

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING UNITED STATES
DIPLOMATIC AND CONSULAR STAFF
IN TEHRAN**

(UNITED STATES OF AMERICA v. IRAN)



COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE RELATIVE AU PERSONNEL
DIPLOMATIQUE ET CONSULAIRE
DES ÉTATS-UNIS À TÉHÉRAN**

(ÉTATS-UNIS D'AMÉRIQUE c. IRAN)



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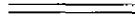
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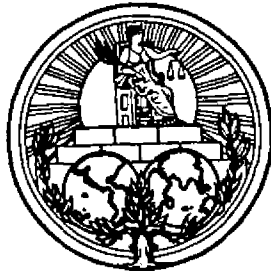


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The present volume contains the record filed in the case concerning *United States Diplomatic and Consular Staff in Tehran*.

This case, entered on the Court's General List on 29 November 1979 under number 64, was the subject of an Order on Indication of Provisional Measures (*United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, p. 7*) and of a Judgment delivered on 24 May 1980 (*United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1980, p. 3*) and was discontinued by an Order of 12 May 1981 (*United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1981, p. 45*).

The Application, Request for the Indication of Provisional Measures, Memorial and Oral Arguments appear in this volume in chronological order.

The page references originally appearing in the statements have been altered to correspond with the pagination of the present edition.

The Hague, 1982.

Le présent volume reproduit le dossier de l'affaire relative au *Personnel diplomatique et consulaire des Etats-Unis à Téhéran*.

Cette affaire, inscrite au rôle général sous le numéro 64, a fait l'objet d'une ordonnance portant indication de mesures conservatoires (*Personnel diplomatique et consulaire des Etats-Unis à Téhéran, mesures conservatoires, ordonnance du 15 décembre 1979, C.I.J. Recueil 1979, p. 7*) et d'un arrêt rendu le 24 mai 1980 (*Personnel diplomatique et consulaire des Etats-Unis à Téhéran, arrêt, C.I.J. Recueil 1980, p. 3*) et elle a été rayée du rôle par une ordonnance du 12 mai 1981 (*Personnel diplomatique et consulaire des Etats-Unis à Téhéran, C.I.J. Recueil 1981, p. 45*).

La requête, la demande en indication de mesures conservatoires, le mémoire et les plaidoiries sont reproduits dans le présent volume suivant leur ordre chronologique.

Les renvois d'un exposé à l'autre ont été modifiés pour tenir compte de la pagination de la présente édition.

La Haye, 1982.

CONTENTS

	<i>Page</i>
Application Instituting Proceedings submitted by the Government of the United States of America	
I. Statement of facts	3
II. The jurisdiction of the Court	4
III. The claims of the United States	6
IV. Judgment requested	7
Request for the Indication of Provisional Measures of Protection submitted by the Government of the United States of America	9
Oral Arguments on the Request for the Indication of Provisional Measures	
OPENING OF THE ORAL PROCEEDINGS	16
Preliminary questions by the President	17
Communication from the Government of Iran	18
Question by the President	19
STATEMENT BY MR. OWEN (UNITED STATES OF AMERICA)	20
ARGUMENT OF MR. CIVILETTI (UNITED STATES OF AMERICA)	21
Opening remarks	21
The applicable international legal standards	22
The 1961 Vienna Convention on Diplomatic Relations	22
The 1963 Vienna Convention on Consular Relations	23
The New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	23
The 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran	24
ARGUMENT OF MR. OWEN (UNITED STATES OF AMERICA)	25
The legal principles are simple and unambiguous	25
The facts are equally simple	25
Recital of the facts	25
The facts amount to a continuing violation of plainly established rights	26
The Court has undoubted jurisdiction under the first three treaties relied upon and prima facie jurisdiction under the fourth	27
Action by the Security Council does not exclude action by the Court	28
The request for provisional measures is based on the irreparable injury being inflicted on the American hostages	29
The request is also intended to preserve the <i>status quo pendente lite</i>	30
The communication to the Court from the Iranian Government does not constitute a legal obstacle to the United States request	32
The <i>Aegean Sea Continental Shelf</i> case distinguished	33
The different responsibilities of the Security Council and of the Court are recognized in Security Council resolution 457	33

	<i>Page</i>
The provisional measures requested specified	34
The Court urged to act with expedition	35
QUESTIONS BY JUDGE MOSLER AND BY THE COURT	37
CLOSING OF THE ORAL PROCEEDINGS	38
READING OF THE ORDER	39
Documents submitted to the Court after the filing of the request for the indication of provisional measures	
Selected document I	43
Declaration of David D. Newsom, Under Secretary of State, of 6 December 1979, with Appendices	43
<i>Appendix A.</i>	46
Letter dated 9 November 1979 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council	46
Statement by Ambassador Donald F. McHenry, United States Permanent Representative to the United Nations, in the Security Council, on the situation in Iran, 1 December 1979	46
Statement by Ambassador Donald F. McHenry, United States Permanent Representative to the United Nations, in the Security Council, on the situation in Iran, 4 December 1979	48
<i>Appendix B.</i>	50
The White House, Statement on Iran, 6 November 1979	50
Statement at Special Briefing—Wednesday, 7 November 1979—5.02 p.m.	50
Statement by Secretary of State Cyrus R. Vance—Thursday, 7 November 1979, 3.29 p.m.	50
Statement by the Honorable Cyrus R. Vance, Secretary of State, concerning the situation in Iran, 8 November 1979	51
The White House, 9 November 1979	51
The White House, 10 November 1979	51
The White House, announcement by the President, the Briefing Room, 12 November 1979	52
The White House, 12 November 1979. Imports of Petroleum and Petroleum Products. By the President of the United States of America: A Proclamation	52
The White House, 14 November 1979	53
The Secretary of the Treasury, Washington, 14 November 1979	53
Iran and Energy	54
The White House, Statement by the President, 17 November 1979	57
The White House, 19 November 1979	58
Statement by the Vice President at Press Conference in Bloomington, Minnesota, at Minnesota Farmers' Union Convention: 19 November 1979	58
The White House, 20 November 1979	58
Statement by Secretary of State Cyrus Vance, 21 November 1979	59
Department of Justice, 27 November 1979	59
News Conference on Iran	60
The White House, Statement by the Vice-President, 5 December 1979, the Briefing Room	66

	<i>Page</i>
<i>Appendix C</i>	67
1. Khomeini telephone call	67
2. Council of experts president's speech	67
3. Qom Seminary statement	68
4. Revolution Council assumes Government functions	69
5. Khomeini's son arrives	69
6. Student interviewed	70
7. Guards Commander on takeover	72
8. Public Prosecutor statement	72
9. Praise for Embassy seizure	72
10. Khomeini representative's remarks	73
11. Yazdi comments	73
12. Khomeini on occupation	74
13. Letter of resignation	75
14. Khomeini accepts Bazargan resignation, delegates power	75
15. Students threaten to kill US Embassy hostages	76
16. Clergy support for takeover	76
17. "Announcement" from Shiraz	77
18. Khomeini tells youths to leave Iraqi Consulate	77
19. Beheshti interviewed on new tasks of Revolution Council	77
20. Khomeini forbids officials to meet US representatives	78
21. Students reaffirm demand	78
22. Khomeini's refusal to deal with US commended	79
23. Ayatollah Beheshti interview	80
24. Bani-Sadr letter to Waldheim	80
25. Gotbzadeh Press Conference	83
26. Student leader says hostages will die if troops sent	84
27. Military personnel march	85
28. Bani-Sadr on demands	86
29. Revolution Council addresses people	87
30. Student statement No. 37	88
31. Khomeini interview on hostages	88
32. CBS interview with Khomeini	90
33. Gotbzadeh interview	94
34. Ahmad Khomeini interview	97
35. Khomeini speech	99
36. 21 November developments concerning US Embassy	102
37. Khomeini addresses Pakistani officers	102
38. Bani-Sadr address	103
39. Bani-Sadr Press Conference	105
40. Gotbzadeh on trials	105
41. 27 November developments concerning US Embassy	105
42. Khomeini denounces Carter	107
43. Students repeat trial threat	108
44. No UN representative	108
45. Gotbzadeh Press Conference	108
46. Students on Shah's departure	112
47. Gotbzadeh Paris radio interview	112
48. Careful guarding of Laingen	114
49. Students threaten to begin trials	114
Selected document 2	116
Response by the United States, 11 December 1979, to questions presented by the Court on 10 December 1979	116

	<i>Page</i>
Selected document 3	118
Response by the United States, 12 December 1979, to a question presented by Judge Gros on 11 December 1979	118
Memorial of the Government of the United States of America	
Part I. Introduction	123
Part II. Statement of the Facts	125
A. The attack	125
B. The role of the Iranian authorities	127
C. The status of the hostages	130
D. Violations of the Embassy's archives and documents	132
E. Lack of access to the hostages	133
F. The status of the United States Chargé d'Affaires	133
G. The Iranian Government's stated justification of the seizure of the Embassy and the hostages	134
H. Efforts of the United States to negotiate the dispute	136
I. Protests by the Government of the United States	137
J. Resort to the United Nations and to the Court	137
K. Other responsive measures of the United States	140
Part III. The Jurisdiction of the Court	141
A. The Optional Protocols to the Vienna Conventions on Diplomatic and Consular Relations afford the Court jurisdiction	141
1. Prerequisites to the Court's jurisdiction	142
2. The natural and ordinary meaning of the Optional Protocols	144
3. Possible arguments against the Court's jurisdiction under the Optional Protocols	144
4. Optional character of resort to arbitration or conciliation	145
5. The <i>travaux préparatoires</i>	146
6. The failure of Iran to seek arbitration or conciliation	149
7. Jurisdiction through lapse of time	151
B. The Treaty of Amity, Economic Relations, and Consular Rights affords the Court jurisdiction	152
C. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, affords the Court jurisdiction	154
D. The Court has jurisdiction to grant the relief sought by the United States	155
Part IV. The Claims of the United States	156
A. The responsibility of Iran for the acts of omission and commission of which the United States complains	156
B. The Government of Iran has violated, and continues to violate, its international legal obligation to ensure the inviolability of United States diplomatic agents and members of the administrative and technical staff of the United States Embassy	158
1. The obligation	158
2. The breach	161
C. The Government of Iran has violated, continues to violate and threatens further imminent violation of its international legal obligation to ensure immunity from prosecution for United States diplomatic agents and members of the administrative and technical staff on the United States Embassy	161

	<i>Page</i>
1. The obligation	161
2. The breach	163
D. The Government of Iran has violated, and continues to violate, its international legal obligation to ensure the inviolability of United States diplomatic premises	163
1. The obligation	163
2. The breach	164
E. The Government of Iran has violated, and continues to violate, its international legal obligations to ensure inviolability of diplomatic archives, to accord full diplomatic facilities, to accord freedom of movement, to permit free communication, to preclude discrimination, and to facilitate departure	165
1. Inviolability of archives and documents	165
(a) The obligation	165
(b) The breach	165
2. Accordance of full facilities,	166
(a) The obligation	166
(b) The breach	166
3. Freedom of movement	166
(a) The obligation	166
(b) The breach	167
4. Freedom of communication	167
(a) The obligation	167
(b) The breach	168
5. Non-discrimination	168
(a) The obligation	168
(b) The breach	168
6. Facilitation of departure	169
(a) The obligation	169
(b) The breach	169
F. The Government of Iran has violated, and continues to violate, its international legal obligations to respect and protect consular premises, to accord full facilities, to accord freedom of movement, to permit free communication, to permit contact with United States nationals and to preclude discrimination	169
1. Protection of premises	170
(a) The obligation	170
(b) The breach	171
2. Accordance of full facilities	171
(a) The obligation	171
(b) The breach	172
3. Freedom of movement	172
(a) The obligation	172
(b) The breach	172
4. Freedom of communication	173
(a) The obligation	173
(b) The breach	173

	<i>Page</i>
5. Contact with nationals	173
(a) The obligation	173
(b) The breach	174
6. Non-discrimination	174
(a) The obligation	174
(b) The breach	175
G. The Government of Iran has violated, and continues to violate, its international legal obligations regarding the prevention and punishment of crimes against internationally protected persons, including diplomatic agents	175
1. Co-operation	176
(a) The obligation	176
(b) The breach	178
2. Prosecution	178
(a) The obligation	178
(b) The breach	178
H. The Government of Iran has violated, and continues to violate, its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights to provide the most constant protection and security to United States nationals, and to provide reasonable and humane treatment to United States nationals in custody, in Iran	179
1. Iran's obligation to provide constant protection and security to United States nationals in Iran	180
(a) The plain meaning of the provision	180
(b) Provision for constant protection and security imports the minimum standard of treatment due to all aliens	181
(c) Provision for constant protection and security imports fundamental standards of human rights	182
2. Iran's obligation to treat those United States nationals in custody in a humane and reasonable manner and provide them with access to consular services	183
Part V. If Iran were to allege that the United States itself has violated the treaties upon which the United States relies in this case, such allegations would not detract from the claims asserted by the United States	184
Part VI. The relief sought by the Government of the United States	187
A. The proposed declaration by the Court of Iran's violations of the legal obligations it owes to the United States	187
B. The proposed determination by the Court that Iran shall perform its specific legal obligations towards the United States	187
C. The proposed determination by the Court that the United States is entitled to the payment of reparations by Iran for violations of the international legal obligations which Iran owes to the United States	188
D. Final conclusions	190
Statement of verification. Declaration of David D. Newsom, Under Secretary of State, 11 January 1980	191
<i>Annexes to the Memorial</i>	
Annex 1. <i>Washington Star</i> , Excerpt, 10 November 1979, p. A7	192
Annex 2. Excerpt from telephone interview with Sadeq Tabataba'i	194
Annex 3. Excerpt from interview with Abu Sharif	194

	<i>Page</i>
<i>Annex 4.</i> Excerpt from speech by Ayatollah Khomeini	194
<i>Annex 5.</i> Statement by Ayatollah Khomeini	195
<i>Annex 6.</i> Message from Muslim student followers of the Imam's policy	196
<i>Annex 7.</i> Excerpt from interview with Sayyed Ahmad Khomeini	196
<i>Annex 8.</i> Interview with Bani Asadi	197
<i>Annex 9.</i> Excerpt from interview with Sadeq Gotbzadeh	197
<i>Annex 10.</i> Message from Imam Khomeini's Office in Qom and Statement No. 28 of the Muslim student followers of the Imam's policy	198
<i>Annex 11.</i> Excerpt from Statement No. 32 of the Muslim student followers of the Imam's policy	199
<i>Annex 12.</i> Decree of Ayatollah Khomeini	199
<i>Annex 13.</i> Statement No. 37 of the Muslim student followers of the Imam's policy	200
<i>Annex 14.</i> Resolution of the Muslim student followers of the Imam's policy	200
<i>Annex 15.</i> Interview with "student leaders"	201
<i>Annex 16.</i> Excerpts from interview with Ayatollah Khalkhali	202
<i>Annex 17.</i> Views of Ayatollah Khalkhali	204
<i>Annex 18.</i> Excerpts from interview with Ayatollah Khalkhali	205
<i>Annex 19.</i> Ayatollah Khalkhali's views	206
<i>Annex 20.</i> Discussion with Shar' magistrates	206
<i>Annex 21.</i> Speech by former Foreign Minister Yazdi	207
<i>Annex 22.</i> Excerpts from interview with Sadeq Gotbzadeh	208
<i>Annex 23.</i> Instruction issued by Ayatollah Khomeini	210
<i>Annex 24.</i> Excerpt from announcement by Foreign Minister Gotbzadeh	210
<i>Annex 25.</i> Excerpt from interview with "students"	210
<i>Annex 26.</i> Excerpts from interview with Ahmad Khomeini	211
<i>Annex 27.</i> Excerpts from interview with Ahmad Khomeini	212
<i>Annex 28.</i> Excerpts from "student" interview	212
<i>Annex 29.</i> Interview with Sadeq Tabataba'i	213
<i>Annex 30.</i> Excerpt from interview with Foreign Minister Gotbzadeh	213
<i>Annex 31.</i> "Student" Statement No. 13	213
<i>Annex 32.</i> Foreign Ministry announcement	214
<i>Annex 33.</i> "Student" Statement No. 20	214
<i>Annex 34.</i> Statements of Foreign Minister Gotbzadeh	215
<i>Annex 35.</i> Excerpts from interview with Foreign Minister Gotbzadeh	215
<i>Annex 36.</i> Excerpts from interview with Foreign Minister Gotbzadeh	215
<i>Annex 37.</i> "Student" Statement, unnumbered	216
<i>Annex 38.</i> Excerpt from message from Foreign Ministry Supervisor Bani-Sadr	217
<i>Annex 39.</i> Interview with Ayatollah Behesti	217
<i>Annex 40.</i> Interview with Seyyed Hoseyn	218
<i>Annex 41.</i> Excerpt from interview with Ayatollah Khomeini	219
<i>Annex 42.</i> Letter dated 9 November 1979 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council	221
<i>Annex 43.</i> Statement by the President of the United Nations Security Council, 9 November 1979	221
<i>Annex 44.</i> Statements by the President of the United Nations General Assembly, 9 November and 20 November 1979	221
<i>Annex 45.</i> Provisional Verbatim Record of the Two Thousand One Hundred and Seventy-Second Meeting of the United Nations Security Council	222
<i>Annex 46.</i> Security Council resolution 457 (1979)	225

	<i>Page</i>
<i>Annex 47.</i> Excerpt from an interview with Foreign Minister Gotbza- deh	226
<i>Annex 48.</i> Statement of Secretary of State Vance before the Security Council, 29 December 1979	227
<i>Annex 49.</i> Official French, Spanish, Russian and Chinese texts of the Optional Protocols concerning the Compulsory Settlement of Dis- putes	229
<i>Annex 50.</i> United States response to Iranian drafting suggestion regarding the 1955 Treaty of Amity, Economic Relations and Consular Rights	232
<i>Annex 51.</i> List of Treaties of Friendship, Commerce and Naviga- tion	233
<i>Annex 52.</i> Memorandum on Dispute Settlement Clause in Treaty of Friendship, Commerce and Navigation with China	234
<i>Annex 53.</i> Department of State Memorandum on Provisions in Com- mercial Treaties relating to the International Court of Justice	236
<i>Annex 54.</i> Correspondence relating to the Dispute Settlement Provi- sion in Commercial Treaty with the Netherlands	237
<i>Annex 55.</i> The United Nations Convention against the Taking of Hostages	241
 Oral arguments	
OPENING OF THE ORAL PROCEEDINGS	252
Communication from the Government of Iran	253
Questions by the President	254
ARGUMENT OF MR. OWEN (UNITED STATES OF AMERICA)	255
Order of presentation	256
Sources of information	256
Political structure in Iran	257
The attack on the Embassy and the Iranian Government's responsi- bility	258
The United States reactions to the seizure	260
Iran's use of the hostages for political coercion	262
The United States restraint	263
The Iranian Government's control	263
The United States efforts in the United Nations	264
The United States efforts in this Court	266
QUESTIONS DE MM. GROS ET TARAZI	268
ARGUMENT OF MR. OWEN (<i>cont.</i>)	269
The Security Council's resolution	269
The United Nations Commission of Inquiry—response to Question No. 1 by the President	269
Summary of substantive legal principles	272
ARGUMENT OF MR. SCHWEBEL (UNITED STATES OF AMERICA)	274
Summary of argument on jurisdiction	274
Jurisdiction under the Vienna Conventions	274
The existence of a dispute	275
The dispute arises from the interpretation or application of the conventions	278
Articles II and III of the Protocols are not surplusage	282

	<i>Page</i>
Jurisdiction under the Treaty of Amity, Economic Relations and Consular Rights	284
Jurisdiction under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons	285
Possible questions of admissibility	286
The case is not moot	286
The standing of the United States	289
Inapplicability of local remedies rule	289
Response to Question No. 3 by Judge Gros	291
ARGUMENT OF MR. OWEN (UNITED STATES OF AMERICA)	292
The claims of the United States	292
Lack of relevant exceptions to diplomatic immunity—response to Question No. 2 by the President	294
Categories of United States claims	295
Immunity of Embassy personnel from seizure	295
Direct responsibility of Iranian Government	296
QUESTIONS BY JUDGES MOROZOV AND ODA	298
ARGUMENT OF MR. OWEN (<i>cont.</i>)	301
Conditions of hostages' captivity	301
Responses to questions	303
Judge Gros' Questions Nos. 1B and 2	303
The President's Question No. 3	307
Judge Gros' Question No. 1A	309
Judge Tarazi's Question	309
Relief sought by the United States	310
QUESTIONS BY THE PRESIDENT AND JUDGE GROS	312
ARGUMENT OF MR. OWEN (<i>cont.</i>)	313
Responses to questions	315
Judge Morozov's Question No. 1	315
Judge Morozov's Question No. 2	315
Judge Morozov's Question No. 3	317
Judge Morozov's Question No. 4	317
Judge Morozov's Question No. 5	317
Judge Morozov's Question No. 6	318
Judge Morozov's Question No. 7	318
Judge Oda's Question No. 1	319
Judge Oda's Question No. 2	319
Judge Oda's Question No. 3	319
The President's Question	320
Judge Gros' Question	320
Conclusions	321
CLOSING OF THE ORAL PROCEEDINGS	323
READING OF THE JUDGMENT	324
Documents submitted to the Court after the filing of the Memorial	
I. Letter from the Director of the United States Foreign Broadcast Information Service to the Agent of the United States of America, Washington, 14 March 1980	329

	<i>Page</i>
II. Supplemental documents	331
1. Student statement No. 91	331
2. Excerpts: Gotbzadeh message to the United Nations	331
3. Gotbzadeh on hostages' release	332
4. Excerpts: Gotbzadeh press conference	332
5. Foreign Ministry statement: unacceptability of United Nations decisions	333
6. Excerpts: Revolution Council, Ministers meeting	333
7. Ministry of National Guidance announcement: deadline for <i>media departure</i>	333
8. Dispatch: possible movement of hostages	334
9. Foreign Ministry statement: denial of Waldheim mediation role	334
10. Excerpts: Gotbzadeh on hostages, Shah	335
11. Excerpts: Gotbzadeh on hostages, Soviets	335
12. Excerpts: Gotbzadeh interview	336
13. Student on hostages' condition	336
14. Revelation statement No. 26	337
15. Excerpts: Gotbzadeh interview	337
16. Militants issue statement on Khomeini's hospitalization	338
17. Foreign Ministry statement: US making "big mistake" on Shah	339
18. Excerpts: Gotbzadeh interview	340
19. Spanish Deputy recounts visit to US Embassy	342
20. Carter "agents" charged with forging letters from captives	342
21. Excerpts: Ayatollah Beheshti interview	343
22. Excerpts: Bani-Sadr Reuter interview	344
23. Excerpts: Bani-Sadr <i>Le Matin</i> interview	344
24. Excerpts: Bani-Sadr discusses policies, cabinet makeup	345
25. Excerpts: Bani-Sadr policy toward West	346
26. "Student" statement No. 98 calls for marches against US	347
27. Excerpts: Bani-Sadr press conference	348
28. Islamabad conference resolution's impact on hostages	349
29. Excerpts: <i>Le Monde</i> interviews President-Elect Bani-Sadr	349
30. Militants on hostages' fate	350
31. Beheshti on hostages' fate	351
32. Gotbzadeh on diplomats' escape	351
33. Excerpts: Envoy to Canada comments	352
34. Students issue "lamentation" addressed to Khomeini	354
35. Excerpts: Bani-Sadr interview	355
36. Bani-Sadr calls for return of Shah's wealth	355
37. Militants interviewed on hostages, Shah	356
38. Message from Urumiyeh guards	362
39. Khuzestan guards corps' support	362
40. Students on hostages' release	363
41. <i>Ettela'At</i> publishes interview with students on hostages	363
42. Revelation statement No. 30	364
43. Bani-Sadr <i>Keyhan</i> interview	365
44. Bazargan criticizes "students" in Minatchi affair	366
45. Bani-Sadr's spokesman denies reports on release of hostages	367
46. "Students" denial of involvement	367
47. Excerpts: Beheshti on hostages	367
48. Bani-Sadr on power centres	368
49. Students reject hostages' release unless Shah is returned	369
50. Tape of hostages' telephone calls	369
51. Ahmad Khomeini's visit to Embassy	370
52. "Students" meeting	371

	<i>Page</i>
53. Khomeini confirms Bani-Sadr as Revolution Council Head . . .	371
54. BBC: Bani-Sadr wants council to "stand up" to "students" . . .	372
55. Gotbzadeh reportedly wants hostages released soon	372
56. Bani-Sadr <i>Al-Ittihad</i> interview	372
57. Foreign Ministry on Gotbzadeh statement	372
58. Excerpt: "students" interview	373
59. Minatchi on "students" charges	377
60. Gotbzadeh denial	378
61. Excerpts: Bani-Sadr interview	379
62. Further reportage on military parade, "students" position . . .	380
63. BBC on Gotbzadeh remarks	380
64. Fars Guards chief on US	381
65. Excerpts: Beheshti interviewed on demand for Shah's return . . .	382
66. Bani-Sadr gives interview to French radio	383
67. Excerpts: Bani-Sadr on Revolution Council session	383
68. Excerpts: Bani-Sadr <i>Le Monde</i> interview	384
69. Gotbzadeh on hostages' release	385
70. AFP interview with Gotbzadeh	386
71. Ayatollah Beheshti on hostages	387
72. Excerpts: Bani-Sadr, 'Arafat interview	387
73. Excerpts: Bani-Sadr decries multiplicity of decision centres . . .	389
74. Excerpts: Gotbzadeh discusses hostages, other issues	390
75. Excerpts: further Gotbzadeh comments in Greece	390
76. AFP report	390
77. Excerpts: Gotbzadeh on commission's investigation	391
78. Possible questioning of hostages	391
79. Excerpts: Bani-Sadr Athens television interview	392
80. Bani-Sadr on students	393
81. Protest lodged over Canadian Embassy activities	394
82. Bani-Sadr on students' ouster	395
83. Bani-Sadr on United Nations Commission	395
84. Gotbzadeh postpones return trip	395
85. AFP on Gotbzadeh remarks	396
86. AFP on composition of commission	396
87. Khomeini names Bani-Sadr Commander in Chief	397
88. Bani-Sadr announcement on approval	397
89. More on Gotbzadeh remarks	397
90. Bani-Sadr message to Waldheim	398
91. Muslim students read US "documents"	398
92. AFP on revelations	399
93. Khomeini address to nation	400
94. Bani-Sadr: Commission's work not related to release	401
95. Beheshti on hostages	401
96. Rafsanjani on hostage situation	401
97. Late report: students issue statement No. 102	403
98. Bani-Sadr discusses return of Shah, hostages	404
99. AFP: United Nations Envoy discusses investigating Commission . . .	404
100. Khomeini says Majles must decide hostages' fate	405
101. Students' reaction	406
102. Student statement No. 104	406
103. Meeting with Gotbzadeh	407
104. Student interview	407
105. Mobilization headquarters issues 9-point resolution	412
106. Bani-Sadr gives interview on hostages, foreign relations	413

	<i>Page</i>
107. Beheshti: ten weeks before release of hostages can be discussed	414
108. Vacating of embassy	415
109. Excerpts: Gotbzadeh interview on Commission	415
110. Gotbzadeh discusses Commission's meeting with hostages	416
111. Students' <i>Keyhan</i> interview	419
112. Khomeini allows Italian to act as hostages' "postman"	419
113. BBC reports consent for Commission meeting with hostages	419
114. Prosecutor asks Foreign Ministry to hand over hostage	420
115. Excerpts: Bani-Sadr <i>Der Spiegel</i> interview	420
116. Commission's announcement on visit	421
117. Student interview	422
118. Gotbzadeh: Commission's meeting with hostages "a certainty"	423
119. Excerpts: Gotbzadeh <i>Mesimvrini</i> interview	424
120. AFP: Students agree to visit	425
121. Gotbzadeh leaves decision on "refugee" up to Imam, Council	426
122. Late Report: students say United Nations Panel can meet hostages	426
123. Revolutionary Council's approval	428
124. Prosecutor General on Tomseth summons	428
125. Students say Council can "take delivery" of hostages	429
126. AFP on Council meeting	429
127. Tehran on AFP interview	430
128. Students' statement on handover	430
129. Gotbzadeh interview	430
130. Khomeini silent on hostages	431
131. Further report	431
132. Foreign Ministry statement	432
133. Student statement on hostages	432
134. Revolution Council statement on transfer	433
135. Guards backing of Khomeini	434
136. Gotbzadeh communique on negotiations	434
137. Students on Commission meeting, handover	435
138. Students demand Shah's return	435
139. Mahdavi Kani interviewed on handover of hostages	436
140. Students interview	436
141. Gotbzadeh statement on situation	439
142. Khomeini message on Commission's meeting	445
143. More on Khomeini message	446
144. Students' appeal for marches	447
145. Revolution Council on hand over	448
146. Students' release of documents	449
147. Commission's departure, meeting with students	449
148. Gotbzadeh on Commission's departure	450
149. INA on Commission's departure	450
150. Broadcasting official on departure	450
151. Commission's communique on departure	451
152. 11 March developments concerning US relations, hostages	451
153. Students' statement on documents	452
154. Gotbzadeh on Commission's role	453
155. Bani-Sadr on Commission, students	453
156. Statement by Secretary-General of the United Nations on Inquiry Commission to Iran	455
157. White House statement on Commission	455
158. Department of State, special press briefing, 23 February 1980 (excerpts)	456

	<i>Page</i>
159 Department of State, daily press briefing, Tuesday, 26 February 1980 (excerpts)	456
160. Press conference held by Foreign Minister Andrew Peacock, Deputy Prime Minister Brian Talboys, and Secretary of State Cyrus R. Vance at the conclusion of the 29th ANZUS Council Meeting, Washington, DC, 27 February 1980 (excerpts)	457
161. Inquiry Commission decides to suspend activities in Tehran to confer with Secretary-General in New York	457
162. Transcript of press conference by Secretary-General Kurt Waldheim held at headquarters on 11 March 1980	458
163. Secretary of State Vance's remarks to the press after the meeting at the United Nations, 12 March 1980, with the Secretary-General and the United Nations Commission relating to Iran, 8.15 p.m.	461
III. Letter dated 28 March 1980 from the Deputy Agent of the United States of America to the Registrar (response to questions presented by the President of the Court on 20 March 1980 and by Judge Gros on 21 March 1980)	463
Appendix A	464
Appendix B	465
Appendix C	467
Appendix D	469
Appendix E	470
Appendix F	471
IV. Letter dated 15 April 1980 from the Deputy Agent of the United States of America to the Registrar (response to a question presented by the President of the Court on 10 April 1980)	475
Documents enclosed	476
V. Response by the United States, 22 April 1980, to a question presented by Judge Gros on 17 April 1980	483
VI. Response by the United States, 1 May 1980, to a question presented by the President of the Court on 25 April 1980	484
Documents enclosed	484
Correspondence	
Nos. 1-97	493

**APPLICATION INSTITUTING
PROCEEDINGS SUBMITTED BY THE
GOVERNMENT OF THE UNITED STATES
OF AMERICA**

**REQUÊTE INTRODUCTIVE D'INSTANCE
PRÉSENTÉE PAR LE GOUVERNEMENT
DES ÉTATS-UNIS D'AMÉRIQUE**

I have the honor to refer to the following:

- (1) the Vienna Convention on Diplomatic Relations of 1961, and Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of that Convention;
- (2) the Vienna Convention on Consular Relations of 1963, and Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes of that Convention;
- (3) Article XXI (2) of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran of 1955, and
- (4) Article 13 (1) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973.

Under the jurisdiction thereby conferred upon the Court, I hereby submit, in accordance with Article 40 (1) of the Statute and Article 38 of the Rules of Court, this Application instituting proceedings in the name of the Government of the United States of America against the Government of Iran in the following case:

I. STATEMENT OF FACTS

At about 10.30 a.m., Tehran time, on 4 November 1979, during the course of a demonstration of approximately 3,000 persons, the United States Embassy compound in Tehran was overrun by several hundred of the demonstrators. The Iranian Government's security personnel on duty at the Embassy compound apparently made no effort to deter or discourage the demonstrators from the takeover. Access to the compound and Chancery building was gained by cutting chains and removing bars from a Chancery basement window, and control of the first floor of the Chancery was rapidly seized. In the process the invaders took hostage the Embassy security officer, who had come out of the Chancery to negotiate with them, and four of the Embassy's Marine guards. A large group of Embassy personnel, including consular and non-American staff and visitors, took refuge on an upper floor of the Chancery.

About two hours after the beginning of the attack, and after the invaders had attempted to set fire to the Chancery building and to cut through the upstairs steel doors with a torch, the demonstrators gained entry to the upper floor and seized the remaining personnel.

During the two hours of attack on the Embassy, no Iranian security forces were sent to relieve the situation, despite repeated calls for help from the Embassy to the Iranian Foreign Ministry, and despite the efforts of the United States Chargé d'Affaires, who made contact with the Prime Minister's office and Foreign Ministry officials at the time the attack occurred. No attempt was made by the Government of Iran to clear the Embassy premises, to rescue the personnel held hostage, or to persuade the invaders and demonstrators to terminate their action. Nor did the Government of Iran take any action when, shortly after the Embassy seizure, the United States consulates in Tabriz and Shiraz were also seized.

Since the time of the takeover, the Embassy personnel have been held hostage in the compound under threatening and inhumane conditions. Some hostages have been paraded in sight of the crowd outside, blindfolded and hands bound, in full hearing of menacing, chanting crowds. Inside the buildings the hostages have been kept bound, often by hand and foot, forced to remain silent, subjected

to other forms of coercion, and denied communication with their families and United States officials. Embassy records have been ransacked.

During the entire time and with the support and assistance of the Iranian authorities, demonstrations have been occurring outside the compound, often quite vociferous. A crowd of hundreds of thousands of demonstrators converged on the Embassy on 22 November.

Those holding the hostages have refused to release them and have conditioned *their release on various unacceptable demands*. They have threatened on several occasions that, in certain circumstances, the hostages would be put to death. While 13 hostages were released on 18 and 20 November, at least 50 Americans remain in captivity, virtually all of whom are diplomatic agents of the United States or members of the administrative and technical staff of the Embassy. The group holding the Embassy has asserted that the remaining hostages are guilty of espionage and will be tried for their "crimes" if their demands are not met. Non-Iranian outside observers have been permitted only limited access to the hostages. It is not certain that all persons held have been seen, and the conditions during these few visits did not permit free communication with the hostages.

During this continuing ordeal, the Government of Iran is failing and refusing to make any effort to secure the release of the hostages and the return of the Embassy and consular premises to the United States' control. The Government has refused any direct substantive contact with United States Government officials in Tehran or at the United Nations. It refused to admit the special emissaries sent to Iran by the Government of the United States. The United States Chargé d'Affaires, who was at the Foreign Ministry at the time the attack began, has been confined to the Foreign Ministry and denied free access both to his diplomatic colleagues from other Embassies and to senior Iranian officials.

Moreover, the Government of Iran, from an early stage of the crisis, has given direct support and encouragement to the group holding the Embassy. Members of that group have been permitted to come and go freely from the compound. The Government of Iran has refused or ignored the repeated requests of the Government of the United States to free the hostages and to restore the Embassy compound to the possession of the United States. The Government of Iran has supported the demands of those holding the hostages, has endorsed the charges of espionage leveled against Embassy personnel, and has threatened to place the personnel on trial for espionage.

II. THE JURISDICTION OF THE COURT

Under paragraph 1 of Article 36 of the Statute of the Court, the jurisdiction of the Court encompasses "all matters specially provided for . . . in treaties and conventions in force". The United States and Iran are, as Members of the United Nations, parties to the Statute, and are also parties to three international conventions, each of which independently establishes the Court's jurisdiction over the present dispute.

First, the United States and Iran are parties to the Vienna Convention on Diplomatic Relations (done at Vienna, 18 April 1961) and to its Optional Protocol concerning the Compulsory Settlement of Disputes. As set forth separately in the Application, the actions of Iran bearing on this dispute constitute multiple and profound violations of that Convention. Article I of the Protocol provides:

"Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol."

Second, the United States and Iran are parties to the Vienna Convention on Consular Relations (done at Vienna, 24 April 1963) and to its Optional Protocol concerning the Compulsory Settlement of Disputes. Article I of that Protocol is identical in its terms to Article I of the Protocol to the Convention on Diplomatic Relations, *supra*¹. The present dispute involves numerous violations of the Consular Convention.

Finally, the United States and Iran are parties to the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, signed in Tehran on 15 August 1955 (284 *UNTS* 93). As set forth below, numerous and serious violations of this treaty are also involved in the present dispute. Article XXI, paragraph 2, of the treaty provides:

"Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

That a dispute exists between the United States and Iran is clear. The present dispute has not been satisfactorily adjusted by diplomacy, Iran is continuing in its violations, and Iran has refused to discuss pacific settlement of the dispute.

In addition to the foregoing, the United States and Iran are parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, included Diplomatic Agents (done at New York, 14 December 1973). Serious violations of this Convention are also involved in the present dispute. Article 13, paragraph 1, of the Convention provides:

"Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of them may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

In light of the urgency of rectifying the present violations of the Convention and Iran's refusal to meet with United States emissaries on the subject, which renders impracticable and infeasible any prior resort to arbitration, it is submitted that the Court is competent to hear the United States' claims under this Convention in connection with its other claims.

¹ Articles II and III of the Protocols to the Vienna Conventions on Diplomatic Relations and Consular Relations both provide that the parties may agree on alternate procedures—arbitration or conciliation—in lieu of proceeding directly to the Court. The parties have not exercised these options in this case; no such agreements have been made. Indeed, the Iranian authorities have refused to discuss the dispute—still less modes of settlement of it—with United States emissaries.

The terms of the Preambles to both Protocols demonstrate the intent of the Protocols to make recourse to the Court unconditional and not dependent upon joint pursuit by the parties of the options of arbitration or conciliation. They provide that:

"Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period."
(Emphasis supplied.)

III. THE CLAIMS OF THE UNITED STATES

The Government of the United States, in submitting the dispute to the Court, claims as follows:

(a) Pursuant to Article 29 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to ensure that the persons of United States diplomatic agents be kept inviolate from "any form of arrest or detention" and that every such diplomatic agent shall be treated "with due respect" and protected from "any attack on his person, freedom, or dignity". The Government of Iran has violated and is currently violating the foregoing obligations.

(b) Pursuant to Article 37 of the same Convention, the Government of Iran is under an international legal obligation to the United States to ensure that members of the administrative and technical staff of the United States Embassy in Tehran, and members of the families of United States diplomatic agents and of administrative and technical staff, enjoy the relevant privileges and immunities specified in Article 29 of the Convention. The Government of Iran has violated and is currently violating the foregoing obligations.

(c) Pursuant to Article 31 of the same Convention, the Government of Iran is under an international legal obligation to the United States to ensure that its diplomatic agents shall be absolutely immune "from the criminal jurisdiction" of Iran and that, under Articles 31 and 37 of the Convention, such immunity is accorded to members of the administrative and technical staff of the United States Embassy as well as to the families of diplomatic agents of administrative and technical staff. By its threats of prosecution, the Government of Iran has violated and is currently violating the foregoing obligations.

(d) Pursuant to Article 22 of the same Convention, the Government of Iran is under an international legal obligation to the United States to ensure that United States diplomatic premises in Iran "shall be inviolable". The Government of Iran has violated and is currently violating this obligation.

(e) Pursuant to Articles 24, 25, 27 and 47 of the same Convention, the Government of Iran is under an international legal obligation to the United States to ensure the inviolability of the archives and documents of the United States Embassy in Tehran, to accord full facilities for the performance of the functions of the Embassy, to permit and assist Embassy personnel to depart from Iran, and to preclude discrimination between States in the application of the Convention. The Government of Iran has violated and is currently violating the foregoing obligations.

(f) Pursuant to Articles 28, 31, 33, 34, 36 and 40 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to ensure that the United States enjoys full facilities for the performance of consular functions; that United States consular premises, documents, and archives are kept inviolate; that the consular personnel of the United States shall enjoy freedom of movement and travel in Iran; that such personnel shall enjoy the right to communicate and contact other United States nationals; that the consular personnel of the United States be treated with respect and protected from attack on their persons, freedom, and dignity; and that United States consular officers be free from arrest or detention. The Government of Iran has violated and is currently violating the foregoing obligations.

(g) Pursuant to Article 4 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Government of Iran is under an international legal obligation to the United States to co-operate in the prevention of crimes against the official premises and the staff of the United States Embassy in Tehran, including an obligation to take all practicable measures to prevent preparations in its

territory for the commission of such crimes. The Government of Iran has violated and is currently violating the foregoing obligations.

(h) Pursuant to Article 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Government of Iran is under an international legal obligation to the United States to submit to competent Iranian authorities for the purpose of prosecution all those persons who, since 4 November 1979, have been engaged in committing crimes against the official premises and the staff of the United States Embassy in Tehran. The Government of Iran has violated and is currently violating the foregoing obligation.

(i) Pursuant to Articles II (4) and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, the Government of Iran is under an international legal obligation to the United States to ensure that nationals of the United States shall receive "the most constant protection and security" within the territory of Iran; that such nationals shall, if placed in custody, receive reasonable and humane treatment; that the United States shall have the full opportunity to safeguard the interests of such detained nationals; and that such nationals shall, while in custody, have full access to United States consular officials and services. The Government of Iran has violated and is currently violating the foregoing obligations.

(j) Pursuant to Articles XIII and XVIII of the foregoing Treaty of Amity, Economic Relations, and Consular Rights, the Government of Iran is under an international legal obligation to the United States to accord to United States consular officers and employees the privileges and immunities accorded to officers and employees of their rank and status by general international usage and, in particular, immunity from local jurisdiction for acts done in their official capacities and within the scope of their authority; to accord to such consular officers and employees the opportunity to exercise all functions which are in accordance with general international usage; and to ensure that consular offices are not entered by the police or other local authorities except in case of fire or other disaster. The Government of Iran has violated and is currently violating the foregoing obligations.

(k) The Government of Iran, or persons acting with its support and approval, are holding United States citizens as hostages and are threatening the lives of these hostages in order to coerce the United States into taking actions which the United States has no international legal obligation to take. This exercise of coercion is in violation of Iran's obligations under the Charter of the United Nations, particularly Article 2, paragraphs 3 and 4, and Article 33.

(l) The Government of Iran is under an international legal obligation to the United States to respect and observe, and ensure respect for and observance of, the obligations of Iran under customary international law to ensure the immunities of the diplomats and staff of the United States Embassy in Tehran, the inviolability of its Embassy, and the protection of its nationals. The Government of Iran has violated and is currently violating the foregoing obligations.

IV. JUDGMENT REQUESTED

Accordingly, the United States requests the Court to adjudge and declare as follows:

(a) That the Government of Iran in tolerating, encouraging, and failing to prevent and punish the conduct described in the preceding Statement of Facts, violated its international legal obligations to the United States as provided by

- Articles 22, 24, 25, 27, 29, 31, 37 and 47 of the Vienna Convention on Diplomatic Relations.

- Articles 28, 31, 33, 34, 36 and 40 of the Vienna Convention on Consular Relations,
 - Articles 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and
 - Articles II (4), XIII, XVIII and XXI of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, and
 - Articles 2 (3), 2 (4) and 33 of the Charter of the United Nations;
- (b) That pursuant to the foregoing international legal obligations, the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained within the premises of the United States Embassy in Tehran and to assure that all such persons and all other United States nationals in Tehran are allowed to leave Iran safely;
- (c) That the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violations of Iran's international legal obligations to the United States, in a sum to be determined by the Court; and
- (d) That the Government of Iran submit to its competent authorities for the purpose of prosecution those persons responsible for the crimes committed against the premises and staff of the United States Embassy and against the premises of its Consulates.

The Government of the United States further requests the Court to indicate interim measures of protection as set forth in a separate request filed concurrently with this Application.

The Government of the United States has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the United States, The Hague, Lange Voorhout 102.

Respectfully submitted,
(Signed) Roberts B. OWEN,
The Legal Adviser.

KINGDOM OF THE NETHERLANDS
PROVINCE OF SOUTH-HOLLAND
CITY OF THE HAGUE
EMBASSY OF THE UNITED STATES OF AMERICA

I, Hugh V. Simon, Jr., certify that the above signature is that of Roberts B. Owen, who has been designated by the Secretary of State as Agent of the United States in this case.

(Signed) Hugh V. SIMON, Jr.,
American Consul.
29 November 1979.

I, David D. Newsom, certify and declare the following:

1. I am Under Secretary for Political Affairs of the United States Department of State. I have been vested by the Secretary of State with overall responsibility within the Department for matters relating to the crisis in Iran.

2. In this capacity, I have closely monitored events since the attack on the United States Embassy in Tehran began. The facts stated in the Application of the United States to the Court are, to the best of my knowledge, true.

(Signed) David D. NEWSOM.