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International Adjudication: Embassy Seizure—*United States v. Iran*

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based on a finding that contempt law was invalid, few member states would have had cause to heed the decision, since few member states have contempt laws.⁵⁶ Instead, the judgment suggests a presumption against injunctions which restrain freedom of expression, whether imposed by English contempt law, or by other states pursuant to different laws.

Finally, member states frequently refer to the Convention when making policy decisions concerning human rights.⁵⁷ This may cause *The Sunday Times* judgment to have a dual effect. First, as member states apply the judgment in their municipal systems, the meaning of protection of judicial authority and impartiality will become standardized among states. Second, because the judgment stresses to member states that proper interpretation of article 10 includes the public's right to know and have access to ideas which are offensive to the state, freedom of expression will be given broader protection throughout the Council of Europe.

Victoria L. Wagner

INTERNATIONAL ADJUDICATION: EMBASSY SEIZURE —
United States v. Iran, [1979] I.C.J.

On December 15, 1979, the International Court of Justice unanimously granted a request by the United States for relief *pendente lite* in the *Case Concerning United States Diplomatic and Consular Staff in Tehran*, ordering the immediate release of all United States nationals detained in Iran and the return to the United States of its diplomatic premises. The Court's order¹ has been ignored, a demonstration of the limits of international adjudication in the context of a nationalist revolution.

The United States filed its petition² on November 29, 1979, making several allegations. The United States averred that on November 4,

justify an injunction. Important factors are public interest, the injunction's scope, and the activity of the pending case. *The Sunday Times* Case, [1979] Y.B. EUR. CONV. ON HUMAN RIGHTS — (Eur. Ct. of Human Rights) (judgment), reprinted in 18 INT'L LEGAL MATS. 931, 959-60 (1979).

56. *Id.* at 955.

57. See, e.g., DIRECTORATE OF HUMAN RIGHTS, COUNCIL OF EUROPE, COLLECTION OF DECISIONS OF NATIONAL COURTS REFERRING TO THE CONVENTION (Supp. Jan. 1974).

1. *United States v. Iran*, [1979] I.C.J. 7, reprinted in U.S. DEP'T OF STATE, SELECTED DOCS. NO. 15 at 11 (1979).

2. U.S. DEP'T OF STATE, SELECTED DOCS. NO. 14 at 2-5 (1979), reprinted in N.Y. Times, Nov. 30, 1979, at A16, col. 1.

The Court based its order on the allegations contained in the United States' application. The Court did not make any findings of facts at the time of its provisional order.

1979, the United States Embassy in Tehran and the United States Consulates in Tabriz and Shiraz were seized by demonstrators who took hostage all persons present,³ including some non-diplomats. The United States further averred that the Iranian security forces refused to protect the Embassy and Consulates. At the same time, the United States Chargé d'Affaires and two other diplomats were detained at the Iranian Ministry of Foreign Affairs. The United States claimed that demonstrators ransacked the files of the Embassy and Consulates and refused to release the United States nationals except on conditions unacceptable to the United States. The petition further alleged that United States nationals were bound and blindfolded and subjected to severe discomfort, isolation, and threats of criminal prosecution and death.⁴ The United States maintained that these acts violated treaties in force between the United States and Iran, as well as general principles of international law.⁵ The United States argued that in spite of this, the Government of Iran had made no attempt to obtain the release of the United States nationals, refused any substantive contact with United States officials, supported the demonstrators' demands, and threatened to prosecute the United States nationals for espionage.⁶

Two issues were raised during the Court's preliminary hearing on the case. First, the Court considered whether it had proper jurisdiction, and second, it decided whether the interim measures requested by the United States were appropriate.

The United States based its claim of jurisdiction on several treaties.

3. *Id.* The United States specifically alleged that, except for 13 persons released on Nov. 18 and 20, all those detained remained captive. These include at least 28 persons having recognized diplomatic status, at least 20 having recognized administrative and technical staff status, and two other United States nationals. *United States v. Iran*, [1979] I.C.J. 18, para. 34.

4. *Id.*

5. U.S. DEP'T OF STATE, *supra* note 2, at 3-4. The specific treaty articles alleged to have been violated were arts. 22, 24, 25, 27, 29, 31, 37, & 47 of the Vienna Convention on Diplomatic Relations, Apr. 15, 1961, 23 U.S.T. 3230, T.I.A.S. 7502, 500 U.N.T.S. 241 [hereinafter cited as Vienna Convention on Diplomatic Relations]; arts. 28, 31, 33, 34, 36, & 40 of the Vienna Convention on Consular Relations, Apr. 14, 1963, 21 U.S.T. 77, T.I.A.S. 6820, 596 U.N.T.S. 261 [hereinafter cited as Vienna Convention on Consular Relations]; arts. 4 & 7 of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1977, T.I.A.S. 8532 [hereinafter cited as Diplomatic Protection Convention]; arts. II (4), XIII, XVIII, & XIX of the Treaty of Amity, Economic Relations, and Consular Rights Between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93 [hereinafter cited as Amity Treaty]; U.N. CHARTER arts. 2(3), 2(4), 33. The United States cited numerous contemporary sources in support of its assertion that general principles of international law had been violated. U.S. DEP'T OF STATE, *supra* note 1, at 5.

6. U.S. DEP'T OF STATE, *supra* note 2, at 3.

The United States argued⁷ that its claims arose under the terms of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations,⁸ to which both Iran and the United States are parties. The United States asserted that, under the respective Optional Protocols⁹ to both Conventions, the Court has compulsory jurisdiction over all disputes arising under the Conventions. The United States also argued that, even though other provisions¹⁰ of the Vienna Conventions on Diplomatic Relations and on Consular Relations provide that the parties may agree to resort to arbitration or conciliation within two months of the outbreak of the dispute rather than to the Court, these articles did not require the United States to try these measures as a prerequisite to the Court's compulsory jurisdiction. The United States also asserted that, in any case, Iran's refusal to negotiate with a United States emissary¹¹ excused any arguable prerequisite to the Court's jurisdiction. The United States further argued¹² that the Court had compulsory jurisdiction both under the Treaty of Amity, Economic Relations, and Consular Rights of 1955 (Amity Treaty) Between the United States and Iran¹³ and under the Convention of 1973 on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (Diplomatic Protection Convention).¹⁴

7. For the text of the oral argument presented to the Court on Dec. 10, 1979 by United States Attorney General Benjamin R. Civiletti and the Dep't of State Legal Adviser Roberts B. Owen, as Agent, see U.S. DEP'T OF STATE, *supra* note 1, at 2-11. The United States argued, and the Court agreed, that only prima facie evidence of jurisdiction is necessary for article 41 relief. *Id.* at 5-6.

8. Vienna Convention on Diplomatic Relations, *supra* note 5; Vienna Convention on Consular Relations, *supra* note 5.

9. Vienna Convention on Diplomatic Relations Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 18, 1961, 23 U.S.T. 3374, T.I.A.S. 7502, 500 U.N.T.S. 241, art. 1; Vienna Convention on Consular Relations Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 24, 1963, 21 U.S.T. 326, T.I.A.S. 6820, 596 U.N.T.S. 469, art. I.

10. Vienna Convention on Consular Relations, Optional Protocol, *supra* note 9, arts. II & III.

11. In early November, President Carter dispatched former United States Attorney General Ramsey Clark as an emissary to visit Iran to discuss the situation with the Iranian government. Mr. Clark was refused permission to enter Iran and remained in Istanbul for several days before returning to the United States. U.S. DEP'T OF STATE, *supra* note 1, at 6.

12. *Id.* at 6.

13. Amity Treaty, *supra* note 5, art. XXI (2).

14. Diplomatic Protection Convention, *supra* note 5, art. 13 (1). Article 13 provides that the parties shall submit any dispute concerning the application or interpretation of the Diplomatic Protection Convention to arbitration. If, after six months, the parties are unable to agree to arbitration, any of the parties may refer the dispute to the International Court of Justice. The United States Agent argued that Iran had effectively foreclosed the possibility of arbitration by refusing to allow the United States emissary to enter the coun-

The United States requested, as interim measures, that the Court order Iran: first, to release all United States nationals in Iran and allow their prompt, safe departure from Iran; second, to restore control of the premises of the United States Embassy, Chancery, and Consulates to the United States Government; third, to insure that all persons attached to the Embassy and Consulates be permitted to carry out their official functions to the extent that they remain in Iran; fourth, to refrain from placing any consular or diplomatic personnel on trial or before an "international commission"¹⁵; and fifth, to insure that no action be taken which might prejudice the rights of the United States pending a final judgment.¹⁶ The United States asserted that, without these measures, its rights would be irreparably damaged. In oral argument, the United States referred to the continuing emotional and physical harm to its nationals, its right to maintain effective diplomatic functions in Iran, the threat of injury to its nationals and the danger to world peace.¹⁷ The United States emphasized that these measures were distinct from the final judgment requested of the Court and therefore did not prejudice the merits of the case.¹⁸

Iran chose not to be represented before the Court. However, the Minister of Foreign Affairs for Iran, Sadegh Ghotbzadeh, sent a telegram to the Court on behalf of his government challenging the Court's jurisdiction. In its telegram, Iran insisted that the issue of the United States nationals was only a "marginal and secondary aspect of an overall problem" of United States' interference in the domestic affairs of Iran and that any inquiry into the Islamic Revolution's repercussions in Iran was essentially a matter within the national sovereignty of Iran.¹⁹

Specifically, in its telegram, Iran raised two objections to the United States' request for provisional measures. First, Iran argued that this request in fact implied that the Court should judge the merits of the United States' case; and, second, that since provisional measures are

try and by closing the United States Embassy; thus, the six month requirement should be voided. U.S. DEP'T OF STATE, *supra* note 1, at 6. However, the Court did not reach this issue.

15. Although Iran has proposed such an international investigation, it is unclear what the composition and powers of the commission would be. U.S. DEP'T OF STATE, *supra* note 1, at 9-10.

16. *Id.*

17. *Id.* at 7.

18. *Id.* at 8. The United States requested a judgment that Iran be found in violation of its international legal obligations and be ordered to release all United States nationals, restore the Embassy and Consulates to United States' control, provide reparations, and prosecute the persons responsible for holding the nationals. For a complete text of the judgment requested, see *United States v. Iran*, [1979] I.C.J. 8, para. 1.

19. *United States v. Iran*, [1979] I.C.J. 10-11, para. 8.

intended to protect the interests of all parties to a dispute, they cannot be applied unilaterally as the United States had requested.²⁰

In its provisional order, the Court unanimously agreed that it had compulsory jurisdiction under the Optional Protocols of the Vienna Conventions.²¹ The Court said that articles II and III gave the parties the right to choose arbitration or conciliation in lieu of the Court's jurisdiction, but that an attempt at arbitration or conciliation was not a prerequisite to the Court's jurisdiction.²² The Court added that, under the Vienna Conventions, it had jurisdiction to consider the rights of United States nationals seized within the Embassy, as well as the rights of diplomatic personnel.²³ The Court reasoned that, under the Vienna Convention on Consular Rights,²⁴ consular functions include safeguarding the interests of nationals and that other provisions protecting the inviolability of the premises of embassies²⁵ and consulates²⁶ covered the rights of nationals seized on such premises. The Court, however, did not reach the question of whether compulsory jurisdiction might also be based upon the Amity Treaty or the Diplomatic Protection Convention.²⁷

The Court rejected Iran's challenge to the Court's compulsory jurisdiction on two grounds. First, given the significant legal principles involved, the question of the United States nationals could not be regarded as of secondary or marginal importance.²⁸ In particular, the Court noted that both the Secretary General²⁹ and the Security Council³⁰ had referred to the situation as threatening international peace and security. Second, the Court noted that Iran retains the right to present claims against the United States in either a counter-memorial or a counterclaim.³¹ The Court concluded that its jurisdiction over one

20. *Id.*

21. United States v. Iran, [1979] I.C.J. 14, para. 18; Vienna Convention on Diplomatic Relations, Optional Protocol, *supra* note 9; Vienna Convention Consular Relations, Optional Protocol, *supra* note 9.

22. United States v. Iran, [1979] I.C.J. 14, para. 17.

23. *Id.* at 14, para. 19.

24. Vienna Convention on Consular Relations, *supra* note 5, art. 5.

25. Vienna Convention on Diplomatic Relations, *supra* note 5, arts. 22, 25.

26. Vienna Convention on Consular Relations, *supra* note 5, arts. 28, 31, 36.

27. United States v. Iran, [1979] I.C.J. 14-15, para. 21.

28. United States v. Iran, [1979] I.C.J. 15, para. 23.

29. United Nations Secretary General Kurt Waldheim called the holding of the United States nationals "a grave situation" posing "a serious threat to international peace and security." Letter from Kurt Waldheim to the United Nations Security Council (Nov. 25, 1979), *reprinted in* U.N. Doc. S/13646.

30. S/Res/457 (1979).

31. United States v. Iran, [1979] I.C.J. 15, para. 24. Counterclaims may be filed under article 80 of the Rules of the International Court of Justice. I.C.J. ACTS AND DOCUMENTS, No. 3 at 92-149 (1972).

aspect of a dispute should not be limited merely because other aspects of the dispute had not been presented.³²

The Court also rejected Iran's arguments that the United States' requests were inappropriate as interim relief measures. The Court decided that a request for provisional measures³³ must by its nature relate to the substance of the case³⁴ and that either party may request unilateral measures.³⁵

In granting the United States' request for provisional measures, the Court affirmed that "there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies."³⁶ The Court added that the consular function is no less important and that "therefore the privileges and immunities of consular officers and consular premises and archives, are similarly principles deep-rooted in international law."³⁷ The Court upheld the United States' claim that the detention of United States personnel exposed the United States to a danger of irreparable harm, thus necessitating provisional measures in order to preserve the *status quo ante*.

The Court ordered that the United States personnel be afforded all the "privileges and immunities to which they are entitled under the treaties in force between the two states, and under general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran."³⁸

It is unclear whether this order would preclude Iran from detaining on criminal charges the two United States nationals not entitled to diplomatic protection.³⁹ If the Court's failure to distinguish the non-diplomatic nationals can be read as an assertion that they are entitled to the same immunity from criminal jurisdiction and the same right to leave Iran, then the Court has gone beyond the literal text of the Vienna Conventions, which only confer rights upon diplomatic persons. If the Court intended this as a response to the manner in which the nationals were seized and detained, then the Court's opinion is a strong activist defense of human rights against an assertion of state sovereignty.

32. United States v. Iran, [1979] I.C.J. 15, para. 24.

33. STATUTE OF THE I.C.J. art. 41.

34. United States v. Iran, [1979] I.C.J. 16, para. 28. The Court distinguished the United States' request for provisional measures from those in the Factory of Chorzów case, [1927] P.C.I.J., ser. A, No. 12, at 10, in which the Permanent Court of International Justice denied a request for awarding a portion of a claim for a sum of money as a provisional measure.

35. United States v. Iran, [1979] I.C.J. 16-17, para. 29.

36. *Id.* at 19, para. 38.

37. *Id.* at 20, para. 40.

38. *Id.* at 21, para. 47.

39. See note 3 *supra*.

The Court's decision clouds the real legal question: whether the order to release the United States nationals and to allow them to leave Iran is an appropriate provisional measure. Plainly, if Iran carried out the Court's order, it would not be able to press its claim that these persons must stand trial for espionage.⁴⁰ Thus, the Court has in effect spoken on the merits of Iran's claim against the United States diplomatic personnel. However, Iran might still claim financial reparations from the United States for the United States' alleged violations of international law.⁴¹

Based on its public statements, the Government of Iran is unlikely to comply with the Court's provisional order. It appears that the crisis in Iran must be resolved through political, rather than legal, means.

Nonetheless, the Court's unequivocal defense of diplomatic immunities as a core principle of the international legal order is more than a rhetorical exercise. The Court's order lends legitimacy to the political efforts to pressure Iran for the return of the United States nationals,⁴² focusing world opinion against acts which strike at the foundation of international legal order.

Joel Richard Paul

40. The United States diplomatic and consular personnel arguably would not be entitled to immunity from criminal prosecution in Iran if they had in fact engaged in espionage and interference in the internal affairs of Iran outside the scope of their official functions. Article 31 of the Vienna Convention on Diplomatic Relations, *supra* note 5, provides immunity for a diplomatic agent except in the case of "an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions." Diplomatic agents are required to respect local laws, and not to interfere in the domestic affairs of the receiving state or use the mission for any purpose incompatible with international law. However, this obligation is imposed without prejudice to the privileges and immunities of diplomatic agents. *Id.* art. 41.

Similarly, consular officers and employees have immunity from the jurisdiction of the receiving state only "in respect of acts performed in the exercise of consular functions." Thus, consular personnel may be denied immunity for acts outside their official functions. Moreover, without prejudice to their privileges or immunities, consular personnel must obey local laws, not interfere in domestic affairs, and not use the consular premises for purposes incompatible with its official functions. Vienna Convention on Consular Relations, *supra* note 5, arts. 43, 55.

41. United States v. Iran, [1979] I.C.J. 15, para. 24.

42. The Court's order has added weight to the efforts of the United States to form a consensus for imposing international economic sanctions against Iran. For example, the United Nations Security Council cited the Court's order as justification for its decision to impose economic sanctions if the Secretary General was unable to obtain the release of the United States nationals by Jan. 7, 1980. S/Res/457 (1979).