending claims, however, is not to say that these statutory provisions are entirely irrelevant to the question of the validity of the President's action. We think both statutes highly relevant in the looser sense of indicating congressional acceptance of a broad scope for executive action in circumstances such as those presented in this case. As noted in Part III, *supra*, at 2982-2983, the IEEPA delegates broad authority to the President to act in times of national emergency with respect to property of a foreign country. The Hostage Act similarly indicates congressional willingness that the President have broad discretion when responding to the hostile acts of foreign sovereigns....

...(W)e cannot ignore the general tenor of Congress' legislation in this area in trying to determine whether the President is acting alone or at least with the acceptance of Congress. As we have noted, Congress cannot anticipate and legislate with regard to every possible action the President may find it necessary to take or every possible situation in which he might act. Such failure of Congress specifically to delegate authority does not, "especially ... in the areas of foreign policy and national security," imply "congressional disapproval" of action taken by the Executive. *Haig v. Agee*, 453 U.S. 280, 291, 101 S.Ct. 2766, 2774, 69 L.Ed.2d 640. On the contrary, the enactment of legislation closely related to the question of the President's authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to "invite" "measures on independent presidential responsibility," *Youngstown*, 343 U.S., at 637, 72 S.Ct., at 871 (Jackson, J., concurring). At least this is so where there is no contrary indication of legislative intent and when, as here, there is a history of congressional acquiescence in conduct of the sort ***679** engaged in by the President. It is to that history which we now turn.

Not infrequently in affairs between nations, outstanding claims by nationals of one country against the government of another country are "sources of friction" between the two sovereigns. *United States v. Pink*, 315 U.S. 203, 225, 62 S.Ct. 552, 563, 86 L.Ed. 796 (1942). To resolve these difficulties, nations have often entered into agreements settling the claims of their respective nationals. As one treatise writer puts it, international agreements settling claims by nationals of one state against the government of another "are established international practice reflecting traditional international theory." L. Henkin, Foreign Affairs and the Constitution 262 (1972). Consistent with that principle, the United States has repeatedly exercised its sovereign authority to settle the claims of its nationals against foreign countries. Though those settlements have sometimes been made by

treaty, there has also been a longstanding practice of settling such claims by executive agreement without the advice and consent of the Senate. Under such agreements, the President has agreed to renounce or extinguish claims of United States nationals against foreign governments in return for lump-sum payments or the establishment of arbitration procedures. To be sure, many of these settlements were ****2987** encouraged by the United States claimants themselves, since a claimant's only hope of obtaining any payment at all might lie in having his Government negotiate a diplomatic settlement on his behalf. But it is also undisputed ***680** that the "United States has sometimes disposed of the claims of its citizens without their consent, or even without consultation with them, usually without exclusive regard for their interests, as distinguished from those of the nation as a whole." Henkin, *supra*, at 262-263. Accord, Restatement (Second) of Foreign Relations Law of the United States § 213 (1965) (President "may waive or settle a claim against a foreign state ... [even] without the consent of the [injured] national"). It is clear that the practice of settling claims continues today. Since 1952, the President has entered into at least 10 binding settlements with foreign nations, including an $80 million settlement with the People's Republic of China.

Crucial to our decision today is the conclusion that Congress has implicitly approved the practice of claim settlement by executive agreement. This is best demonstrated by Congress' enactment of the International Claims Settlement Act of 1949, 64 Stat. 13, as amended, 22 U.S.C. § 1621 *et seq.* (1976 ed. and Supp. IV). The Act had two purposes: (1) to allocate to United States nationals funds received in the course of an executive claims settlement with Yugoslavia, and (2) to provide a procedure whereby funds resulting from future settlements could be distributed. To achieve these ends Congress created the International Claims Commission, now the Foreign Claims Settlement Commission, and gave it jurisdiction to make final and binding decisions with respect to claims by United States nationals against settlement funds. 22 U.S.C. § 1623(a). By creating a procedure to implement future settlement agreements, Congress placed its stamp of approval on such agreements....

Over the years Congress has frequently amended the International Claims Settlement Act to provide for particular problems arising out of settlement agreements, thus demonstrating Congress' continuing acceptance of the President's claim settlement authority....

Finally, the legislative history of the IEEPA further reveals that Congress has accepted the authority of the Executive to enter into settlement agreements. Though the IEEPA was enacted to provide for some limitation on the President's emergency powers, Congress stressed that "[n]othing in this act is intended ... to interfere with the authority ***682** of the President to [block assets], or to impede the settlement of claims of U. S. citizens against foreign countries." ...

Petitioner raises two arguments in opposition to the proposition that Congress has acquiesced in this longstanding practice of claims settlement by executive agreement....

PetiFtioner...asserts that Congress divested the President of the authority to settle claims when it enacted the Foreign Sovereign Immunities Act of 1976 (hereinafter FSIA), 28 U.S.C. § § 1330, 1602 *et seq*. The FSIA granted personal and subject-matter jurisdiction in the federal district courts over commercial suits brought by claimants against those foreign states which have waived immunity. 28 U.S.C. § 1330. Prior to the enactment of the FSIA, a foreign government's immunity to suit was determined by the Executive Branch on a case-by-case basis. According to petitioner, the principal purpose of the FSIA was to depoliticize these commercial lawsuits by taking them out of the arena of foreign affairs--where the Executive Branch is subject to the pressures of foreign states seeking to avoid liability through a grant of immunity--and by placing them within the exclusive jurisdiction of the courts. Petitioner thus insists that the President, by suspending its claims, has circumscribed the jurisdiction of the United States courts in violation of Art. III of the Constitution.

We disagree. In the first place, we do not believe that the President has attempted to divest the federal courts of jurisdiction. Executive Order No. 12294 purports only to "suspend" the claims, not divest the federal court of "jurisdiction." As we read the Executive Order, those claims not within the jurisdiction of the Claims Tribunal will "revive" ***685** and become judicially enforceable in United States courts. This case, in short, illustrates the difference between modifying federal-court jurisdiction and directing the courts to apply a different rule of law. See *United States v. Schooner Peggy*, 1 Cranch 103, 2 L.Ed. 49 (1801). The President has exercised the power, acquiesced in by Congress, to settle claims and, as such, has simply effected a change in the substantive law governing the lawsuit. Indeed, the very example of sovereign immunity belies petitioner's argument. No one would suggest that a determination of sovereign immunity divests the federal courts of "jurisdiction." Yet, petitioner's argument, if accepted, would have required courts prior to the enactment of the FSIA to reject as an encroachment on their jurisdiction the President's determination of a foreign state's sovereign immunity.

Petitioner also reads the FSIA much too broadly. The principal purpose of the FSIA was to codify contemporary concepts concerning the scope of sovereign immunity and withdraw from the President the authority to make binding determinations of the sovereign immunity to be accorded foreign states. See *Chas. T. Main Int'l, Inc. v. Khuzestan Water & Power Authority*, 651 F.2d, at 813-814; ****2990***American Int'l Group, Inc. v. Islamic Republic of Iran*, 211 U.S.App.D.C., at 482, 657 F.2d, at 444. The FSIA was thus designed

to remove one particular barrier to suit, namely sovereign immunity, and cannot be fairly read as *prohibiting* the President from settling claims of United States nationals against foreign governments. It is telling that the Congress which enacted the FSIA considered but rejected several proposals designed to limit the power of the President to enter into executive agreements, including claims settlement agreements. ***686** It is quite unlikely that the same Congress that rejected proposals to limit the President's authority to conclude executive agreements sought to accomplish that very purpose *sub silentio* through the FSIA. And, as noted above, just one year after enacting the FSIA, Congress enacted the IEEPA, where the legislative history stressed that nothing in the IEEPA was to impede the settlement of claims of United States citizens. It would be surprising for Congress to express this support for settlement agreements had it intended the FSIA to eliminate the President's authority to make such agreements.

In light of all of the foregoing--the inferences to be drawn from the character of the legislation Congress has enacted in the area, such as the IEEPA and the Hostage Act, and from the history of acquiescence in executive claims settlement--we conclude that the President was authorized to suspend pending claims pursuant to Executive Order No. 12294. As Justice Frankfurter pointed out in *Youngstown*, 343 U.S., at 610-611, 72 S.Ct., at 897-898, "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned ... may be treated as a gloss on 'Executive Power' vested in the President by § 1 of Art. II." Past practice does not, by itself, create power, but "long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent...." *United States v. Midwest Oil Co.*, 236 U.S. 459, 474, 35 S.Ct. 309, 313, 59 L.Ed. 673 (1915). See *Haig v. Agee*, 453 U.S., at 291, 292, 101 S.Ct., at 2774. Such practice is present here and such a presumption is also appropriate. In light of the fact that Congress may be considered to have consented to the President's action in suspending claims, we cannot say that action exceeded the President's powers.

Our conclusion is buttressed by the fact that the means ***687** chosen by the President to settle the claims of American nationals provided an alternative forum, the Claims Tribunal, which is capable of providing meaningful relief. The Solicitor General also suggests that the provision of the Claims Tribunal will actually *enhance* the opportunity for claimants to recover their claims, in that the Agreement removes a number of jurisdictional and procedural impediments faced by claimants in United States courts. Brief for Federal Respondents 13-14. Although being overly sanguine about the chances of United States claimants before the Claims Tribunal would require a degree of naivete which should not be demanded even of judges, the Solicitor General's point cannot be discounted. Moreover, it is important to remember that we have already held that the President has the *statutory* authority to nullify attachments and

to transfer the assets out of the country. The President's power to do so does not depend on his provision of a forum whereby claimants can recover on those claims. The fact that the President has provided such a forum here means that the claimants are receiving something in return for the suspension of their claims, namely, access to an international tribunal before which they may well recover something on their claims. ****2991** Because there does appear to be a real "settlement" here, this case is more easily analogized to the more traditional claim settlement cases of the past.

Just as importantly, Congress has not disapproved of the action taken here. Though Congress has held hearings on the Iranian Agreement itself, Congress has not enacted legislation, or even passed a resolution, indicating its displeasure with the Agreement. Quite the contrary, the relevant Senate ***688** Committee has stated that the establishment of the Tribunal is "of vital importance to the United States." S.Rep.No.97-71, p. 5 (1981). We are thus clearly not confronted with a situation in which Congress has in some way resisted the exercise of Presidential authority.

Finally, we re-emphasize the narrowness of our decision. We do not decide that the President possesses plenary power to settle claims, even as against foreign governmental entities. As the Court of Appeals for the First Circuit stressed, "[t]he sheer magnitude of such a power, considered against the background of the diversity and complexity of modern international trade, cautions against any broader construction of authority than is necessary." *Chas T. Main Int'l, Inc. v. Khuzestan Water & Power Authority*, 651 F.2d, at 814. But where, as here, the settlement of claims has been determined to be a necessary incident to the resolution of a major foreign policy dispute between our country and another, and where, as here, we can conclude that Congress acquiesced in the President's action, we are not prepared to say that the President lacks the power to settle such claims.

V

We do not think it appropriate at the present time to address petitioner's contention that the suspension of claims, if authorized, would constitute a taking of property in violation of the Fifth Amendment to the United States Constitution in the absence of just compensation. Both petitioner and ***689** the Government concede that the question whether the suspension of the claims constitutes a taking is not ripe for review.

...(T)o the extent petitioner believes it has suffered an unconstitutional taking by the suspension of the claims, we see no jurisdictional ***690** obstacle to an appropriate action in the United States Court of Claims under the Tucker Act.

The judgment of the District Court is accordingly affirmed, and the mandate shall issue forthwith.

(Concurring Opinion of Justice Stevens and concurring and dissenting opinion of Justice Powell omitted.)

* * *

Notes

After the Supreme Court decision, Dames & Moore took its case to the Iran-United States Claims Tribunal, as required by the Algiers Accords. The Tribunal awarded Dames & Moore 1) $100,000, plus 10 percent interest, against the Islamic Republic of Iran; and (2) $108,435 plus interest, against the National Iranian Gas Company. (Award No. 97-54-3, 4 Iran-U.S. C.T.R. 212 (1983).)

At the time of the 1990-91 Gulf War, several cases occurred in U.S. courts where a plaintiff obtained a default judgment against an Iraqi government agency and the State Department interceded in an attempt to vacate the judgment on foreign policy grounds. In such cases the State Department requested the court to vacate the judgment on the ground that it would undermine attempts by the Department to establish an overall claims settlement procedure in conjunction with the U.N. claims process. Thus, the Executive Branch sought to accomplish through a unilateral exercise of its constitutional foreign affairs power what it had accomplished by executive agreement in *Dames & Moore.*