

**MEMORIAL OF THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA**

**MÉMOIRE DU GOUVERNEMENT  
DES ÉTATS-UNIS D'AMÉRIQUE**

PART I  
INTRODUCTION

This case—the case of the American hostages in Tehran—now reaches its second phase before the Court with the submission of this Memorial on the merits of the claims of the United States of America against the Islamic Republic of Iran.

To recapitulate the essentials of the history of the case, the United States Embassy in Tehran and various United States nationals, nearly all of them diplomatic agents, staff and consular officers, were seized by an Iranian mob on 4 November 1979, and have since been held captive with the full approval of the Government of Iran; on 29 November 1979, the United States filed an Application in this Court alleging that the conduct of the Government of the Islamic Republic of Iran violated Iran's international legal obligations to the United States under four governing treaties to which the two States are party; on the same day, 29 November 1979, the United States requested that the Court promptly indicate provisional measures calling upon Iran forthwith to clear the Embassy, release the hostages, and protect them from further unlawful conduct; on 9 December 1979, the Government of Iran submitted a letter to the Court asserting that for various reasons the Court should not take cognizance of the case, but the Government of Iran appointed no Agent to appear at the hearing on the United States' request for an indication of provisional measures; the hearing took place before the Court on 10 December 1979, at which time the Court heard oral argument on behalf of the United States (but not on behalf of Iran); on 15 December 1979, the Court entered an Order indicating provisional measures (as further set forth in Part II of this Memorial); and on 24 December 1979, the Court entered a further Order which fixes time-limits for the written proceedings and which requires the United States to file the present Memorial on 15 January 1980. Under the same Order Iran is to submit its Counter-Memorial by 18 February 1980.

As to the status of the dispute as it exists as of this writing, it should also be noted (1) that the Government of Iran has officially rejected and failed to comply with the provisional measures indicated by the Court on 15 December 1979; (2) that the American hostages and Embassy in Tehran continue to be held captive in violation of those provisional measures and of Iran's international obligations; and (3) that the Government of Iran has given no indication of an intention to appoint an Agent, to file a Counter-Memorial, or to contest in any way the claims of the United States which are before the Court.

Before turning to the facts underlying those claims, it may be useful to summarize the provisions of the final judgment now sought by the United States. In essence the United States on the merits seeks a judgment, the full terms of which appear in the last Part of this Memorial, declaring:

- (a) that aspects of the conduct of the Government of the Islamic Republic of Iran relating to the seizure of the United States Embassy and United States personnel violate the international legal obligations owed by Iran to the United States as provided by various provisions of the Vienna Convention on Diplomatic Relations (specifically Articles 22, 24-27, 29, 31, 37, 44 and 47), of the Vienna Convention on Consular Relations (specifically Articles 5, 27, 28, 31, 33-36, 40 and 72), of the Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and

Iran (specifically Articles II (4), XIII, XVIII and XIX), and of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (specifically Articles 2, 4 and 7);

(b) that pursuant to the foregoing international legal obligations:

- (i) the Government of the Islamic Republic of Iran shall immediately ensure that the premises of the United States Embassy, Chancery and Consulates are restored to the possession of the United States authorities under their exclusive control, and shall ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;
- (ii) the Government of the Islamic Republic of Iran shall ensure the immediate release, without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or who are or have been held as hostages elsewhere, and afford protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;
- (iii) the Government of the Islamic Republic of Iran shall, as from that moment, afford to all the diplomatic and consular personnel of the United States the protection, 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;
- (iv) the Government of the Islamic Republic of Iran shall, in affording the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled, including immunity from any form of criminal jurisdiction, ensure that no such personnel shall be obliged to appear on trial or as a witness, deponent, source of information, or in any other role, at proceedings, whether formal or informal, initiated by or with the acquiescence of the Iranian Government, whether such proceedings be denominated a "trial", "grand jury", "international commission" or otherwise;
- (v) the Government of the Islamic Republic of Iran shall submit to its competent authorities for the purpose of prosecution, or extradite to the United States, those persons responsible for the crimes committed against the personnel and premises of the United States Embassy and Consulates in Iran;

(c) that the United States of America is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals held hostage, of reparation by the Islamic Republic of Iran for the violations of the above international legal obligations which it owes to the United States, in an amount to be determined by the Court at a subsequent stage of the proceedings.

## PART II

### STATEMENT OF THE FACTS

The Factual Statement which follows is, to the best of the knowledge and belief of the Government of the United States, accurate and complete. In the governing circumstances, however, in which the United States is unable to gain access to its diplomatic and consular representatives in Iran, or to its Embassy and consular premises in Iran and to the files which they contain, the Court will appreciate that certain factual details, particularly those relating to the current condition of United States personnel in Tehran, are unavailable to the United States Government at this time<sup>1</sup>.

#### A. The Attack

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. Under then existing security arrangements the Government of the Islamic Republic of Iran normally maintained 10 to 15 uniformed policemen outside the Embassy compound and a contingent of "Pasdaran", Revolutionary Guards, nearby. On 4 November 1979, however, these security personnel made no apparent effort to deter or discourage the demonstrators from seizing the Embassy's premises. According to at least one press report, the security forces simply disappeared from the scene<sup>2</sup>.

The invading group gained access to the compound and the Chancery building by cutting chains and removing bars from a Chancery basement window, and they seized control of the first floor of the Chancery. 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. Thereafter a large group of Embassy personnel, non-American staff and visitors took refuge on an upper floor of the Chancery. Over 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, they gained entry to the upper floor and seized the remaining personnel, with the exception of 11 American staff members who held out in the main vault for an additional hour. They also seized the other buildings on the compound and the personnel located in them, including consular officers of the Embassy. They seized the various residences on the compound, including the residence of the Chargé d'Affaires, and put them to use as places of confinement for the hostages.

During the assault of more than three hours, repeated calls for help were made from the Embassy to the Iranian Foreign Ministry, and repeated efforts to secure help from the Iranian authorities were also made through direct discussions at the Foreign Ministry by the United States Chargé d'Affaires, Bruce Laingen, who made contact with the Prime Minister's office and with

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<sup>1</sup> Unless some other source is cited herein, verification of the facts is provided by the declaration of Under Secretary of State David D. Newsom of 11 January 1980, submitted with this Memorial.

<sup>2</sup> *Washington Star*, 10 Nov. 1979, p. A7 (Ann. 1).

Foreign Ministry officials. Despite these repeated requests, no Iranian security forces were sent to provide relief and protection to the Embassy. No attempt was made by the Iranian Government to clear the Embassy premises, to rescue the personnel held hostage, or to persuade the invaders and demonstrators, via radio broadcasts, emissaries, or otherwise, to terminate their action against the Embassy. In fact, the Iranian Government's spokesman, in an interview the following day, stated that the Revolutionary Guards were sent to the Embassy as a result of Laingen's appeals, but not to release the Embassy and hostages from the invaders. According to his statement of 5 November,

"... yesterday the American Embassy Chargé d'Affaires immediately contacted the Foreign Ministry and stated he lacks security and that he would need protection. So, on orders of the government, the Revolution Guards entered to prevent clashes there. Last night the brothers who are occupying the Embassy thanked the guards for their presence and for maintaining security there<sup>3</sup>."

The same morning, 5 November, only hours after the Embassy seizure, the United States consulates in Tabriz and Shiraz were also seized, but again the Iranian Government took no protective action<sup>4</sup>. The Revolutionary Guard corps of Fars Province immediately announced its support for the Shiraz takeover, and, according to an announcement issued on 6 November, they actually shared control over the United States Consulate there with the "students"<sup>5</sup>.

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<sup>3</sup> Telephone interview with Sadeq Tabatabai, Tehran Domestic Service, 1140 GMT, 5 Nov. 1979, as reported in Foreign Broadcast Information Service (FBIS), *Daily Report*, 6 Nov. 1979, pp. R14, 16 (Ann. 2). In an interview published 1 December in Beirut, the Revolutionary Guards operations commander, asked about the role of the guards in the occupation of the United States Embassy, replied:

"As a matter of fact, we played no role in the occupation of the embassy which was occupied by students supporting Imam Khomeini. The guards role was to protect the safety of the hostages and secure the area. There were signs of a serious plot to explode [sic] the situation around the embassy. Our task was to protect the safety of both the hostages and the students." (Interview with Abu Sharif, undated, *As-Safir* (Beirut), 1 Dec. 1979, as reported in FBIS, *Daily Report*, 4 Dec. 1979, p. R40 (Ann. 3).)

<sup>4</sup> Operations at these consular posts had been suspended as a result of the attacks in February 1979, and no United States personnel were at these posts when the 5 November attacks occurred. (Response by the United States, 11 Dec. 1979, to a question presented by the Court on 10 Dec. 1979, reprinted in Selected Documents, No. 2.)

<sup>5</sup> Announcement issued by the "Corps of Guardsmen and students stationed at the US Consulate", Shiraz Domestic Service, 6 Nov. 1979, as reported in FBIS, *Daily Report*, 7 Nov. 1979, p. R2 (submitted to the Court in Declaration of 6 Dec. 1979, of David D. Newsom, App. C, Item 17, hereinafter cited as "Newsom Declaration", reprinted in Selected Documents, No. 1).

The failure of the Government of Iran on 4 and 5 November to protect the United States Embassy and consular premises, and its apparent complicity in the attack at least from the moment of sending the Revolutionary Guard to assist the invaders rather than protect the Embassy, directly violated assurances provided earlier by that Government that United States premises would be protected. It was also in contrast to Iran's prior conduct. When the United States Embassy was attacked on 14 February 1979, the Government of Iran acted quickly and efficiently to try to deal with the attackers and to remove them. Following the attack, on 11 March, Prime Minister Bazargan addressed a letter to the Embassy expressing deep regret at the incident, its readiness to indemnify the United States for the damage caused to its premises "by anti-revolutionary elements", and its assurance that the Government "have made arrangements to prevent seriously the repetition of such incidents". (See Response of the United States, 12 Dec. 1979, to a

### B. The Role of the Iranian Authorities

The Government's role in the attacks may be said to have begun even before 4 November. On 28 October, in a speech at Qom, Ayatollah Khomeini, then *de facto* Chief of State of Iran, stated:

"All the problems of the East stem from these foreigners, from the West, and from America at the moment. All our problems come from America. All the problems of the Muslims stem from America . . ."<sup>6</sup>

In the early morning of 1 November, in anticipation of a demonstration in the vicinity of the United States Embassy, the Embassy reported to the State Department that the normal complement of police was outside the compound and that the Embassy felt confident that it could get more protection if needed. Thirty minutes later Chargé Laingen reported that several hundred demonstrators were marching back and forth in front of the Embassy but that the police detachment had been strengthened, providing "more than enough for now". The Chief of Police came to the Embassy personally and met with Mr. Laingen, who informed Washington that the Chief was "taking his job of protecting the Embassy very seriously". Mr. Laingen reported that the prayer leader at the main demonstration in another location in the city, the Ayatollah Montazeri, had repeated an announcement on the radio that the people should *not* go to the Embassy. The number of demonstrators at the Embassy varied during the day, up to 5,000 or more, but protection was maintained by Iranian security forces. That evening, as the crowd dispersed, both the Chief of Protocol and the Chief of Police expressed relief to Chargé Laingen that everything had gone well.

However, incitement against the United States continued to come from the highest governmental authority in Iran, Ayatollah Khomeini—incitement which apparently led to the 4 November attack on the United States Embassy<sup>7</sup>. In an interview on 5 November, a person identified as a "student" involved in the Embassy takeover explained the genesis of the action as follows:

"The need to do something was felt more than ever, which is quite evident in the speeches of the Imam [Ayatollah Khomeini] in the past week or couple of weeks. The Imam during this period had talked to all those received by him about the problem of America. In his last message on the occasion of 4 November he addressed a message to students and all the strata of people, especially pupils, students and theological students, and asked them to extend and strengthen their attacks against the United States. That was why the Muslim student believers in the way of the Imam decided, with regard to all of the above, to take a revolutionary step in the right channel, that is to say against America and its interests. . . . Thus, the need to do something was felt simultaneously in two universities, and students from several faculties agreed on the plan to occupy the Embassy and take the staff of the Embassy hostage<sup>8</sup>."

The influence of Ayatollah Khomeini's speeches was also indicated by a

question presented by Judge Gros on 11 Dec. 1979, reprinted in Selected Documents, No. 3.) On at least two further occasions prior to 22 October, and on one occasion after that date, Chargé d'Affaires Laingen discussed the security situation with Iranian Foreign Minister Yazdi who assured Mr. Laingen that the Government of Iran would fulfil its international obligation to protect the United States Embassy.

<sup>6</sup> Tehran Domestic Services, 2030 GMT, 28 Oct. 1979, as reported in FBIS, *Daily Report*, 29 Oct. 1979, p. R2, R3 (Ann. 4).

<sup>7</sup> See, e.g., Statement of Ayatollah Khomeini, 1 Nov. 1979, as reported in FBIS, *Daily Report*, 2 Nov. 1979, pp. R1-R2 (Ann. 5).

<sup>8</sup> Newsom Declaration, App. C, Item 6.

statement issued on 5 November by a group which identified itself as "Student Followers of the Imam's Policy". The statement noted that it was Ayatollah Khomeini "who cried out that it is up to the pupils, university students and theology students to extend their attacks upon the United States" so as to force it to meet Iranian demands. The statement continued:

"And so, in following your [Ayatollah Khomeini's] orders, and with faith in the pursuit of your path which is the path of god, we decided to take a step, small as it was, by occupying the Embassy of the US mercenaries in Iran and voice your divine wrath. . . . [W]e vow to you that, hand in hand at your command, we will continue the fight to the total destruction of their sovereignty<sup>9</sup>."

The "student" statements of 5 November indicate that a large number of persons were involved in the advance planning and execution of the 4 November attack—so large as to make it questionable whether the Iranian Government did not know of the plans in advance. While denying any such advance knowledge, Sayyed Ahmad Khomeini, son of and adviser to the Ayatollah Khomeini, stated in an interview on 20 November that he had been in contact with the organizing group prior to the attack<sup>10</sup>.

Whether or not the Iranian authorities' responsibility for the attack was initially limited to incitement and specific failure to deter, prevent and terminate the action, it became evident within hours after the attack that the Government was giving the action its endorsement, co-operation and full support; at least from that point on, the Government was an accomplice and participant in the continuing holding of the Embassy and the hostages.

On 4 November, the day of the attack, the invaders held a press conference at the Embassy and announced that Ayatollah Khomeini, acting as "guide of the Iranian Revolution", had telephoned the Embassy to express his agreement with the "students'" action<sup>11</sup>. No denial of this announcement was made by the Government of Iran. On 5 November other Iranian authorities expressed their support of the action of the "students". For example, the commander of the Revolutionary Guards, whose troops apparently had been sent in by the Government's order to protect the invaders, sent a message to the "students" characterizing their action as "a brave and god-loving step", regretting his own inability to participate in their "gathering", and pledging that the corps of the Revolutionary Guards "are ready to serve you with all their force and might and, holding their lives in their hands, are prepared to shed to the last drop of the blood and to undertake your protection to the last state of victory"<sup>12</sup>. On the same day, 5 November, a public statement was made that the "staff of the central office of the public prosecutor of the Islamic revolution, the research staff and the judiciary announce their support for the Muslim fighting students who have occupied the US Embassy"<sup>13</sup>. Foreign Minister Yazdi, while recognizing that "according to international regulations the Iranian Government is duty-bound to safeguard the life and property of foreign nationals", stated: "The action of the students enjoys the endorsement and support of the government, because America herself is responsible for this incident"<sup>14</sup>.

<sup>9</sup> Statement of the "Student Followers of the Imam's Policies", Tehran Domestic Service, 1030 GMT, 5 Nov. 1979, as reported in FBIS, *Daily Report*, 6 Nov. 1979, pp. R3-R4 (Ann. 6).

<sup>10</sup> Tehran Domestic Service, 1030 GMT 20 Nov. 1979, as reported in FBIS, *Daily Report*, 21 Nov. 1979, p. R2 (Ann. 7).

<sup>11</sup> Newsom Declaration, App. C, Item 1.

<sup>12</sup> *Ibid.*, Item 7.

<sup>13</sup> *Ibid.*, Item 8.

<sup>14</sup> *Ibid.*, Item 11.

Ayatollah Khomeini himself publicly justified and supported the Embassy's seizure and refused to call upon the students to withdraw from the Embassy<sup>15</sup>. Since 5 November Iranian officials have continued to support the holding of hostages and to participate in their continued detention<sup>16</sup>.

This support and participation by the Iranian authorities had been a critical factor in the continued holding of the Embassy and of the hostages<sup>17</sup>. Foreign Minister Gotbzadeh summed it up succinctly in late December: "The fact is that the seizure of the embassy was approved by the Imam and, consequently by the people. As far as I am concerned", he said, "I will do whatever I have to do"<sup>18</sup>. Those holding the United States Embassy have also made clear that they will obey the orders of Ayatollah Khomeini. For example, they have consistently identified themselves as the "Student Followers of the Imam's Policies". In a statement issued by them on 5 November, they not only declared that their action was taken pursuant to Ayatollah Khomeini's orders, they also told Ayatollah Khomeini that they would continue to fight "at your command"<sup>19</sup>. On 10 November Ayatollah Khomeini ordered the "students" to admit the Papal envoy, Annibale Bugnini, to the Embassy<sup>20</sup> and the "students" promptly complied with the order issued by "the leader of the Iranian Revolution, His Excellency Imam Khomeyni"<sup>21</sup>. In a statement on 14 November the "student followers of the Imam's policy" stated that the leadership of their action against the United States "is in the hands of the able and great leader of the Islamic revolution in Iran, Imam Khomeini; and it is only the viewpoints of the leadership which determine the general direction of and measures related to this move"<sup>22</sup>.

On 17 November Ayatollah Khomeini issued a decree, addressed to the "students" at the Embassy, stating:

"The centre of espionage and conspiracy called the American Embassy and those people who hatched plots against our Islamic movement in that place do not enjoy international diplomatic respect."

<sup>15</sup> *Ibid.*, Item 12.

<sup>16</sup> By contrast, when the Iraqi Consulate in Tehran was seized on 5 November, the authorities undertook negotiations with the invaders, who were requested by Ayatollah Khomeini to leave the building. The invaders announced: "We will follow instructions from the office of the Imam." They cleared the Iraqi Consulate, apparently leaving its documents untouched (Newsom Declaration, App. C, Item 18). Furthermore, when an angry crowd protested in front of the Embassy of the Soviet Union on 1 January 1980, and again on 3 January against the Soviet Union actions in Afghanistan, the Government of Iran provided armed security forces which effectively protected the Embassy from the demonstrators.

<sup>17</sup> The assessment of Bani Asadi, former Deputy Prime Minister in the Bazargan Government, was reported in a December interview:

"If the Ayatollah decides to end the occupation, he says, then the occupation will be ended. All Khomeini has to do, according to Bani Asadi, is to stop broadcasting news about the American Embassy on Iranian television and radio and the students will rapidly become isolated." (FBIS, *Daily Report*, Supp. 39, 13 Dec. 1979, p. 8 (Ann. 8).)

<sup>18</sup> Interview with *Excelsior* correspondent Victor Payan, *Excelsior*, Mexico City, 26 Dec. 1979, in Spanish, informal United States translation (Ann. 9).

<sup>19</sup> Footnote 9, *supra*, p. 128.

<sup>20</sup> Message from Imam Khomeini's office in Qom, Tehran Domestic Service, 1630 GMT, 10 Nov. 1979, as reported in FBIS, *Daily Report*, 13 Nov. 1979, p. R15 (Ann. 10).

<sup>21</sup> Statement No. 28 of the "Student Followers of the Imam's Policy", *ibid.*

<sup>22</sup> "Student" Statement No. 32, Tehran Domestic Service, 1030 GMT, 14 Nov. 1979, as reported in FBIS, *Daily Report*, 15 Nov. 1979, pp. R5-R6 (Ann. 11).



The decree directed the "students" to:

"hand over the blacks and the women, if it is proven that they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran. The Noble Iranian nation will not give permission for the release of the rest of them. Therefore, the rest of them will be under arrest until the American Government acts according to the wish of the nation<sup>23</sup>."

*That same day the following announcement was issued in the name of the "Student Followers of the Imam's Policy":*

"Following the orders of the great leader of the revolution, Imam Khomeini, about releasing the women and blacks who are among the hostages and whose acts of espionage have not been proved, we have acted immediately and according to the orders of the Imam those individuals whose acts of espionage have not been proved will be handed over to the Ministry of Foreign Affairs so that they may be expelled from the country. . . . The rest of the hostages and the premises of the centre of espionage, as ordered by the Imam, will be at the disposal of you, valiant nation . . .<sup>24</sup>"

By 20 November 13 of the hostages had, in fact, been released.

During an interview with a United States television network on 28 December, when asked directly if the remaining hostages would be released upon the order of Ayatollah Khomeini, the designated spokesman for the "students" holding the Embassy replied that they would be<sup>25</sup>.

### C. The Status of the Hostages

At least 62 Americans and a number of non-American hostages were seized when the Embassy was invaded. Thereafter an American businessman was added to the group being held at the Embassy. It appears that all of the non-American hostages have subsequently been released. Thirteen of the American hostages were released by 20 November pursuant to the order of Ayatollah Khomeini, who also ordered the continued detention of the remainder—whom he described as being under arrest in connection with allegations of espionage pending United States compliance with Iran's demands.

The available evidence makes clear that those who have been held by Iran under this form of "arrest" have been subjected to a harrowing ordeal<sup>26</sup>. At the outset some were paraded blindfolded, hands bound behind their backs before hostile and chanting crowds. At least during a substantial period of their captivity, it appears that the hostages were kept bound, hand and foot, and frequently blindfolded; forced to remain silent for extended periods of time; denied mail<sup>27</sup>; denied the right to communicate with each other, with their captors (except as to basic requests), and with their own government; subjected to interrogation, some apparently intensively and repeatedly; threatened with

<sup>23</sup> Decree of Ayatollah Khomeini, Tehran Domestic Service, 0930 GMT, 17 Nov. 1979, as reported in FBIS, 20 Nov. 1979, p. R11 (Ann. 12).

<sup>24</sup> "Student" Statement No. 32, Tehran Domestic Service, 1053 GMT, 17 Nov. 1979, as reported in FBIS, *Daily Report*, 19 Nov. 1979, pp. R15-16 (Ann. 13).

<sup>25</sup> ABC Television, 28 Dec. 1979.

<sup>26</sup> The facts set forth in the ensuing paragraph were derived from reports received through the press and from persons who have been in the Embassy compound since its seizure.

<sup>27</sup> Christmas cards were apparently allowed to reach some of the hostages.

criminal trials; threatened with death in the event of a United States rescue attempt<sup>28</sup>; and some directly threatened with weapons.

The threat of criminal trials for all the remaining hostages, with a possible death penalty, has been made repeatedly by both Iranian officials and by the "Student Followers of the Imam's Policies". On 18 November the Ayatollah Khomeini said that "what our nation has done is to arrest a bunch of spies, who, according to the norms, should be investigated, tried and treated in accordance with our own laws". He raised the possibility of trials of the hostages even if the United States complied with Iran's demands, saying that, if the hostages were then released "it will be because we have been lenient". Asked if the hostages would never be killed under any circumstances, Khomeini indicated that, if Iran's demands were not met, the hostages would definitely be tried and whatever the court decides would be acted upon<sup>29</sup>. The trial threat was reiterated in a 17-point resolution issued by the "Student Followers of the Imam's Policy" on 21 November<sup>30</sup> and was expressly conveyed to the hostages by their captors<sup>31</sup>. In an interview published 6 December Ayatollah Khalkali, head of Iran's revolutionary "courts", repeated the trial threat, said that he would be pleased to preside over the court, and threatened the firing squad for those found guilty, while expressing the hope some might be found innocent and raising the possibility of a pardon by Ayatollah Khomeini for the others<sup>32</sup>. Ayatollah Khalkali was later reported as promising that the hostages would not be put to death even if tried<sup>33</sup>, and as expressing his belief that they were innocent and should be released<sup>34</sup>. On 22 December, however, he was reported as having denied such statements and as having repeated the death penalty threat for those hostages who might be proven guilty<sup>35</sup>.

Sharia Magistrate Ayatollah Gilani, during a discussion with newsmen on 18 December, made the following statement:

"The trial of the hostages will take place when permission is received from Imam Khomeini. It will be held under the supervision of the Shar' magistrate and the Islamic Revolution Council, in accordance with the precepts of Islam and in observance of the noble verses of the glorious Koran, and they will be treated with justice. However, pseudo-diplomats and spies fall outside this rule. In Islam, spies are considered to be 'ayyun' [eyes], for which the Islamic law prescribes the severest punishment, and the imam of the Muslims may even kill spies or turn them into slaves. . . . The imam may kill them, or pardon them, or even detail them to work in the court as slaves, as our workers and slaves. This depends on the imam personally<sup>36</sup>."

<sup>28</sup> "And should the United States and its hateful agents in Iran resort to the least conspiratorial movement, military or otherwise, to release the hostages, all the hostages will be destroyed and responsibility for this will lie directly with the US Government." "Student" Statement No. 15, Newsom Declaration, App. C, Item 15.

<sup>29</sup> Newsom Declaration, App. C, Item 31.

<sup>30</sup> Resolution, paragraph 7, Tehran Domestic Service, 1016 GMT, 21 Nov. 1979, as reported in FBIS, *Daily Report*, 21 Nov. 1979, pp. R11-13 (Ann. 14).

<sup>31</sup> Interview with "student leaders", AFP, 23 Nov. 1979, as reported in FBIS, *Daily Report*, 26 Nov. 1979, pp. 13-14 (Ann. 15).

<sup>32</sup> Interview with Ayatollah Khalkali, undated, *La Stampa*, 6 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 39, 13 Dec. 1979, pp. 31-34 (Ann. 16).

<sup>33</sup> BBC, London, 12 Dec. 1979, as reported in FBIS, *Daily Report*, 13 Dec. 1979, Supp. 39, p. 8 (Ann. 17).

<sup>34</sup> *The Times*, London, 21 Dec. 1979, pp. 1, 6 (Ann. 18).

<sup>35</sup> AFP, Tehran, 22 Dec. 1979, as reported in FBIS, *Daily Report*, 24 Dec. 1979, pp. 17-18 (Ann. 19).

<sup>36</sup> Discussion with Sharia Magistrates, *Ettela'at*, 18 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 45, pp. 30-31 (Ann. 20).

Asked about the hostages' right to defence counsel in these trials, Ayatollah Gilani reportedly replied that "the spies may engage lawyers conversant with Islamic precepts, but the crime of these individuals is so evident that no informed human being will agree to defend such criminals<sup>37</sup>".

A somewhat different threat was also developed—namely, to use the hostages as part of an effort to put the United States itself on trial. In a speech on 10 December former Foreign Minister Yazdi set out the suggestion, stating that Ayatollah Khomeini had accepted it<sup>38</sup>. Foreign Minister Gotbzadeh formulated the concept in terms of an international tribunal or grand jury before which the hostages would testify<sup>39</sup>. Ayatollah Khomeini's formal instruction to Foreign Minister Gotbzadeh to form the "international investigating committee" was issued on 13 December<sup>40</sup>. By late December, however, leading international figures had made clear that they would not participate in any such investigation while the hostages remained in custody, and little has since been heard of the international committee approach. As the possibility of United Nations sanctions against Iran has developed, the earlier idea of a trial of the hostages themselves has re-emerged as a counter-threat against Security Council action<sup>41</sup>.

#### D. Violations of the Embassy's Archives and Documents

From the outset those Embassy files, records and documents which were not destroyed by the Embassy staff during the 4 November attack were ransacked. Their purported contents have been interpreted and disseminated by the "students" (in a series of so-called "revelation statements") and by the government-controlled media. The day following the takeover the "students" affirmed that the documents would be considered, reported to the public, and, if necessary, delivered to Khomeini<sup>42</sup>. Embassy documents were apparently compiled in dossiers for use in deciding on the release of the 13 hostages in November<sup>43</sup> and an interrogation of the hostages; apparently it is also intended that they will be used as evidence if the hostages are tried<sup>44</sup>. Thus the "students" have announced that the documents will be "exposed and simplified" in the courts<sup>45</sup>, and Foreign Minister Gotbzadeh has also stated that these documents would be used before the planned "international grand jury"<sup>46</sup>. As early as 8 November the Iranian Government spokesman was seeking to justify the

<sup>37</sup> *Ibid.*

<sup>38</sup> Tehran Domestic Service, 1630 GMT, 10 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 37, 11 Dec. 1979, pp. 7-8 (Ann. 21).

<sup>39</sup> Interview with Sadeq Gotbzadeh, Tehran, in English to Europe, 10 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 37, pp. 10-12 (Ann. 22).

<sup>40</sup> Instruction issued by Ayatollah Khomeini, Tehran Domestic Service, 13 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 39, 13 Dec. 1979, p. 11 (Ann. 23).

<sup>41</sup> Announcement by Foreign Minister Gotbzadeh, Tehran Domestic Service, 28 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 49, 28 Dec. 1979, p. 4 (Ann. 24).

<sup>42</sup> Interview with "Students", Tehran Domestic Service, 2030 GMT, 5 Nov. 1979, as reported in FBIS, *Daily Report*, 6 Nov. 1979, p. R8 (Ann. 25).

<sup>43</sup> Ahmad Khomeini Interview, Tehran Domestic Service, 1135 GMT, 19 Nov. 1979, as reported in FBIS, *Daily Report*, 20 Nov. 1979, pp. R2-3 (Ann. 26).

<sup>44</sup> Ahmad Khomeini Interview, Tanjug, Belgrade, 6 Dec. 1979, as reported in FBIS, *Daily Report*, Supp. 41, 17 Dec. 1979, pp. 21-22 (Ann. 27).

<sup>45</sup> "Student" press interview at the US Embassy, Tehran in English to Europe, 1930 GMT, 1 Dec. 1979, p. R27 (Ann. 28).

<sup>46</sup> See Ann. 22.

continuing hostage situation on the basis of documents found in the Embassy<sup>47</sup>, an attempted justification which was to become standard<sup>48</sup>.

### E. Lack of Access to the Hostages

During this entire time, despite repeated requests both by telephone to the "students" at the Embassy and through the Embassy of Iran in Washington, all contact between the hostages and United States Government officials, even by telephone, has been prohibited with the apparent approval of Iranian authorities. Non-Iranian outside observers have been allowed only the most intermittent and limited access to the hostages, most recently a visit by three American clergymen and one Algerian priest on 25 December. By resolution dated 31 December 1979, the United Nations Security Council requested the Secretary-General of the United Nations to visit Tehran in an effort to find a way of resolving the crisis, and although the Secretary-General sought leave to see the hostages during his visit of 31 December to 3 January, he was not permitted to see them.

The clergymen reported seeing 43 hostages. The "students" holding the hostages claim that there is a total of 49 at the Embassy, whereas the information of the United States Government is that 50 of the American citizens who were taken captive have not been released. The Foreign Minister of Iran said on 26 December that he would investigate the number of hostages<sup>49</sup>, but no clarification of the discrepancy has been issued. The conditions of all visits have apparently been closely controlled by the captors, with limitations put on the type of communications allowed and with monitoring of all contacts. Those who continue to be held at the Embassy, or who are believed to be so held, include 48 members of the diplomatic, administrative and technical staffs of the Embassy and 2 private American citizens.

### F. The Status of the United States Chargé d'Affaires

In addition to those held at the Embassy, three members of the diplomatic staff of the Embassy, including the United States Chargé d'Affaires, Bruce Laingen, have been confined to the Iranian Foreign Ministry since the attack. Since 4 November they have been denied access to senior Iranian officials and permitted only limited and intermittent visits from their diplomatic colleagues from other embassies in Tehran. They have, however, been permitted to communicate on an irregular basis with the United States.

On 6 November the "students" demanded the surrender of Mr. Laingen<sup>50</sup>. On 7 November the Foreign Ministry issued a statement acknowledging the Government's legal duty to protect these United States diplomats, stating that

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<sup>47</sup> Sadeq Tabatabai Interview, Tehran, in English to Europe, 1930 GMT, 8 Nov. 1979, as reported in FBIS, *Daily Report*, 9 Nov. 1979, p. R11 (Ann. 29).

<sup>48</sup> See, e.g., Anns. 22 and 27.

<sup>49</sup> Interview with French television, AFP, 21 Dec. 1979, as reported in FBIS, *Daily Report*, Supplement 48, 27 Dec. 1979, p. 9 (Ann. 30). The last visit to the hostages by a non-Iranian observer prior to 25 December was made on 25 November by a United States Congressman on a private visit who reported seeing 20 of the hostages. Other brief visits occurred on 10 November by the Ambassadors of Algeria, France, Sweden and Syria jointly and on 11 November by the Papal Nuncio and, separately, by the Ambassador of the Federal Republic of Germany.

<sup>50</sup> "Student" Statement No. 13, Tehran Domestic Service, 1030 GMT, 6 Nov. 1979, as reported in FBIS, *Daily Report*, 6 Nov. 1979, p. R12 (Ann. 31).

they were, in fact, under the protection of the Government at the Foreign Ministry<sup>51</sup>. On 8 November the "Student Followers of the Imam's Policy" announced their view that Mr. Laingen was "a plotting spy" and, therefore, a hostage with no right to leave the Foreign Ministry. They announced that "a special team will be sent to the Foreign Ministry to guard him"<sup>52</sup>. On 30 November Foreign Minister Gotbzadeh stated that Mr. Laingen and his two colleagues were free to leave Iran when they wished, although it would be difficult to protect them on route to the airport, but on 1 December the students replied that the three diplomats at the Foreign Ministry were their hostages and under their surveillance<sup>53</sup>. In a 2 December interview the Foreign Minister said the three were free to wait at the Foreign Ministry, where they would be protected, but that "we" are no longer responsible when they leave the Ministry<sup>54</sup>. And in another interview reported the next day the Foreign Minister stated that Mr. Laingen and his colleagues had sought and been granted asylum. He added, however:

"Therefore, as long as they remain in the ministry I am personally responsible for ensuring that nothing happens to them, but those men too have no doubt committed crimes. So as soon as they leave the ministry precincts they will fall back into the hands of justice, and then I will be the first to demand that they be arrested and tried<sup>55</sup>."

Although the United States Government has not characterized Mr. Laingen and his two colleagues at the Foreign Ministry as hostages, the restrictions on their freedom make clear that they are hostages as well, although confined in less inhumane conditions than their colleagues at the Embassy. The uncertainty of their situation was emphasized by "student" demands early in January that Mr. Laingen should be transferred to the custody of the Embassy's captors for questioning<sup>56</sup>.

#### G. The Iranian Government's Stated Justification of the Seizure of the Embassy and the Hostages

While the Government of Iran has not communicated officially to the United States, or to the Court, its rationale for the seizure and ransacking of the Embassy, the holding of the hostages, and the threats to try them, a number of Iranian statements have been made purporting to justify the actions in legal terms. As noted above, former Foreign Minister Yazdi, while acknowledging Iran's legal duty of protection, asserted that the United States itself was responsible for the 4 November attacks because of its own prior misdeeds<sup>57</sup>. The "supervisor" of the Foreign Ministry, Mr. Bani-Sadr, issued a statement on 12 November attempting to justify the action on the theory that the Embassy was not an embassy but a centre of "government interference in trivial and

<sup>51</sup> Foreign Ministry Announcement, 7 Nov. 1979, Tehran Domestic Service, as reported in FBIS *Daily Report*, 8 Nov. 1979, p. R14 (Ann. 32).

<sup>52</sup> "Student" Statement No. 20, Tehran Domestic Service, 1030 GMT, 8 Nov. 1979, as reported in FBIS, *Daily Report*, 9 Nov. 1979, p. R3 (Ann. 33).

<sup>53</sup> AFP Tehran, 1 Dec., as reported in FBIS, *Daily Report*, 3 Dec., pp. R20-21 (Ann. 34).

<sup>54</sup> Interview with Paris radio, Paris Domestic Service, 1200 GMT, 2 Dec. 1979, as reported in FBIS, *Daily Report*, 3 Dec. 1979, pp. R37-38 (Ann. 35).

<sup>55</sup> *Le Figaro*, Paris, 4 Dec. 1979, as reported in FBIS, *Daily Reports*, 6 Dec. 1979, pp. R29-30 (Ann. 36).

<sup>56</sup> "Student" Statement, unnumbered, Tehran Domestic Service, 1124 GMT, 4 Jan. 1980 as reported in FBIS, *Daily Report*, 4 Jan. 1980, p. 10 (Ann. 37).

<sup>57</sup> Newsom Declaration, App. C, Item 11.

major affairs and of espionage"<sup>58</sup>. Ayatollah Khomeini, when questioned by reporters about holding hostages in violation of international law, responded on 18 November that ambassadors or charges who spy are subject to being taken hostage. He argued that Iran had not violated international norms but that the United States had done so by admitting the Shah to the United States and refusing to extradite him to Iran<sup>59</sup>. On 19 November Sadeq Gotbzadeh, then Iranian Revolutionary Council spokesman and Minister of National Guidance, asserted the invalidity of the law of diplomatic immunity. He said that the basis of diplomatic immunity had been shattered; that "these laws have been made to guarantee the crimes that the representatives of the big powers have committed in the small countries"; that "all nations which have never been independent accepted them"; that "diplomatic immunity does not guarantee the act of espionage, the crimes and whatever you have"; and that this "was not the American Embassy, it was a centre of espionage . . ."<sup>60</sup>.

In an interview published on 29 November Ayatollah Behesti, Secretary of the Revolutionary Council, asserted a different theory. He admitted that, if spies are discovered in a foreign embassy, it is standard procedure to expel them but not to take them as hostage. He said, however, that it is "standard procedure but not revolutionary. If we were talking here about diplomatic traditions, then I would say you are right. But we have a revolution. And they have laws of their own. Being revolutionaries, we support the youth because this action is the only way to make the world familiar with their ideas, goals, and feelings of revenge"<sup>61</sup>.

An explanation for Iran's action was given in a news dispatch from Tehran published on 30 November:

"Seyyed Hoseyn, Imam Khomeini's grandson and adviser explained to us on Monday 26 November: 'The occupation of the US Embassy is particularly profitable both in the Third World and in Iran itself.' Hoseyn's theory, which is as well-argued as Mr. Bani-Sadr's, could be summarized as follows:

1. The blows dealt against US imperialism have absorbed all the internal conflicts which were undermining the Islamic Republic, and have united the entire population, regardless of class and political leanings, under the Imam's banner. The embassy's occupation is the most popular event that has occurred since the monarchy was overthrown. 'It has enabled us to open the door to a strategic alliance between the Islamic movement and the secular and left-wing groups and to a tactical alliance with the Soviet bloc', Seyyed Hoseyn told us in particular.

2. 'The Third World and Muslim peoples, especially the Arabs now regard the Iranian Revolution as their own.' The occupation of the US Embassy has been seen by them as an exciting challenge to the most powerful of the two superpowers. 'We have therefore liberated these peoples from fear, from "psychological occupation", which is more effective than any other, to which US imperialism subjected them' Seyyed Hoseyn stated. The seizure of diplomats as hostages is not regarded by Third World populations as a violation of international law about which, moreover, they understand very little. 'The poor and underprivileged

<sup>58</sup> Message from Foreign Ministry Supervisor Bani-Sadr, Tehran Domestic Service, 12 Nov. 1979, as reported in FBIS, *Daily Report*, 13 Nov. 1979, p. R37 (Ann. 38).

<sup>59</sup> *Newsom Declaration*, App. C, Item 31.

<sup>60</sup> *Ibid.*, Item 33.

<sup>61</sup> *Stern*, Hamburg, 29 Nov. 1979, in German, informal United States translation (Ann. 39).

despise the legal and meddlesome minds of the rich and powerful', Seyyed Hoseyn added and he is considered to be as 'radical' as his grandfather<sup>62</sup>."

#### H. Efforts of the United States to Negotiate the Dispute

From the first days of the crisis the United States sought to open discussions with the Government of Iran but was flatly rebuffed; Iran later simply barred all official communication on the subject of the hostages.

On 7 November the Secretary of State requested a former Attorney-General of the United States, Ramsey Clark, and an assistant to travel to Iran to deliver a message from the President of the United States to the Ayatollah Khomeini<sup>63</sup>. Although the message protested the actions of the Government of Iran and called for release of the hostages, Mr. Clark also was authorized to discuss all avenues for resolution of the crisis<sup>64</sup>. The Iranian Government initially agreed to receive Mr. Clark in Tehran, but shortly after Mr. Clark landed in Istanbul, where he was to change planes, Iranian authorities reversed themselves and stated that Mr. Clark and his colleague could not come to Iran. Tehran radio broadcast a message from Ayatollah Khomeini stating that it was "not possible under any circumstance for the special representatives to meet with him", that "the members of the Islamic Revolutionary Council under no circumstances should meet with them", that "none of the responsible officials has the right to meet with them", and that "the way to talks would be opened" only if the United States met specified Iranian demands<sup>65</sup>. Shortly thereafter Iranian authorities indicated that they would have no direct contact with representatives of the United States Government concerning the holding of the hostages<sup>66</sup>.

The United States Government has persisted in its efforts to open communications with the Government of Iran. Beginning with a request on 4 November for assistance in ending the Embassy seizure, the United States has communicated positions on various matters relating to the crisis to the Iranian Chargé d'Affaires in Washington; it has asked him for Iran's comments on specific matters from time to time. The Chargé, however, has not been able to respond to questions relating to the release of the hostages<sup>67</sup>.

The United States Government has also attempted to establish communications with the Iranian representative at the United Nations, but he and the staff of the Iranian Mission have declined contact with United States representatives. While there had been some hope that Iran would follow through on its pledge to send a representative from Tehran to participate in the Security Council meetings in November, thus providing an opportunity for dialogue, Iran did not participate in the meeting<sup>68</sup>.

Chargé Laingen, held in custody in the Ministry of Foreign Affairs in Tehran, has had regular contact with the Ministry's Chief of Protocol but has been denied access to any senior officers of the Ministry and has not been

<sup>62</sup> *Le Monde*, Paris, 30 Nov., pp. 1, 3, as reported in FBIS, *Daily Report*, 3 Dec. 1979, p. R19 (Ann. 40).

<sup>63</sup> Newsom Declaration, para. 3.

<sup>64</sup> Response by United States to question presented by the Court on 10 Dec. 1979.

<sup>65</sup> Newsom Declaration, para. 3 and App. C, Item 20.

<sup>66</sup> Newsom Declaration, para. 3. During an interview on 18 Nov. Ayatollah Khomeini asserted that he would even refuse to meet with President Carter. He stated that, if "Mr. Carter wants to make us step down from our demands ... it is out of the question". If he meets the demand, "then, there will be no point in our meeting. Therefore, I am not willing to meet him". Newsom Declaration, App. C, Item 31.

<sup>67</sup> Newsom Declaration, para. 3.

<sup>68</sup> *Ibid.*

permitted to engage in any conversations of substance regarding the release of the hostages<sup>69</sup>.

In addition to these efforts at direct communication, there have been a number of efforts made by leaders of other governments and by the Secretary-General of the United Nations to intercede with the authorities in Iran to secure the release of the hostages and the resolution of the crisis<sup>70</sup>, the latest of these being the Secretary-General's personal visit to Iran at the behest of the Security Council in the period 31 December-3 January. As of the date of this Memorial all such efforts have been rebuffed.

The United States has sought to provide a basis for reaching an end to the crisis. It has said that, after the release of the hostages, Iran's complaints against the government of the Shah might be presented to an appropriate forum. The United States would not oppose such a process. In addition, the United States has made it clear that the American judicial system would be available to the Iranian authorities who wished to pursue Iran's claims to the assets of the Shah. There has been no substantive response from Iranian authorities to these suggestions for a means of ending the crisis, although Iran has initiated a lawsuit in a United States court to recover claimed assets.

### I. Protests by the Government of the United States

From the onset of the attack upon the United States Embassy in Tehran, the United States has protested to the Government of Iran the attack and the seizure and detention of the American hostages. As noted above, Mr. Ramsey Clark was dispatched to Iran to present a formal protest (and to negotiate toward the release of the hostages) but he was prevented from entering the country. However, senior officers of the Department of State, including Under Secretary of State Newsom, were in frequent telephone contact with Iranian authorities in Tehran during the first half of November until further such contacts were prohibited by the Ayatollah Khomeini. In these communications the Department officials protested in the strongest terms the illegal and continuing detention of American personnel and discussed possible means of securing their release. These officials also made approaches to the Iranian Chargé d'Affaires in Washington protesting the situation in Iran. Other communications, including protests, were made through private intermediaries and through foreign embassies in Tehran, acting on behalf of the United States Government.

### J. Resort to the United Nations and to the Court

From an early stage of the crisis the United States has persistently sought peaceful resolution of the hostage dispute with Iran through the United Nations.

By letter dated 9 November 1979, from the United States Permanent Representative to the United Nations addressed to the President of the Security Council, the United States requested that the Security Council urgently consider what might be done to secure the release of the American hostages and restore

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<sup>69</sup> *Ibid.*

<sup>70</sup> In an interview with European correspondents in late November, Ayatollah Khomeini stated: "Probably not a day passes without (messages) being received by our Foreign Ministry from abroad, from various countries to whom they [the United States] have appealed. They keep appealing to us to release the hostages and so forth." Tehran Domestic Service, 0125 GMT, 29 Nov., as reported in FBIS, *Daily Report*, 30 Nov. 1979, p. R8 (Ann. 41).



the sanctity of diplomatic personnel and establishments<sup>71</sup>. In response the President of the Security Council, speaking in the Council's name, appealed on 9 November 1979 for the immediate release of the hostages<sup>72</sup>. The President of the General Assembly has similarly called for the release of the hostages<sup>73</sup>.

On 25 November 1979, in the exercise of his exceptional authority under Article 99 of the United Nations Charter to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, the Secretary-General of the United Nations requested that the Security Council be convened urgently in an effort to seek a peaceful solution to the hostage crisis.

In his address to the Council on 27 November 1979, the Secretary-General declared that the situation in Iran "threatens the peace and stability of the region and could well have very grave consequences for the entire world"<sup>74</sup>. On 4 December 1979, the Security Council adopted unanimously resolution 457, urgently calling upon the Government of Iran "to release immediately the personnel of the Embassy of the United States of America being held in Tehran, to provide them protection and allow them to leave the country"<sup>75</sup>. That resolution also requested the Secretary-General to lend his good offices to the immediate implementation of the resolution and to take all appropriate measures to that end. The efforts of the Secretary-General have not yet succeeded in their stated purpose.

On 29 November 1979, the United States filed with the International Court of Justice an Application instituting proceedings against Iran. It concurrently filed a Request for Interim Measures of Protection. On 29 November Secretary of State Cyrus Vance also wrote a letter to the President of the Court requesting the Court to indicate appropriate interim measures within days, and suggesting that the President of the Court request the Government of Iran to ensure that no steps be taken to inflame opinion against the hostages, to heighten the danger to which they are exposed, or to place them on trial. The next day, in the exercise of the power conferred on him by Article 74, paragraph 4, of the Rules of Court, the President of the Court addressed a telegram to the Governments of Iran and the United States calling attention to the need to act in such a way as would enable any subsequent Order of the Court to have its appropriate effects.

On 15 December 1979, following a hearing on the request for provisional measures, the Court unanimously indicated the following provisional measures pending its final decision in the case:

- "A. (i) The Government of the Islamic Republic of Iran should immediately ensure that the premises of the United States Embassy, Chancery and Consulates be restored to the possession of the United States authorities under their exclusive control, and should ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;
- (ii) The Government of the Islamic Republic of Iran should ensure the immediate release without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;

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<sup>71</sup> Ann. 42.

<sup>72</sup> Ann. 43.

<sup>73</sup> Ann. 44.

<sup>74</sup> S/PV. 2172 (27 Nov. 1979) (Ann. 45).

<sup>75</sup> Ann. 46.

(iii) The Government of the Islamic Republic of Iran should, as from that moment, afford to all the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and other general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran;

B. The Government of the United States of America and the Government of the Islamic Republic of Iran should not take any action and should ensure that no action is taken which may aggravate the tension between the two countries or render the existing dispute more difficult of solution<sup>76</sup>."

The response of the Government of Iran was prompt and unambiguous: in an interview on 17 December the Iranian Foreign Minister stated that the "prefabricated verdict of the Court was clear to us in advance; for this reason Iran's *Chargé d'Affaires* at The Hague was ordered to officially reject the decision of The Hague Court"<sup>77</sup>.

At the request of the United States, the United Nations Security Council met again in late December to consider measures to be taken to induce Iran to comply with its international obligations. At the Council's meeting of 29 December Secretary of State Vance noted that "the United States Government has, with determination, persistence and patience, pursued every peaceful channel available to us"<sup>78</sup>. On 31 December 1979, the Security Council adopted resolution 461:

*"The Security Council,*

*Recalling its resolution 457 (1979) of 4 December 1979,*

*Recalling also the appeal made by the President of the Security Council, on 9 November 1979 (S/13616), which was reiterated on 27 November 1979 (S/13652),*

*Gravely concerned over the increasing tension between the Islamic Republic of Iran and the United States of America caused by the seizure and prolonged detention of persons of United States nationality who are being held as hostages in Iran in violation of international law, and which could have grave consequences for international peace and security,*

*Taking note of the letters from the Minister for Foreign Affairs of the Islamic Republic of Iran dated 13 November 1979 (S/13626) and 1 December 1979 (S/13671) relating to the grievances and statements of his Government on the situation,*

*Recalling also the letter dated 25 November 1979 from the Secretary-General (S/13646) stating that, in his opinion, the present crisis between the Islamic Republic of Iran and the United States of America poses a serious threat to international peace and security,*

*Taking into account the Order of the International Court of Justice of 15 December 1979 calling on the Government of the Islamic Republic of Iran to ensure the immediate release, without any exception, of all persons of United States nationality, who are being held as hostages in Iran (S/13697) and also calling on the Government of the United States of America and the Government of the Islamic Republic of Iran to ensure that no action is taken by them which will aggravate the tension between the two countries,*

<sup>76</sup> *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979, pp. 16-17.*

<sup>77</sup> Tehran Domestic Service, 1030 GMT, 17 Dec. 1979, as reported in FBIS, *Daily Report*, 18 Dec. 1979, p. 3 (Ann. 47).

<sup>78</sup> Statement by Secretary of State Vance, 29 Dec. 1979 (Ann. 48).

*Further taking into account* the report of the Secretary-General of 22 December 1979 on developments of the situation (S/13704),

*Mindful* of the obligation of States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

*Conscious* of the responsibility of States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

1. *Reaffirms* its resolution 457 (1979) in all aspects;
2. *Deploras* the continued detention of the hostages contrary to Security Council resolution 457 (1979) and the Order of the International Court of Justice of 15 December 1979 (S/13697);
3. *Urgently calls*, once again, on the Government of the Islamic Republic of Iran to release immediately all persons of United States nationality being held as hostages in Iran, to provide them protection and to allow them to leave the country;
4. *Reiterates* its request to the Secretary-General to lend his good offices and to intensify his efforts with a view to assisting the Council to achieve the objectives called for in this resolution, and in this connection takes note of his readiness to go personally to Iran;
5. *Requests* the Secretary-General to report to the Council on his good offices efforts before the Council meets again;
6. *Decides* to meet on 7 January 1980 in order to review the situation and, in the event of non-compliance with this resolution, to adopt effective measures under Articles 39 and 41 of the Charter of the United Nations."

To date Iran has not complied with the foregoing resolution.

#### K. Other Responsive Measures of the United States

The United States has taken the following additional measures in response to the actions for which it holds the Government of the Islamic Republic of Iran responsible. On 10 November 1979, President Carter directed Attorney-General Civiletti to identify Iranian students in the United States who are not in compliance with the terms of their entry visas, and to take the necessary steps to commence deportation proceedings against those who are in violation of applicable immigration laws and regulations. On 12 November 1979, President Carter ordered the discontinuation of all oil purchases from Iran for delivery to the United States. On 14 November 1979, President Carter acted to block all official Iranian assets in the United States, including both deposits in United States banks and deposits in foreign branches and subsidiaries of United States banks. (The order was entered in response to reports that the Government of Iran was about to withdraw its funds.) On 12 December 1979, the United States informed the Iranian Chargé d'Affaires in Washington that the number of personnel assigned to the Iranian Embassy and consular posts in the United States would be limited to a maximum of fifteen at the Embassy and five at each consular post. Compliance with such restrictions was, in general, to be completed within five days (but in fact was not). The limitations will be in force as long as United States nationals are held hostage in Iran.

PART III  
THE JURISDICTION OF THE COURT

The jurisdiction of the Court in this case is based upon Article 36, paragraph 1, of the Statute of the Court<sup>1</sup> and the following provisions of treaties in force to which the United States and Iran are parties, each of which provides an independent and sufficient basis for the Court's jurisdiction:

- (1) Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, 500 *UNTS* 241, accompanying the Vienna Convention on Diplomatic Relations of 1961, 500 *UNTS* 95;
- (2) Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, 596 *UNTS* 487, accompanying the Vienna Convention on Consular Relations of 1963, 596 *UNTS* 261;
- (3) Article XXI, paragraph 2, of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, signed on 15 August 1955, 284 *UNTS* 93; and
- (4) Article 13, paragraph 1, of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, done at New York, 14 December 1973, *TIAS* No. 8532.

**A. The Optional Protocols to the Vienna Conventions on Diplomatic and Consular Relations Afford the Court Jurisdiction**

The United States and Iran are both parties to the Vienna Convention on Diplomatic Relations of 1961 and to the accompanying Optional Protocol concerning the Compulsory Settlement of Disputes. Article I of the Optional Protocol reads as follows:

“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.”

The United States and Iran are also parties to the Vienna Convention on Consular Relations of 1963 and to its accompanying Optional Protocol concerning the Compulsory Settlement of Disputes. Article I of the latter Protocol is identical in its terms to Article I of the Optional Protocol to the Convention on Diplomatic Relations. Indeed, the two Optional Protocols are identical throughout save for necessary changes in titles and dates. It is therefore convenient to discuss the two protocols together, always bearing in mind, however, that each provides an independent basis for the Court's jurisdiction.

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<sup>1</sup> Article 36 (1) of the Court's Statute provides that 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.

Article I is truly a model compromissory clause providing, as the Court noted in paragraph 17 of its Order of 15 December 1979, "in the clearest manner for the compulsory jurisdiction" of the Court over any dispute arising out of the interpretation or application of the Vienna Conventions<sup>2</sup>.

### 1. PREREQUISITES TO THE COURT'S JURISDICTION

There are only two prerequisites to the Court's jurisdiction under Article I:

- (1) there must be a "dispute";
- (2) the dispute must arise out of the "interpretation or application" of the Convention to which each of the Optional Protocols respectively relates.

If these two conditions are satisfied, either party to the dispute may confer jurisdiction upon the Court by simply filing a unilateral application.

There can be no doubt of the existence of a "dispute" in this case. As held by the Permanent Court of International Justice in *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2 at p. 11, "A dispute is a disagreement on a point of fact or law, a conflict of legal views or of interests between two persons". The facts in the instant case dramatically demonstrate the existence of such a disagreement or conflict between the United States and Iran. As set forth in the Statement of the Facts, from the very hour when the United States Embassy was attacked, the United States has repeatedly demanded that Iran protect the Embassy, preserve the inviolability of Embassy personnel, and take such other action as is required of receiving States under the Vienna Conventions. A formal protest of Iran's conduct was to have been presented by the special envoy of the President of the United States, former Attorney-General Ramsey Clark, but he was denied entrance to Iran.

Iran has continued to refuse to conform its behaviour to the requirements of the Vienna Conventions and general international law. The Government of Iran actually has endorsed, approved, and sought advantage from the continuing violation of the rights of the United States under these Conventions, in the teeth of the publicly reiterated protests of the Government of the United States. There can be no doubt that on 29 November 1979, when the United States filed its Application instituting proceedings before this Court, there existed a "dispute" between the two States within the meaning of Article I of the Optional Protocols. That dispute persists to this day.

Moreover, the dispute plainly arises, in part, from the "interpretation or application" of the Vienna Conventions on Diplomatic and Consular Relations. The United States claims that Iran's conduct violates Articles 22, 24, 25, 26, 27, 29, 31, 37, 44, and 47 of the Vienna Convention on Diplomatic Relations and Articles 5, 27, 28, 31, 33, 34, 35, 36, 40, and 72 of the Vienna Convention on Consular Relations. If Iran had disputed these claims, there would obviously be

<sup>2</sup> The clarity and precision of Article I derives from its origins in the work of the Institute of International Law under the leadership of the late Professor Paul Guggenheim, Rapporteur for the Institute's Commission on Drafting a Model Clause Conferring Compulsory Jurisdiction on the International Court of Justice. Article I, following in this respect Article I of the corresponding Optional Protocol to the 1958 Conventions on the Law of the Sea, is drawn directly from the text recommended by the Institute at its 1956 session in Grenada. See *Annuaire de l'Institut de Droit International*, Session de Grenade, 1956, Vol. 46, at 360-62, 365-67. The text of the Optional Protocol to the 1958 Law of the Sea Conventions may be found at 450 UNTS 169; the debt owed by the 1958 Optional Protocol to the work of the Institute was acknowledged explicitly by the Swiss delegation which proposed the text. See United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, UN doc. A/CONF.13/38 at 111, A/CONF.13/BUR/L.3, reprinted as Annex I to A/CONF.13/L.24.

a "dispute" as to the "interpretation or application" of the two Conventions. The fact that Iran has not made any attempt to justify its conduct as lawful under the Conventions does not deprive the dispute of its character as a dispute arising from the "interpretation or application" of the Conventions. While Iran's apparent failure to advance any plausible alternative construction of the relevant treaty provisions is further token of the flagrant disregard by the Government of that country for its international obligations<sup>3</sup>, the fact remains that the present dispute arises directly from Iran's refusal to carry out its conventional obligations and is thus within the scope of Article I of the Optional Protocols. The Permanent Court of International Justice observed that not only is "application" a "wider, more elastic and less rigid term than 'execution', but also 'execution' ... is a form of 'application'". (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, at p. 24.*) Nor does the fact that, in Iran's view, the present dispute bears some relation to alleged grievances of Iran against the United States remove the present dispute from the scope of the Optional Protocols. In paragraph 25 of its Order of 15 December 1979 the Court itself characterized the present dispute as one:

"... which concerns diplomatic and consular premises and the detention of internationally protected persons and involves the interpretation or application of multilateral conventions codifying the international law governing diplomatic and consular relations ..." (italics added).

While the Court's decision of 15 December does not, of course, prejudge the question of the Court's jurisdiction to rule on the merits, the validity of the Court's characterization can hardly be contested.

The two prerequisites to the Court's jurisdiction under Article I of the Optional Protocols having been satisfied—i.e., that there is a "dispute" between the Parties over the "interpretation or application" of the Vienna Conventions—the United States was and is entitled, under the express terms of Article I, to invoke the jurisdiction of the Court in the present dispute by unilateral application. The Application of the United States was filed in conformity with Article 40 of the Court's Statute and Article 38 of the Rules, and, the Court having jurisdiction over the dispute, Iran will be bound by any judgment of the Court upon it. As Professor Briggs has written in relation to Article I of the Optional Protocols:

"The excellence of the clause that certain disputes 'shall lie within (*relevant de*) the compulsory jurisdiction of the International Court of Justice', to which States parties to the Optional Protocols agree in Article I, lies in the fact that it clearly establishes the jurisdiction of the Court in relation to a respondent State which has become bound by such a clause if an application is filed against it." (H. Briggs, "The Optional Protocols of Geneva (1958) and Vienna (1961, 1963) concerning the Compulsory Settlement of Disputes", in *Recueil d'Etudes de Droit International en Hommage à Paul Guggenheim*, p. 628 at p. 634 (1968).)

The Court may thus proceed to consider the merits of the United States case against Iran in so far as it relates to the Vienna Conventions of 1961 and 1963.

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<sup>3</sup> To the extent that any of the Iranian statements quoted in the previous Part may be taken to advance a construction of these provisions at variance with that advanced by the United States, the character of the present dispute as one involving the interpretation or application of the Conventions is only emphasized.

## 2. THE NATURAL AND ORDINARY MEANING OF THE OPTIONAL PROTOCOLS

As indicated above, the United States is of the view that the case for the Court's jurisdiction under Article I of the Optional Protocols is clear, simple, and unanswerable. The natural and ordinary meaning of the terms of Article I of the Protocols being clear, this Court should give effect to them. As the Court declared in *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 4 at p. 8:

"The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in the context, that is an end of the matter ... When the Court can give effect to a provision of a treaty by giving the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning."

## 3. POSSIBLE ARGUMENTS AGAINST THE COURT'S JURISDICTION UNDER THE OPTIONAL PROTOCOLS

It may be helpful to the Court, in the light of the provisions of Article 53 of the Statute, for this Memorial to address certain arguments which might conceivably be raised against the Court's jurisdiction under the various titles of jurisdiction upon which the United States relies<sup>4</sup>.

The principal argument against jurisdiction would probably be, in essence, that the United States Application was prematurely filed, that the Court is without jurisdiction for that reason, and that the case should therefore be dismissed. Such an objection would have to rest on an interpretation of Articles II and III of the Optional Protocols to the effect that no application to the Court may be made before the expiration of a period of two months from the date on which one party notifies the other that a dispute exists<sup>5</sup>. Under this interpretation, it would be contended that during the specified two-month period the parties are obligated to explore the possibility of resort not to the Court, but instead to arbitration (Article II) or conciliation (Article III); and that the Court lacks jurisdiction over a dispute within the literal terms of Article I if the application instituting proceedings is filed prior to the expiration of the said two-

<sup>4</sup> In view of the disadvantage under which the United States labours in attempting to anticipate unarticulated arguments which might be made against the Court's jurisdiction, the United States would respectfully request that, before the Court makes a decision on any ground not addressed in this Memorial or addressed in a manner not satisfactory to the Court, the Court permit the United States the opportunity to address that ground, either by way of written submission or oral presentation to the Court.

<sup>5</sup> Article II provides:

"The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application."

Article III provides:

"1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application."

month period. Under this approach the application would have to be dismissed even if (as predictably will be true here) the two-month period has in fact expired before the case is heard by the Court and notwithstanding the failure of the parties to agree on—or even discuss—any other method of settling the dispute during that period.

In its specific application to the instant case the argument would be that, inasmuch as the Application of the United States was filed on 29 November 1979, prior to the expiration of two months from the *earliest* date, 4 November, on which it might be held that the United States notified Iran of the existence of a dispute, the Application was premature and should be dismissed, notwithstanding the uncontested facts (*a*) that at no time prior to 29 November or indeed to date has Iran indicated a willingness to submit the dispute to arbitration or conciliation, (*b*) that Iran has in fact continually refused to have any direct contact with representatives of the United States aimed at resolving the dispute, and (*c*) that, by the time the case is ready for hearing by the Court in accordance with the schedule set in the Court's Order of 24 December 1979, more than two months will have elapsed from the *latest* date, 29 November, on which it conceivably might be held that the United States notified Iran of the existence of a dispute.

#### 4. OPTIONAL CHARACTER OF RESORT TO ARBITRATION OR CONCILIATION

Each step in the foregoing argument rests on fallacious premises.

Articles II and III do not require a two-month waiting period prior to resort to the Court under Article I. Instead, these articles simply point out to the parties the possibility, if they mutually so desire and agree, of resorting to arbitration or conciliation in preference to submission of the dispute by unilateral application to the Court. The critical clause of Articles II and III is purely permissive—"the parties *may* agree"—and contains no mandatory element. This is language which empowers, not language which obligates. The essential purpose which emerges from the language and structure of Articles I, II, and III was that of making clear that a party which in good faith explores the possibility of resort to arbitration or conciliation, or even a party which accepts such an approach in principle subject to the negotiation of an acceptable *compromis*, does not thereby waive its right to apply to the Court if final agreement on a *compromis* is not reached. As Mr. Ruegger has written in connection with the Optional Protocols:

"Ce protocole est souple—dans l'esprit de la résolution de l'Institut—il prévoit l'arbitrage à côté de la juridiction et fait également une place aux autres méthodes éprouvées de règlement de différends. *Mais, ce qui est l'essentiel, il est vraiment obligatoire, ne laissant aucune échappatoire de procédure.*" (Ruegger, "Clauses arbitrales et de juridiction," in *Recueil d'études de droit international en hommage à Paul Guggenheim*, at pp. 687, 695 (1968).) (Italics added.)

This purpose is confirmed by the relevant historical context. As has already been mentioned, the Optional Protocols to the Vienna Conventions of 1961 and 1963 were modelled after the 1958 Optional Protocol to the 1958 Conventions on the Law of the Sea. These conventions were among the first of the codification conventions adopted under United Nations auspices, and there was, in this context, a particular significance to defining the role of the Court in relation to these conventions. There had been a considerable body of opinion, expressed for example by some members of the Institute of International Law during the course of the Institute's work on a model clause conferring



compulsory jurisdiction on the Court<sup>6</sup>, that the International Court of Justice, as the principal judicial organ of the United Nations, should be the sole forum for the settlement of disputes relating to the interpretation or application of general multilateral conventions. This point of view did not prevail, it being considered that the interest of the international community in the uniform interpretation or application of these texts did not justify such an extraordinary limitation on the right of the parties mutually to agree to settle their dispute by resorting to other fora. Against the background of this debate, it is not at all surprising to find that the Optional Protocols include clauses expressly preserving freedom of choice of the parties. By making clear that a party which had been engaged for two months in an effort to agree finally on arbitration or conciliation nonetheless retained its right to apply to the Court in the event such efforts did not reach fruition, the Protocols closed a possible loophole in their comprehensive system of third-party dispute settlement. Clauses of this intent clearly do not have the effect of limiting the right conferred in unqualified terms in Article I.

The foregoing analysis—which, in the view of the United States, conclusively establishes the jurisdiction of the Court under the Protocols to the Vienna Convention—is reinforced by two further considerations. First, the Preambles to the 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:

“*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 ...*” (Italics added.)

In this case the United States waited more than three weeks from the time the dispute arose before filing an Application in this Court—surely a “reasonable period” given the circumstances. Second, the texts of the Protocols in their official languages other than English correspond to the plain meaning which the English imports, thus demonstrating, perhaps even more pointedly than the English itself, that recourse to arbitration or conciliation is a mere option subject to mutual agreement. (The French, Spanish, Russian and Chinese texts are reproduced in Annex 49.)

##### 5. THE TRAVAUX PRÉPARATOIRES

The legislative histories of the two Optional Protocols of Vienna, as in the case of the Optional Protocol of Geneva, contain further demonstration that there was no intent to require an automatic waiting period of two months prior to resort to the Court. At each of the conferences which adopted these Protocols, a

<sup>6</sup> See, e.g., the views expressed during the 1956 session of the Institute by Mr. Giraud, *Annuaire de l'Institut de droit international*, Session de Grenade, 1956, at p. 185; by Mr. Hambro, *ibid.*, at p. 190; by Mr. Rolin, *ibid.*, at pp. 199-200; and prior to the 1954 session by Mr. Jenks, *Annuaire de l'Institut de droit international*, Session d'Aix-en-Provence, 1954, at p. 376.

The desirability of drafting a clause in such a manner as to preserve the flexibility of the parties was also adverted to during the Vienna and Geneva Conferences. See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, Vol. I, UN doc. A/CONF.20/14 at p. 220 (Mr. Hu, China); United Nations Conference on Consular Relations, *Official Records*, Vol. I, UN doc. A/CONF.25/16 at 254 (Mr. N'diaye, Mali); United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, UN doc. A/CONF.13/38 at 8 (Mr. Ruegger, Switzerland); *ibid.*, at p. 9 (Mr. Verzijl, Netherlands).

proposal was presented which would clearly have required an attempt to arbitrate or conciliate the dispute prior to resort to the Court, and in each case the proposal was rejected, as indicated below.

At the Vienna Conference on Consular Relations in 1963, the following proposal was presented by Switzerland:

"Any dispute between contracting parties concerning the interpretation or application of this convention which cannot be settled by negotiation shall be submitted to arbitration at the request of one of the parties. If within the six months which follow the date of the request for arbitration the parties do not succeed in agreeing on the organization of the arbitration, any one of them may submit the dispute to the International Court of Justice by making an application in conformity with the Statute of the Court." (UN doc. A/CONF.25/C.1/L.161, reprinted in United Nations Conference on Consular Relations, *Official Records*, Vol. II, UN doc. A/CONF.25/16/Add.1, at p. 72.)<sup>7</sup>

The contrast to the text finally adopted could not be clearer.

It is particularly significant not only that the Swiss text was rejected, but also that one of the text's features singled out for criticism by several delegates was the requirement of six months' delay prior to the filing of an application to the Court<sup>8</sup>.

The history of the Optional Protocol to the Vienna Convention on Diplomatic Relations reveals a similar story. The International Law Commission draft articles on diplomatic relations, which were before the 1961 Vienna Conference on Diplomatic Intercourse and Immunities, included in the body of the proposed convention a proposed Article 45 on the settlement of disputes which likewise made obligatory a prior attempt to resolve the dispute by arbitration or conciliation:

"Any dispute between States concerning the interpretation or application of this Convention that cannot be settled through diplomatic channels shall be referred to conciliation or arbitration or, failing that, shall, at the request of either of the parties, be submitted to the International Court of Justice." (UN doc. A/CONF.20/4, reprinted in United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, Vol. II, UN doc. A/CONF.20/14/Add.1 at p. 7.)

A Japanese amendment to the Commission text would have further emphasized the requirement of a prior attempt to arbitrate or conciliate the dispute<sup>9</sup>.

<sup>7</sup> Paragraph 2 of the Swiss proposal read as follows:

"2. Any contracting party may, at the time of signing or ratifying this convention or of acceding thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other contracting parties shall not be bound by the said paragraph with respect to any contracting party which has formulated such a reservation."

The Swiss proposal was, thus, a dispute settlement clause of the "opt-out" variety rather than the "opt-in" type finally adopted.

<sup>8</sup> United Nations Conference on Consular Relations, *Official Records*, Vol. I, UN doc. A/CONF.25/16 at 255 (statements of Mr. Evans (United Kingdom), Mr. Erice y O'Shea (Spain), Mr. Bartos (Yugoslavia)).

<sup>9</sup> Acceptance of the Japanese proposal would have resulted in the following text:

"Any dispute between States concerning the interpretation and application of this Convention that cannot be settled through diplomatic channels shall be referred to conciliation or arbitration. If the dispute should not be settled by the said means, it shall, at the request of either of the parties, be submitted to the International Court of Justice."

(A/CONF.20/C.1/L.307/Rev.1.) Neither of these versions, however, was actually adopted. Although the major question in relation to dispute settlement was whether to include a compulsory dispute settlement provision in the body of the Convention or instead to adopt an Optional Protocol, the Conference clearly would have had no difficulty in devising language which, if included in the Optional Protocol, would have required a prior attempt to resolve the dispute by arbitration or conciliation. Against this background, the absence of any such requirement in the text actually adopted in the Optional Protocol takes on compelling significance<sup>10</sup>.

The records of the 1958 United Nations Conference on the Law of the Sea are also instructive in this regard. As already noted, the Optional Protocol adopted in 1958 was expressly recognized to be the model for the Optional Protocols of Vienna of 1961, A/CONF.20/C.1/L.316 and Add.1 (joint proposal of Iraq, Italy, Poland, and the United Arab Republic), reprinted in United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, Volume II, UN document A/CONF.20/14/Add.1 at 46; which in turn was the model for the Optional Protocol of 1963, A/CONF.25/C.1/L.162 (proposal of Belgium); A/CONF.25/C.1/L.163 (joint proposal of Ghana and India), both reprinted in United Nations Conference on Consular Relations, *Official Records*, Volume II, UN document A/CONF.25/16/Add.1 at 72. The history of the 1958 Optional Protocol highlights in particularly illuminating fashion the absence of a mandatory waiting period in the text finally adopted or in those modelled upon it.

Among the proposals before the Conference was a very detailed proposal by the Netherlands providing for resort to the Court or alternatively to arbitration at the option of *either* of the parties<sup>11</sup>. Of particular importance in the present context is the language contained in paragraph 3 of the Dutch proposal:

<sup>10</sup> It should be noted, moreover, that the United States proposed an amendment to the Commission text which would have deleted the sequential feature of the original, unadopted draft article. (UN doc. A/CONF.20/C.1/L.299, reprinted in United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, Vol. II, UN doc. A/CONF.20/14/Add.1 at p. 43.) China, too criticized the priority given in the Commission text to conciliation or arbitration over judicial settlement. (United Nations Conference on Diplomatic Intercourse and Immunities, Vol. I, UN doc. A/CONF.20/14 at p. 220.)

<sup>11</sup> The text of this proposal (A/CONF.13/BUR/L.6), reprinted in United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, UN doc. A/CONF.13/38, at p. 112, was in pertinent part as follows:

"1. If a dispute arises between two contracting parties concerning the interpretation or application of this convention which cannot be settled through the diplomatic channel, either of them may either refer the dispute to the International Court of Justice by unilateral request in conformity with the Statute of the Court, or submit it to arbitral settlement by a tribunal composed of five members, only two of which may be appointed by the parties.

2. If a contracting party proposing to appear as plaintiff prefers recourse to arbitration, it shall be bound to designate its arbitrator when notifying the other party of such preference. In this case, the other party shall be bound to accept arbitration and to designate its arbitrator within a period of one month.

3. If a contracting party intends to apply to the International Court of Justice, it shall give the other party one month's advance notice of that intention in order that the latter may have an opportunity of expressing its preference for recourse to arbitration. Should that other party prefer recourse to arbitration, it shall be bound to designate its arbitrator when indicating such preference. If the defending party does not designate the arbitrator within the specified time, the plaintiff party may submit the dispute to the International Court of Justice by unilateral request. Should, however, the defending party duly designate its arbitrator, then the plaintiff party shall be bound, within a further period of one month, likewise to designate an arbitrator."

"If a contracting party intends to apply to the International Court of Justice, it shall give the other party one month's advance notice of that intention in order that the latter may have an opportunity of expressing its preference for recourse to arbitration. Should that other party prefer recourse to arbitration, it shall be bound to designate its arbitrator when indicating such preference. If the defending party does not designate the arbitrator within the specified time, the plaintiff party may submit the dispute to the International Court of Justice by unilateral request."

This Dutch language would have made it crystal clear that a party would have no right to bring a case before the International Court until the expiration of the specified time period. But the Dutch proposal, presented for inclusion in the body of one or more of the Conventions, failed to be adopted, the Conference preferring instead to adopt an optional protocol as proposed by Switzerland. (United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, UN doc. A/CONF.13/38 at pp. 33, 35.) While it was natural enough that the Swiss draft served thereafter as the basis of the Drafting Committee's work (UN doc. A/CONF.13/L.40), the Committee made no use of the foregoing language from the Dutch proposal, language which surely would have commended itself to the committee had the idea of a mandatory waiting period been considered desirable by the Conference. Instead, the Conference adopted a text which provided in Article I for an unqualified right to resort to the Court and which physically, as well as conceptually, separated this right from the time periods specified in Articles II and III. In so doing, the Conference was faithful to the spirit of the Institute of International Law, which prepared the text which became Article I of the Optional Protocols and whose purpose was to draft

"une solution qui établisse la compétence de la Cour internationale de Justice aussi complètement et aussi rapidement que possible..." (*Annuaire de l'Institut de droit international*, session d'Aix-en-Provence, 1954, Vol. 45, at p. 314 (Report of Professor Guggenheim).)

For all of the foregoing reasons the United States maintains that proceedings in this Court may be unilaterally instituted under Article I of the Optional Protocols at any time after a dispute of the appropriate character has arisen. Moreover, even if this compelling construction of the Protocols were not accepted by the Court, the United States contends, as set forth below, that jurisdiction would nevertheless exist under the Protocols in the circumstances of this case.

#### 6. THE FAILURE OF IRAN TO SEEK ARBITRATION OR CONCILIATION

As indicated above, a party seeking to defeat this Court's jurisdiction in this case would presumably argue that Articles II and III of the Optional Protocols, when read together with Article I, create a required two-month waiting period; the theory would be that in a dispute between A and B, if A wanted to file an immediate Application to this Court and B preferred arbitration or conciliation, Articles II and III would preclude A from filing its Application until the two months' waiting period had expired.

A proponent of such an interpretation would have to concede, however, that in such a situation the potential applicant would retain the right to reject arbitration or conciliation and thus the right to insist upon proceeding in this Court. That being so, the only right enjoyed by his opponent under such an interpretation of the Optional Protocols is a right, existing for a maximum of

two months, to try to convince the potential applicant that he should agree to arbitration or conciliation in preference to resort to the Court. That is, if the potential respondent really wishes in good faith to proceed by way of arbitration or conciliation, he should be given, *arguendo*, a two-month opportunity to pursue that goal. It by no means follows that the same right should be enjoyed by one who has no interest whatever in either arbitration or conciliation. Quite the contrary, it would be completely anomalous to allow such a party to insist upon a two-month waiting period and to seek dismissal of a premature Application on the ground that the applicant should have afforded the respondent a two-month opportunity to pursue a goal in which the respondent in fact had no interest whatever. Such a rule would allow every violator of international law an automatic period of freedom from litigation without any justification whatever and totally without regard to the urgency, if any, of the applicant's need for judicial relief.

For these reasons it could not justifiably be contended here that Iran was entitled to a two-month period of grace before the United States filed its Application. The fact is that Iran was made aware of the existence of a dispute between the parties as early as 4 November 1979. On that date the Government of Iran knew of the seizure of the Embassy and its personnel and was obviously aware that if it permitted their detention to continue, a dispute with the United States would necessarily exist. On that date also the United States, through its Chargé d'Affaires in Tehran, made repeated efforts to persuade responsible Iranian officials to protect the Embassy and its personnel and voiced repeated protests against their failure to do so, thus clearly giving notice of the existence of the dispute. On 7 November 1979, the President of the United States dispatched a special emissary to Tehran with instructions to deliver a formal protest to Iran's failure to protect the Embassy and its personnel, and although the protest could not actually be delivered (because the authorities in Iran refused to receive the special emissary), Iran clearly knew a protest was contemplated. The United States regards as indisputable the proposition that Iran was on notice of the existence of a dispute at least as early as 7 November<sup>12</sup>.

Thereafter the United States permitted more than three weeks to elapse—weeks of extraordinary anxiety regarding the safety and well-being of the hostages—before filing the Application instituting proceedings in this case. The United States thus allowed Iran more than a reasonable time, prior to the filing of the Application, to give notice of a desire for arbitration or conciliation if any such desire existed. In fact, however, at no point during that three-week period did the Government of Iran evince the slightest interest in resolving the dispute by arbitration, conciliation or any other means. Indeed, throughout the entire period from 4 November 1979 through the date of the filing of this Memorial the

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<sup>12</sup> Two days later, Iran received direct, written notice by means of a communication to the President of the Security Council, circulated to all United Nations Members. On 9 November 1979, the Permanent Representative of the United States of America to the United Nations addressed the following letter to the President of the Security Council:

"On 4 November 1979, the American Embassy in Tehran was occupied and the American Diplomatic personnel on its premises were taken and held by a group of Iranians. All efforts to secure their release, including an offer of discussions with emissaries, have so far been unavailing.

This action and the support it has received strike at the fundamental norms by which States maintain communication and violate the very basis for the maintenance of international peace and security and of comity between States. We consequently request that the Security Council urgently consider what might be done to secure the release of the diplomatic personnel being held and to restore the sanctity of diplomatic personnel and establishments." (UN doc. S/13615.)

Government of Iran has made it continuously clear that it has no interest whatever in the remedies contemplated by Articles II and III of the Optional Protocols, and in such circumstances Iran could scarcely be heard to argue that the Court is without jurisdiction because the United States failed to give Iran an opportunity to pursue a remedy in which it has admittedly had no interest at any time.

Moreover, Iran's refusal to consider conciliation or arbitration—or negotiation, enquiry, judicial settlement, or other peaceful means of the parties' choice—conflicts with its obligation under Articles 2 (3) and 33 of the United Nations Charter, namely, to settle disputes by peaceful means. The holding of the Permanent Court of International Justice in the *Chorzów Factory* case accordingly is in point:

"It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one Party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him." (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 31.*)

To hold that in the instant circumstances an application filed before the expiration of the two-month period is premature would be to adopt an interpretation which rewards unlawful coercion and penalizes respect for the procedures of peaceful settlement.

#### 7. JURISDICTION THROUGH LAPSE OF TIME

Even if the Court were inclined to interpret Articles I, II, and III of the Optional Protocols as requiring a two-month waiting period for the benefit of a respondent who genuinely desired arbitration or conciliation, adherence to that interpretation would not call for dismissal of the United States Application at this stage of the proceedings—for reasons made clear in the decision of the Permanent Court in the *Mavrommatis* case. There the Court rejected a challenge to its jurisdiction even though one of the instruments necessary to found jurisdiction had not yet been ratified when the Greek Application in that case was filed. The instrument in question, Protocol XII of the Treaty of Lausanne, was ratified and entered into force between the date the Application was filed and the date the Court's judgment was rendered. The Court spoke in terms of direct relevance to the present case:

"In the same connection it must also be considered whether the validity of the institution of proceedings can be disputed on the ground that the application was filed before Protocol XII had become applicable. This is not the case. Even assuming that before that time the Court had no jurisdiction because the international obligation referred to in Article 11 was not yet effective, it would always have been possible for the applicant to re-submit his application in the same terms after the coming into force of the Treaty of Lausanne, and in that case, the argument in question could not have been advanced. Even if the grounds on which the institution of proceedings was based were defective for the reason stated, this would not be an adequate reason for the dismissal of the applicant's suit. The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law. Even, therefore, if the application were premature because the Treaty of Lausanne had not yet

been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications." (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 34.*) (*Italics added.*)

By parity of reasoning, even if the United States Application in this case were premature because filed prior to the expiration of two months from the date on which notice given to Iran that a dispute existed, this temporary defect has now been rectified by the passage of time. Since Iran, as already shown, was effectively given notice of the existence of a dispute as early as 7 November, two months have already elapsed, and any arguable defect in the Court's jurisdiction on this account has already been cured<sup>13</sup>.

### **B. The Treaty of Amity, Economic Relations, and Consular Rights Affords the Court Jurisdiction**

Article XXI (2) of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran 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."

The United States contends that this Article provides the Court with jurisdiction over all claims of the United States arising under the Treaty of Amity. Moreover, the case for the Court's jurisdiction under Article XXI (2) is, if anything, even clearer than under Article I of the Optional Protocols.

There are four simple prerequisites to the Court's jurisdiction under Article XXI (2):

- (1) that there be a "dispute";
- (2) that the dispute relate to the "interpretation or application" of the Treaty of Amity;
- (3) that the dispute be one "not satisfactorily adjusted by diplomacy"; and
- (4) that there be no agreement to settlement of the dispute by some other pacific means.

<sup>13</sup> Indeed, even if one took the extreme view that the United States first notified Iran of the existence of a dispute on 29 November by the filing of the Application, the result would be the same. In accordance with the schedule set by the Court's Order of 24 December 1979, more than two months will have elapsed from 29 November before this case is ready for hearing by the Court. Hence, any action by the Court on the merits will necessarily follow the expiry of the two-month period.

Nothing in the Permanent Court's holding in the case concerning *Electricity Company of Sofia and Bulgaria* weakens the authority of the *Mavrommatis* case in this regard. It is true, of course, that in *Electricity Company*, the Court held that it lacked jurisdiction in circumstances where local remedies had not been exhausted prior to the date on which the application was filed, even though such remedies had been exhausted prior to the Court's rendering judgment.

Two considerations crucial to the Court in that case were not present in *Mavrommatis* and are not present here. First, the local remedies rule is a rule having significance beyond that of a mere rule of procedure. Second, and even more important, the instrument conferring jurisdiction on the Court had expired validly in accordance with its terms prior to the date on which local remedies had been exhausted. *Electricity Company of Sofia and Bulgaria, Preliminary Objection, 1939, P.C.I.J., Series A/B, No. 77, p. 80.*

The first requirement need not detain the Court. It has already been demonstrated, if demonstration were necessary in the present circumstances, that on 29 November 1979, there was a dispute between the United States and Iran and that the dispute persists to this day. Nor is it necessary to dwell on the requirement that the dispute relate to the interpretation or application of the Treaty.

The United States claims that Iran's conduct since 4 November has violated its obligations, under Articles II (4) and XIX of the Treaty, to ensure that US nationals in Iran shall receive "the most constant protection and security", 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, while in custody, shall have full access to United States consular officials and services. In addition, the United States claims that the conduct of the Government of Iran has violated its obligations under Articles XIII and XVIII of the Treaty pertaining to consular rights, privileges and immunities.

As previously pointed out with respect to the Vienna Conventions of 1961 and 1963, if the Government of Iran had made some contention in this Court that the United States interpretation of the Treaty was incorrect or that the Treaty did not apply to Iran's conduct in the manner suggested by the United States, the Court would clearly be confronted with a dispute relating to the "interpretation or application" of the Treaty. That being so, the situation is obviously not altered by Iran's silence, and the second prerequisite for jurisdiction is necessarily met<sup>14</sup>.

Compliance with the third and fourth prerequisites is equally clear. It is indisputable that the pending dispute is one "not satisfactorily adjusted by diplomacy" and that the parties have made no agreement to settle the dispute by other pacific means. All of the prerequisites to the Court's jurisdiction under Article XXI (2) are thus satisfied.

It is, of course, true that the text of Article XXI (2) does not provide in express terms that either party to a dispute may bring the case to the Court by unilateral application. It is, however, evident that this is what the Parties intended. The text of Article XXI (2) follows the text of similar clauses in 17 of the 21 commercial treaties concluded by the United States since the Second World War<sup>15</sup>, and this standard text has always been understood by the United States and its treaty partners to confer a right of unilateral resort to the Court. Thus, in connection with the United States Senate hearings on the first treaty containing such a clause, the Department of State submitted a memorandum explaining the clause and making clear that the clause confers a right unilaterally to resort to the Court<sup>16</sup>. Similar explanations have been given in connection with subsequent treaties containing this clause, and the Treaty with Iran has been cited

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<sup>14</sup> It is significant that during the negotiation of the Treaty Iran sought to delete the term "application" from the text and that the United States successfully resisted that suggestion, precisely because the United States wanted to avoid any narrowing of the jurisdictional provision. (See Annex 50 to this Memorial.)

<sup>15</sup> A complete list of treaties of friendship, commerce, and navigation or comparable agreements to which the United States is a party and which contain such clauses is set forth in Annex 51 to this Memorial. Four such treaties either contain a variation of the clause or do not refer to the International Court of Justice in their dispute settlement provisions.

<sup>16</sup> The text of this memorandum is included as Annex 52 to this Memorial. The Memorandum is also printed in *Hearings on a Treaty of Friendship, Commerce, and Navigation between the United States of America and the Republic of China, together with a Protocol thereto, signed at Nanking on November 4, 1946 Before a Subcommittee of the Senate Committee on Foreign Relations, 80th Cong., 2d Sess., pp. 29, 30 (1948).*



specifically as one of the treaties conferring such a right<sup>17</sup>. Moreover, the other parties to treaties containing such a clause have shared this understanding. For example, during the course of negotiating the treaty with the Netherlands, the Dutch Foreign Ministry requested confirmation of its understanding that the clause provided a right of unilateral resort to the Court. The United States Embassy was authorized to respond in the following terms:

“Our understanding accords with yours: namely, that the dispute referred to in Article XXV paragraph 2 may be brought before the Court either by the notification of a special agreement or, in the absence thereof, by application of one of the Parties<sup>18</sup>.”

It should be recalled that this Court has given weight to the intention of a State—as it happens, Iran—in construing the scope of its adherence to the Court’s compulsory jurisdiction under Article 36 (2). See *Anglo-Iranian Oil Co., Jurisdiction, Judgment, I.C.J. Reports 1952*, pp. 93, 104-107.

Iran is not, of course, bound by any understanding between the United States and third countries. However, the fact that a single interpretation has been uniformly given to a particular form of words indicates that the interpretation is the natural and authoritative meaning of the words, and this is plainly true of Article XXI (2) of the Treaty of Amity. In fact, a construction which required the agreement of the parties to submit a case to the Court would be contrary to the sense of the text, which speaks of the agreement of the parties only in relation to alternative methods of peaceful settlement. Moreover, such a construction would deprive the text of all meaning in violation of a basic rule of treaty interpretation. It is thus clear that the Court has jurisdiction over this dispute under Article XXI (2) of the Treaty of Amity<sup>19</sup>.

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<sup>17</sup> See, e.g., Department of State Memorandum on Provisions in Commercial Treaties relating to the International Court of Justice (submitted in connection with hearings on the treaties with Belgium and Vietnam), S. EXEC. REP. No. 9, 87th Cong., 1st Sess. 7-8. This memorandum is reprinted as Annex 53 to this Memorial.

During the Senate hearings on the treaty with Luxembourg, the following exchange took place between the Chairman of the Senate Foreign Relations Committee and the representative of the Department of State:

The Chairman: It [the disputes settlement clause] is a specific undertaking by this country, in the case of a dispute that cannot be resolved, to accept the jurisdiction of the Court. Is that right?

Mr. Trezise: Yes.

The Chairman: In this case we are saying that in regard to the limited field covered by this treaty we agree in advance to submit unsettled disputes to the Court. Is that right?

Mr. Trezise: Yes.

S. EXEC. REP. No. 7, 87th Cong., 2d Sess., at p. 6 (1962).

<sup>18</sup> The correspondence relating to this question is set out at Annex 54.

<sup>19</sup> The Treaty of Amity is today and was on 29 November a “treaty or convention in force” within the meaning of Article 36 (1) of the Court’s Statute. Notwithstanding the undeniably poor state of relations between the United States and Iran, neither side has taken steps to terminate the Treaty. In accordance with Article XXIII (3) of the Treaty, termination would not be effective until one year after notice of termination had been given. See also the Vienna Convention on the Law of Treaties, Article 54. Any attempt to terminate the Treaty would be without effect on the present proceedings, which were instituted while the Treaty was still in effect. See *Right of Passage over Indian Territory, Preliminary Objection, Judgment, I.C.J. Reports 1957*, p. 125 at p. 142; *Nottebohm, Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 111 at pp. 122-123.

**C. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Affords the Court Jurisdiction**

Jurisdiction also exists in the circumstances of the instant case under Article 13, paragraph 1, of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents<sup>20</sup>. The United States concedes that Article 13—unlike, and by way of instructive contrast with, the Optional Protocols or Article XXI (2) of the Treaty of Amity—gives priority to arbitration and ordinarily permits resort to the Court only if the parties have been unable to agree on the organization of the arbitration within a period of six months from the request for arbitration. The United States contends, however, that this limitation on the Court's jurisdiction can have no application in circumstances such as these, where the party in whose favour the six months' rule would operate has by its own policy and conduct made it impossible as a practical matter to have discussions related to the organization of an arbitration, or, indeed, even to communicate a direct formal request for arbitration. It is submitted that when such an attitude has been manifested, an application to the Court may be made without regard to the passage of time. It would simply be anomalous to hold that in a case where judicial relief is urgently needed by the applicant and the respondent has refused to allow any communication between the parties, the latter is nevertheless entitled for six months to hold off all judicial redress by referring to another mode of settlement in which it has no interest whatever.

**D. The Court Has Jurisdiction To Grant the Relief Sought by the United States**

Since, in the instant case, there is a dispute between the United States and Iran arising out of the interpretation or application of the four treaties on which the United States relies, since the Court has jurisdiction under those treaties to render judgment on such a dispute, and since the remedies sought by the United States are appropriately addressed to the violations of those treaties by the Islamic Republic of Iran, the United States respectfully submits that the Court has jurisdiction to grant the relief which it now seeks.

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<sup>20</sup> The full text of Article 13 is as follows:

"1. 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 those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation."

## PART IV

## THE CLAIMS OF THE UNITED STATES

The Government of the Islamic Republic of Iran, through the acts of omission and commission described in the foregoing Statement of the Facts, has violated its international legal obligations to the United States in multiple and profound respects. The violations are of specific obligations undertaken in the following treaties to which both Iran and the United States are parties:

- (1) the 1961 Vienna Convention on Diplomatic Relations, 500 *UNTS* 95;
- (2) the 1963 Vienna Convention on Consular Relations, 596 *UNTS* 261;
- (3) the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, *TIAS* 8532 (the New York Convention); and
- (4) the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, 284 *UNTS* 93 (the Treaty of Amity).

The violations involved are described in the sections that follow. Where appropriate, the customary international law codified by the transgressed treaty provisions is summarized. However, before turning to a statement of the obligations of Iran and the respects in which those obligations have been breached, the question of the responsibility of the Government of Iran for the conduct challenged in this case will be addressed.

#### A. The Responsibility of Iran for the Acts of Omission and Commission of Which the United States Complains

*In the view of the Government of the United States, the violations of international law which have been committed by the Government of the Islamic Republic of Iran, and with respect to which its international responsibility has been engaged, are of two kinds.*

The Government of Iran is responsible, first, for its failures of omission, as described in the Statement of the Facts and sections that follow, which have occurred irrespective of any attribution to that Government of the conduct of the "students" at the Embassy. Thus at the very onset of the hostage crisis the Government of Iran failed to take appropriate steps to protect United States nationals and diplomatic and consular premises from attack. As set forth in the Statement of the Facts, Iranian security personnel at the Embassy compound made no effort to deter the seizure; despite repeated, urgent requests for help, no Iranian security forces were sent to provide relief and protection, nor were any efforts made to rescue the personnel or to dissuade the invaders from their actions. Moreover, at no point since the initial attack has the Government of Iran made any effort to secure the protection and ensure the immunities of United States nationals and premises. It has taken no steps to enforce the Embassy's right of free communication, to facilitate departure of the official personnel, to co-operate in the prevention of the continuing crimes being committed at the Embassy, or to apprehend the perpetrators of such crimes and to submit them to competent authorities for prosecution. The Government of Iran is responsible for such omissions, whether or not it may also be held responsible for the separate actions taken by the "students".

The United States Government also submits, however, that the international

responsibility of the Government of Iran is engaged at yet another level as well. The International Law Commission, in its draft articles on State responsibility and in its commentary on those articles, has recognized that under certain circumstances a State may bear international responsibility for the conduct of persons or groups of persons who do not constitute an organ of the State as such. Article 8 of the draft articles provides as follows:

“The conduct of a person or group of persons shall also be considered as an act of the State under international law if

(a) it is established that such person or group of persons was in fact acting on behalf of that State; or

(b) such person or group of persons was in fact exercising elements of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority.”  
(II *Yearbook of the International Law Commission* 1974, Part One, p. 283.)

The facts of this case are such that subsection (a)—and the principles of customary international law which it codifies—may properly be invoked.

The principle expressed in subsection (a) is “practically undisputed” and “unanimously upheld by the writers on international law who have dealt with the question”. (ILC Commentary on 1974 draft Article 8, *ibid.*, p. 284.) As expressed in the Commentary, the subsection “refers to persons or groups of persons who have committed certain acts when in fact prompted to do so by organs of the State ...” (*ibid.*, p. 283). The principle includes cases in which the organs of the State supplement their own action by the action of private persons, who thus act as “auxiliaries” of the State while remaining outside its official structure. Since this case involves a form of abduction, it is also relevant that, according to the Commentary, State practice with respect to abduction evidences a general recognition of the principle that “if the person in question could be proved to have acted in concert with and at the instigation of the organs of a State, the action of abduction must be regarded as an act of that State” (*ibid.*, p. 284). The facts must establish “that the person or group of persons were actually appointed by organs of the State to discharge a particular function or to carry out a particular duty, that they performed a given task at the instigation of those organs” (*ibid.*, p. 285). In all such cases the acts of the otherwise private persons must “be regarded under international law as acts of the State: that is to say, as acts which may, in the event, become the source of an international responsibility incumbent on the State” (*ibid.*, p. 283).

It is submitted that the facts of this case show that from and after a point in time shortly after the attack and seizure, if not before, the “students” have in fact been acting on behalf of the Government of Iran. Their persistence in holding the hostages has been prompted by the governmental authorities who have sought throughout the crisis to utilize the “students” as “auxiliaries” in the State’s effort to coerce the United States into meeting certain official Iranian demands. The Government of Iran has, in effect, “appointed” the “students” to discharge certain functions in pursuit of a foreign policy objective of the Iranian Government, and the students have clearly acted “in concert with and at the instigation of” the governmental authority.

Although the particular facts which lead to these conclusions have been detailed above, they may be briefly summarized here. The continued detention of the hostages is and has been continuously stimulated by the numerous expressions of official support, endorsement and encouragement. The Ayatollah Khomeini, the Revolutionary Guards, the public prosecutor, the judiciary—all have openly and consistently supported the “students”, and Khomeini has refused to call upon the “students” to desist. The Foreign Minister has stated that the documents seized by the “students” would be used before a planned

"international grand jury", a statement by a high government official which could only serve to prompt further violations of the archives and documents. Indeed, the Revolutionary Guards—an organ of the Government—have apparently on occasion gone beyond words and actually engaged in action of a supportive nature, serving to protect the "brothers" occupying the Embassy and sharing control with the "students" over the United States Consulate in Shiraz. At the same time it is clear that the "students", acting under the control of Khomeini, *de facto* Chief of State, are being used as an instrument to realize one or more objectives of Iranian foreign policy. Indeed, Ayatollah Khomeini has ordered the continued detention and arrest of the hostages by the "students".

In such circumstances, it is submitted, the Government of Iran has not simply committed acts of omission for which it is responsible; it must also take responsibility for affirmative actions taken by the "students" on behalf of the Government of Iran itself<sup>1</sup>.

## **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 .**

### **I. THE OBLIGATION**

Pursuant to Article 29 of the Vienna Convention on Diplomatic Relations<sup>2</sup> the Government of Iran is under an international legal obligation to the United States to ensure that the persons of United States diplomatic agents "shall be inviolable" and that such individuals shall not be liable to "any form of arrest or detention". The Government of Iran is obligated to treat every such diplomatic agent with "due respect" and to take "all appropriate steps to prevent any attack on his person, freedom or dignity". Article 37 of the same Convention provides, subject to limited exceptions not here relevant, that the privileges and immunities specified for diplomatic agents in Article 29 shall also be enjoyed by members of the administrative and technical staff of a diplomatic mission as

<sup>1</sup> There are indications that the ability of the Ayatollah Khomeini and the Government of Iran to control the conduct of the "students" in the United States Embassy in Tehran may have diminished in recent days. The Government of the United States is unable to predict whether that situation, if it exists, will continue or whether the Government of Iran will soon be in a position (e.g., after the forthcoming election of a new President of Iran) to reassert the control which the Ayatollah Khomeini and the Government of Iran exerted over the "students" for the first two months of the crisis. At any rate, since it is factually clear (as demonstrated in the text) that the Ayatollah Khomeini and the Government of Iran exerted practical control over the "students" for the first two months of the hostage crisis, the Government of Iran plainly bears responsibility for the actions of the "students" during that period of time. Moreover, if it should become clear in the future that the "students" can no longer be controlled by the Government, the latter will continue to bear responsibility for the actions of the "students", because throughout November and December 1979 the Government knew or should have known that the "student" group which it was supporting and nurturing could easily get out of control.

<sup>2</sup> Article 29 provides:

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

well as by the families of diplomatic agents and of administrative and technical staff<sup>3</sup>.

Article 29 was intended to confirm the principle of customary international law of personal inviolability of diplomatic agents. (ILC Commentary on 1958 draft Article 27, II *Yearbook of the International Law Commission 1958*, p. 97.) The principle has been called "the oldest established and the most fundamental rule of diplomatic law". (E. Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, p. 135 (1976); see also, *Satow's Guide to Diplomatic Practice*, p. 120, 5th ed., edited by Lord Gore-Booth (1979).) As this Court stated in paragraph 38 of its Order of 15 December 1979 indicating provisional measures in this case,

"there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose; . . . the obligations thus assumed, notably those for assuring the personal safety of diplomats and their freedom from prosecution, are essential, unqualified, and inherent in their representative character and their diplomatic function . . .".

Indeed, the principle of personal inviolability has been viewed as the fundamental principle from which have been derived all diplomatic privileges and immunities. (Harvard Research in International Law, Comment on Article 17 of Draft Convention on Diplomatic Privileges and Immunities, 26 *American Journal of International Law*, p. 91 (Supp. 1932); G. E. do Nascimento e Silva, *Diplomacy in International Law*, p. 91 (1972).)

The rule of the inviolability of the diplomatic envoy, codified in Article 29, was followed in early civilizations and was firmly established as a rule of customary international law when the first treatises on diplomatic law were published in the sixteenth century. (E. Denza, *op. cit.*, p. 135. See also C. E. Wilson, *Diplomatic Privileges and Immunities*, p. 46 (1967).) The extension of the privileges and immunities enjoyed by the head of a mission to the mission's diplomatic staff was also well recognized under international law before adoption of the Vienna Convention on Diplomatic Relations. (ILC Commentary on 1958 draft Article 36, II *Yearbook of the International Law Commission 1958*, p. 101.) As the Commission's Commentary makes clear, immunities of the administrative and technical staff equally are justified by the fact that it is the function of the mission as a whole, rather than the work done by each person, that is determinative. Many such persons "perform confidential tasks which, for the purposes of the mission's function, may be even more important than the tasks entrusted to some members of the diplomatic staff . . . Such persons equally need protection of the same order against possible pressure by the receiving State" (*ibid.*, p. 102).

<sup>3</sup> Article 37 in its pertinent paragraphs provides:

"1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation."

The inviolability rule rests on the recognition that the rule itself is essential in order to allow the diplomatic envoy to perform his functions without hindrance from the government of the receiving State, its officials, or even private persons. (B. Sen, *A Diplomat's Handbook of International Law and Practice*, p. 90 (1965). See also Satow, *op. cit.*, p. 120; M. Ogdon, *Juridical Bases of Diplomatic Immunity*, pp. 8-30 (1936).) The rule has been considered to be of such importance that one leading authority has stated that "[d]iplomatic envoys are just as sacrosanct as heads of States". (H. Lauterpacht, *I Oppenheim's International Law*, p. 789 (8th ed., 1955).) The universal acceptance of the principle is evident from the fact that "from the sixteenth century until the present one can find virtually no instances where a breach of a diplomat's inviolability was authorized or condoned by the Government which received him" (Satow, *op. cit.*, p. 120). In the celebrated de Mathveof case in 1708, in which the Russian Ambassador had been arrested with some violence in London, the Queen accredited a special ambassador for the purpose of conveying to Peter the Great at a public audience the expression of the Queen's regret for the insult offered to his ambassador (Satow, *op. cit.*, p. 121).

This Court has stated, in the quoted paragraph of its 15 December Order, that the obligations assumed by States with regard to the inviolability of diplomatic envoys are "essential, *unqualified*, and inherent" (italics added). The Commentary of the International Law Commission on the comprehensive character of the diplomat's inviolability is instructive as to the narrowness of the few exceptions which, in its view, could possibly be admitted. The Commentary on the 1958 draft Article 27 reads:

"This article confirms the principle of the personal inviolability of the diplomatic agent. From the receiving State's point of view, this inviolability implies, as in the case of the mission's premises, the obligation to respect, and to ensure respect for, the person of the diplomatic agent. The receiving State must take all reasonable steps to that end, possibly including the provision of a special guard where circumstances so required. Being inviolable, the diplomatic agent is exempted from measures that would amount to direct coercion. This principle does not exclude in respect of the diplomatic agent either measures of self-defence or, in exceptional circumstances, measures to prevent him from committing crimes or offences." (II *Yearbook of the International Law Commission 1958*, p. 97.)

In the current case before the Court there has been no showing whatever of facts upon which such arguable exceptions might properly be invoked. Moreover, even if some such facts were presented in this case (as they are not), the right of a person to defend himself against physical assault by a diplomat, or the right of the host State to prevent (for example) a diplomat from engaging in robbery, could not possibly justify the measures of arbitrary seizure and prolonged detention which have been visited upon United States nationals in this case. On the facts of this case, the precise term applied by the Court is the correct term: the inviolability to which the Embassy's hostages were and are entitled is "unqualified".

Article 29 of the 1961 Vienna Convention also specifies that the receiving State "shall" take all appropriate steps to prevent any attack on the person of a diplomatic agent (an obligation which equally embraces members of the administrative and the technical staff). Appropriate steps under Article 29 would include the provision of adequate police protection for an embassy and its personnel and special precautionary measures as needed. (See, e.g., the Commentary of the International Law Commission, II *Yearbook of the International Law Commission 1958*, p. 97, and B. Sen, *op. cit.*, pp. 91-92.) A State is in any case bound to take reasonable steps to bring offenders to justice, and failure to

do so would amount to a breach of duty for which reparation may be claimed. (B. Sen, *op. cit.*, p. 91; see also Harvard Research, *op. cit.*, pp. 95-96; G. E. do Nascimento e Silva, *op. cit.*, p. 91.)

## 2. THE BREACH

Given the clarity of the foregoing legal principles, it is indisputable that the Government of Iran has violated, and continues to violate, its legal obligations through its failure, wilfully and completely, to ensure inviolability and freedom from arrest and detention for United States diplomatic agents and members of the United States Embassy's administrative and technical staff in Tehran. It has failed to treat these persons with due respect and to take all appropriate steps to prevent attacks upon their person, freedom and dignity. Indeed, as noted elsewhere, far from preventing the attacks which occurred, the Government of Iran has gravely compounded and magnified this failure of omission by its acts of commission; it has in fact approved, supported, adopted and made these attacks its own.

### **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 of the United States Embassy**

#### 1. THE OBLIGATION

Pursuant to Article 31 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to ensure that United States diplomatic agents shall be immune "from the criminal jurisdiction" of Iran (para. 1) and shall not be "obliged to give evidence" as witnesses in any proceedings (para. 2)<sup>4</sup>. Article 37 extends this immunity, with exceptions not here relevant, to members of the administrative and technical staff of the United States diplomatic mission in Tehran as well as

<sup>4</sup> Article 31 provides:

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State."



to the families of diplomatic agents and of members of the administrative and technical staff<sup>5</sup>.

The immunity from criminal jurisdiction is, as the International Law Commission put it, "complete" (ILC Commentary on 1958 draft Article 29, II *Yearbook of the International Law Commission 1958*, p. 98). Here again this Court, in paragraph 38 of its Order of 15 December, specifically described the obligation to assure freedom from prosecution as "essential, *unqualified*, and inherent" (italics added). (See also B. Sen, *op. cit.*, p. 106; H. Lauterpacht, *op. cit.*, p. 790; G. E. do Nascimento e Silva, *op. cit.*, p. 120.) This complete immunity from criminal jurisdiction is reaffirmed and emphasized by Article 41 of the Vienna Convention; in stating the duty of persons enjoying privileges and immunities to respect the law of the receiving State, Article 41 expressly notes that the duty is "[w]ithout prejudice to their privileges and immunities".

In the absence of an appropriate waiver of immunity by the sending State, expulsion from the receiving State is the latter's sole remedy as against a protected person who has engaged in improper conduct; in no event can such person be tried or punished<sup>6</sup>. A leading authority has very recently stated that no case can be cited where, without consent, a diplomatic agent has been tried or punished by local courts (Satow, *op. cit.*, p. 124). Thus:

"History records many cases of diplomatic envoys who conspired against the receiving States, but nevertheless were not prosecuted. Thus in 1584 the Spanish ambassador in England, Mendoza, plotted to depose Queen Elizabeth; he was ordered to leave the country. In 1587 the French ambassador in England, L'Aubespine, conspired against the life of Queen Elizabeth; he was simply warned not to commit a similar act again. In 1654 the French ambassador in England, De Bass, conspired against the life of Cromwell; he was ordered to leave the country within twenty-four hours." (Lauterpacht, *op. cit.*, p. 791.)

See also Genet, II *Traité de diplomatie et de droit diplomatique*, pp. 473-477 (1931).

The Commentary of the International Law Commission cited above makes equally clear that, in accordance with paragraph 2 of Article 31, there can be no

<sup>5</sup> The immunity of an ambassador from the criminal jurisdiction of the receiving State was originally regarded as an aspect of inviolability and was, after the principle of inviolability itself, the earliest to be established of the basic rules of diplomatic law (E. Denza, *op. cit.*, p. 149). The principle of immunity of diplomatic envoys from the criminal jurisdiction of the receiving State was thus firmly embedded in customary international law well before the adoption of the Vienna Convention on Diplomatic Relations. (See H. Lauterpacht, *op. cit.*, p. 790; J. L. Brierly, *The Law of Nations*, p. 213 (5th ed., 1955); I. Brownlie, *Principles of Public International Law*, p. 343 (2nd ed., 1973); P. Cahier and L. T. Lee, *Vienna Conventions on Diplomatic and Consular Relations*, p. 29 (1969); M. Hardy, *Modern Diplomatic Law*, p. 56 (1968).) The exemption of diplomatic agents from the giving of evidence was also a principle having wide support in State practice and among learned authorities. See H. Lauterpacht, *op. cit.*, pp. 801-802; B. Sen, *op. cit.*, p. 124; C. E. Wilson, *op. cit.*, pp. 100-101; G. E. do Nascimento e Silva, *op. cit.*, p. 127.

<sup>6</sup> Article 9 of the Vienna Convention on Diplomatic Relations provides:

"1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission."

obligation on a diplomatic agent, or other protected person, to testify or otherwise give evidence as a witness. The rule is expressly stated in the Commentary as deriving from the diplomatic agent's inviolability. The international Law Commission determined that its draft provision should not even state exceptions for those instances in which a diplomatic agent is not immune from the civil and administrative jurisdiction of the receiving State; the giving of evidence may be required only when authorized consent has been given. During consideration of this provision at the United Nations Conference at which the Vienna Convention was concluded, the representative of the United Arab Republic expressed the view that the rule on providing evidence was "a well-established rule of international law and a very necessary one in the interests of the proper functioning of diplomatic missions" (*Official Records*, Vol. I, UN doc. A/CONF.20/14, p. 168).

## 2. THE BREACH

The Government of Iran has threatened, and continues to threaten, imminent violation of its obligations under Article 31: it has repeatedly stated an intention to place the American hostages on trial or to require them to serve as "witnesses" before some sort of international tribunal or "grand jury". In fact, given the Iranian Government's endorsement of criminal charges against the hostages, its approval of and complicity in their detention and interrogation, and its assertion that the hostages will be put on trial or compelled to testify, the Government of Iran appears already to stand in violation of its obligations under Article 31 to assure the hostages' immunity from Iran's criminal jurisdiction and from giving evidence.

### **D. The Government of Iran Has Violated, and Continues to Violate, Its International Legal Obligation to Ensure the Inviolability of United States Diplomatic Premises**

#### 1. THE OBLIGATION

Pursuant to Article 22 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to ensure that United States diplomatic premises in Tehran, including the residence of the head of the mission, "shall be inviolable" and "immune from search" and that agents of the Government of Iran shall not enter the premises "except with the consent of the head of the mission". This Article places the Government of Iran under a "special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity"<sup>7</sup>.

The inviolability is absolute; it may not be infringed under any circumstances, even if mission premises were to be used in a manner incompatible with its functions (ILC Commentary on 1958 draft Article 40, II *Yearbook of the International Law Commission 1958*, p. 104; P. Cahier and L. T. Lee, *op. cit.*, p.

<sup>7</sup> Article 22 provides:

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

21 (and note 40); M. Hardy, *op. cit.*, p. 44). This Court, in paragraph 38 of its 15 December 1979 Order, specifically included the inviolability of embassies among the most fundamental of prerequisites for the conduct of relations between States, noting that obligations in this regard are, again, "essential, unqualified, and inherent" (italics added). The International Law Commission has interpreted the principle as expressed in its draft article not only as preventing the serving of judicial writs within the mission premises but even as enabling a sending State to prevent a receiving State from using the mission's land in order to carry out public works (ILC Commentary on 1958 draft Article 20, II *Yearbook of the International Law Commission 1958*, p. 95).

In considering this article, the International Law Commission determined to make no reference, either in the article or in the commentary, to the issue of entry upon the premises in cases of extreme emergency. It was concluded that any such reference could introduce controversial interpretations which might weaken the paramount principle of inviolability. In this regard the Commission members from the Union of Soviet Socialist Republics, the United Kingdom, and Syria expressed most strongly the view that the principle of inviolability of premises must take precedence over all other considerations (I *Yearbook of the International Law Commission 1958*, pp. 127-134). Similarly, although proposed amendments to this article were introduced at the Vienna Conference in order to qualify the inviolability in exceptional emergency circumstances, all such proposals were withdrawn. The majority of delegations were of the view that it would be dangerous to allow a receiving State to determine when "exceptional circumstances" existed and that it was precisely in times of extreme urgency that it was most necessary to preserve an unqualified principle of inviolability of mission premises. The delegates from Bulgaria, Yugoslavia, the Union of Soviet Socialist Republics, France, Argentina, Colombia, Turkey and Iran were particularly vigorous in insisting at the Conference that the article not be qualified in any way. The delegate from Senegal stated that he considered the article to be the most important of the entire convention (*Official Records*, Vol. I, UN doc. A/CONF.20/14, pp. 135-143).

In order to fulfil its special duty to protect diplomatic premises, as the Commentary of the International Law Commission on the 1958 draft Article 20 states, a receiving State must "take special measures—over and above those it takes to discharge its general duty of ensuring order" (II *Yearbook of the International Law Commission 1958*, p. 95). Protection must be proportionate to the risk or threat to the premises (Satow, *op. cit.*, p. 111). Inadequate protection engages the responsibility of the receiving State (P. Cahier and L. T. Lee, *op. cit.*, p. 24). Moreover, the high duty of protection is reflected in the modern legislation of many countries. Some prescribe particularly severe penalties for trespass or acts of violence to mission premises, while others prohibit certain acts undertaken within a prescribed distance from mission premises (see E. Denza, *op. cit.*, p. 80). The importance of the special duty of protection was underscored in especially strong terms at the Vienna Conference by the delegates from Sweden, Norway and Belgium, all of whom made absolutely clear their view that a receiving State must be held fully answerable for any failure in its obligation to protect the premises of a diplomatic mission from violation (*Official Records*, Vol. I, UN doc. A/CONF.20/14, pp. 135-143).

## 2. THE BREACH

The Government of Iran has violated, and continues to violate, its obligations under Article 22 in that it has failed absolutely to ensure the inviolability, including freedom from search and unauthorized entry, of United States diplomatic premises in Tehran. Quite the contrary, that Government has approved and encouraged the prolonged occupation of the Embassy by persons

who, *de facto*, act as agents of the Government of Iran. It has done so with the acknowledged purpose of holding hostage both United States diplomatic personnel and private United States nationals—an act which, as the Court pointed out in paragraph 19 of its Order of 15 December 1979, falls within the prescriptions of inviolability of the Vienna Conventions on Diplomatic Relations and on Consular Relations. The Government of Iran could not more plainly have violated its special duty to take all appropriate steps to protect United States diplomatic premises against intrusion or damage and to prevent a disturbance of the peace of the mission or impairment of its dignity.

**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**

1. INVIOIABILITY OF ARCHIVES AND DOCUMENTS

(a) *The Obligation*

Pursuant to Article 24 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 archives and documents" of the United States diplomatic mission in Tehran "shall be inviolable *at any time and wherever they may be*"<sup>8</sup> (italics added).

Inviolability of archives and documents is at least partly encompassed within the principle of inviolability of mission premises but was included as a separate provision in the International Law Commission's draft articles because of the importance of archival inviolability to the functions of the mission (ILC Commentary on 1958 draft Article 22, II *Yearbook of the International Law Commission 1958*, p. 96). Although there have been some historical instances in which documents not on mission premises have been used as evidence by a receiving State (a circumstance in any case not relevant here), it is to be noted that Article 24 of the Vienna Convention on Diplomatic Relations establishes a new and higher standard in this and other respects than had previously existed in customary international law (E. Denza, *op. cit.*, p. 110). The importance of the principle as now established is evidenced in the breadth of its coverage.

The inviolability principle embodied in Article 24 extends to documents other than archives. The reference to "documents" as well as archives was added to the text by the International Law Commission with a view to including matter such as memoranda in draft form (see I *Yearbook of the International Law Commission 1958*, p. 135). The Vienna Conference broadened the International Law Commission's draft article still further by accepting an amendment as proposed by the French and Italian delegations, extending protection to such materials at all times and in all places.

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 24 in that it has failed to ensure the inviolability of archives and documents located at the United States mission in Tehran. On the contrary, the Government of Iran has approved the seizure, ransacking and publication of documents of the United States diplomatic mission and has endorsed their threatened use as "evidence" in some sort of purported legal proceeding.

<sup>8</sup> Article 24 provides: "The archives and documents of the mission shall be inviolable at any time and wherever they may be."

## 2. ACCORDANCE OF FULL FACILITIES

(a) *The Obligation*

Pursuant to Article 25 of the Vienna Convention on Diplomatic Relations the Government of Iran is under an international legal obligation to the United States to "accord full facilities for the performance of the functions of the mission"<sup>9</sup>.

Under this article a receiving State must not simply refrain from impeding the normal operation of a mission; on the contrary, the receiving State is under an affirmative duty to furnish all reasonable assistance required by a diplomatic mission and to make every effort to provide the mission with all facilities for the purpose. (ILC Commentary on 1958 draft Article 23, II *Yearbook of the International Law Commission 1958*, p. 96. See also M. Hardy, *op. cit.*, p. 32.) The principle was apparently considered to be so widely recognized and sound that the article was adopted at the Vienna Conference without debate or amendment.

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 25 in that it has failed to permit the United States to have continued access to its compound in Tehran and to enjoy the full facilities necessary—or even the minimal facilities necessary—for the performance of the functions of its diplomatic mission.

## 3. FREEDOM OF MOVEMENT

(a) *The Obligation*

Pursuant to Article 26 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to ensure that, subject only to limitations on entry into national security zones, all members of the United States mission shall have "freedom of movement and travel in its [Iran's] territory"<sup>10</sup>.

In introducing before the International Law Commission a provision concerning freedom of movement, Sir Gerald Fitzmaurice expressed the view that until recently such a provision would not have been necessary. "It had always been traditional and regarded as axiomatic that members of diplomatic missions enjoyed full freedom of movement on the territory of the receiving State, subject to a few minor exceptions in the case of fortified zones to which entrance was prohibited on strategic grounds." (I *Yearbook of the International Law Commission 1957*, p. 85. See also P. Cahier and L. T. Lee, *op. cit.*, p. 33; M. Hardy, *op. cit.*, p. 34.) The possibility that the members of a diplomatic mission, far from enjoying freedom of movement, would be confined in their violated diplomatic premises as hostages, was not within the ambit of the Commission's imagination.

Freedom of movement is an essential requirement for the adequate performance of the functions of a mission. Although movement may be limited or

<sup>9</sup> Article 25 provides: "The receiving State shall accord full facilities for the performance of the functions of the mission."

<sup>10</sup> Article 26 provides:

"Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory."

prohibited in national security zones, the Commission's Commentary on 1958 draft Article 24 makes clear that freedom of diplomatic movement and travel may not be rendered "illusory" (II *Yearbook of the International Law Commission* 1958, p. 96).

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 26 in that it has failed, wholly without justification, to ensure freedom of movement and travel to members of the United States mission in Tehran. There could be no more blatant and more illegal restriction upon freedom of movement than that which has been imposed upon United States personnel held hostage in Iran.

4. FREEDOM OF COMMUNICATION

(a) *The Obligation*

Pursuant to Article 27 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to "permit and protect free communication" on the part of the United States mission for all official purposes and to ensure the inviolability of "official correspondence of the mission"<sup>11</sup>.

Article 27 encompasses all communications for official purposes, whether with the government of the sending State, with officials and authorities of that government, with missions and consulates of other governments, with international organizations, or with the nationals of the sending State. In communicating with the sending government or its missions and consulates wherever located, all appropriate means may be used, including couriers and code messages (ILC Commentary on 1958 draft Article 25, II *Yearbook of the International Law Commission* 1958, p. 97).

From the perspective of effective daily functioning of a diplomatic mission, free and confidential communication between the mission and the sending government has been described as "probably the most important of all the privileges and immunities accorded under international law" (E. Denza, *op. cit.*, p. 119; see also Satow, *op. cit.*, p. 116). The essential character of free communication was recognized by both the International Law Commission and the Vienna Conference, both of which accepted the principle as laid down by the first sentence of paragraph 1 of Article 27, with virtually no controversy: this "generally recognized freedom . . . is essential for the performance of the mission's functions . . ." (ILC Commentary on 1958 draft Article 25, II *Yearbook of the International Law Commission*, p. 97). Indeed, at the Vienna Conference the delegate from Iran referred to the inviolability of diplomatic bags, also an aspect of Article 27, as "sacrosanct", even in the face of misuse by the sending State (*Official Records*, Vol. I, UN doc. A/CONF.20/14, p. 163).

<sup>11</sup> Article 27 in pertinent part provides:

"1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions."

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 27 in that it has failed to protect, and has denied, free communication for official purposes on the part of the United States diplomatic mission in Tehran, and has failed to ensure the inviolability of official correspondence of the mission. Not only have the hostages been held essentially incommunicado in the Embassy and confidential communications violated, but the Government of Iran has denied means for confidential communication between the United States Government and the United States Embassy officials at the Iranian Foreign Ministry and has severely limited the ability of these officials (who include the United States Chargé d'Affaires) to communicate with their diplomatic colleagues in Tehran.

5. NON-DISCRIMINATION

(a) *The Obligation*

Pursuant to Article 47 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to preclude discrimination in the application of the provisions of the Convention except in certain instances involving reciprocity or more favourable treatment<sup>12</sup>.

The rule of non-discrimination as expressed in this article was stated by the International Law Commission to be a general rule flowing from the equality of States (ILC Commentary on 1958 draft Article 44, II *Yearbook of the International Law Commission 1958*, p. 105; see also comment of the delegate from Italy during the Conference consideration of the Article, *Official Records*, Vol. I, UN doc. A/CONF.20/14, p. 218).

(b) *The Breach*

Other diplomatic missions in Tehran happily are not being treated in the same way as the United States diplomatic mission. The discriminatory action of the Government of Iran is not based on restrictive treatment applied by the United States and manifestly does not constitute more favourable treatment. Indeed, despite the actions of the Government of Iran, the United States continues to accord Iranian diplomats in the United States their normal immunities, thus providing treatment strikingly more favourable than that which is currently accorded the United States diplomatic mission in Tehran. The Government of Iran has therefore violated, and continues to violate, its obligation under Article 47 in that it has applied, without justification, adverse and flagrantly discriminatory treatment to the United States diplomatic mission in Tehran.

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<sup>12</sup> Article 47 provides:

"1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

## 6. FACILITATION OF DEPARTURE

(a) *The Obligation*

Pursuant to Article 44 of the Vienna Convention on Diplomatic Relations, the Government of Iran is under an international legal obligation to the United States to facilitate the departure from Iran of persons enjoying privileges and immunities, and their families, "at the earliest possible moment". Moreover, Iran "must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property". The receiving State is so bound "even in case of armed conflict"; *a fortiori* it is so bound in the absence of hostilities<sup>13</sup>.

The obligation to facilitate departure of protected persons assumes special significance in the case of deteriorating relations between sending and receiving States, a point alluded to by the delegate from Romania at the Vienna Conference (*Official Records*, Vol. 1, UN doc. A/CONF.20/14, p. 215). As an example of State practice, after the outbreak of the Second World War, the United States took special protective measures, which included securing lodging in resort hotels, in order to ensure that enemy diplomatic personnel remained safe pending completion of arrangements for departure (see *Hearing before the Subcommittee of the Committee on Foreign Relations*, United States Senate, 89th Cong., 1st Sess., pp. 35-36 (1965)). So clear was the obligation that the International Law Commission, in its Commentary on 1957 draft Article 35, simply stated that "[t]his article requires no commentary" (11 *Yearbook of the International Law Commission 1957*, p. 143).

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligation under Article 44 in that it has failed to facilitate the departure from Iran of United States personnel entitled to the enjoyment of privileges and immunities. Far from meeting this obligation, the Government of Iran has encouraged, endorsed and associated itself with the deliberate, prolonged and forcible detention of such American personnel.

**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**

In addition to its temporarily closed consulates in Tabriz and Shiraz, which were also attacked in early November 1979, the United States maintained several consular staff members, currently held hostage, among the personnel of its diplomatic mission in Tehran. Article 3 of the Vienna Convention on Consular Relations contemplates the exercise of consular functions by diplomatic missions in accordance with that Convention. Article 70 specifically states that the Con-

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<sup>13</sup> Article 44 provides:

"The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property."



vention shall also apply "so far as the context permits" to the exercise of consular functions by a diplomatic mission. As Article 70 provides, when members of a diplomatic mission are exercising consular functions they are entitled to the full protection afforded by the Vienna Convention on Diplomatic Relations.

In numerous respects, however, the actions of the Government of Iran constitute additional distinct violations of the provisions of the Vienna Convention on Consular Relations. As this Court observed in paragraph 40 of its Order of 15 December 1979, "the unimpeded conduct of consular relations, which have also been established between peoples since ancient times, is no less important in the context of present-day international law, in promoting the development of friendly relations among nations, and ensuring protection and assistance for aliens resident in the territories of other States ...".

## I. PROTECTION OF PREMISES

### (a) *The Obligation*

Pursuant to Article 27 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to "respect and protect the consular premises, together with the property of the consular post and the consular archives" in the event of the temporary or permanent closure of a consular post<sup>14</sup>.

The obligation to respect and protect consular premises is of such importance that under Article 27 it applies both in the case of severance of consular relations and even in the case of armed conflict between States, thus advancing beyond customary international law in this regard (L. T. Lee, *Vienna Convention on Consular Relations*, p. 97 (1966)). The importance of preserving the inviolability of consular premises and archives generally is emphasized in Articles 31 and 33 of the Vienna Convention on Consular Relations<sup>15</sup>. The inviolability principle

<sup>14</sup> Article 27 provides:

"1. In the event of the severance of consular relations between two States:

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;

(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this Article shall apply.

In addition,

(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this Article shall apply.

<sup>15</sup> Article 31 provides:

"1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular

has support in international practice apart from the Convention (L. T. Lee, *Consular Law and Practice*, p. 241 (1961); ILC Commentary on 1961 draft Article 32, *Official Records*, Vol. II, UN doc. A/CONF.25/16/Add.1, p. 22; Ahmad, *L'Institution consulaire et le droit international*, pp. 104-114 (1973)).

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Articles 27, 31 and 33 of the Vienna Convention on Consular Relations, in that it has failed to respect and protect the United States consular premises in Tabriz and Shiraz, as well as United States consular premises integrated into the United States Embassy in Tehran.

2. ACCORDANCE OF FULL FACILITIES

(a) *The Obligation*

Pursuant to Article 28 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to "accord full facilities for the performance of the functions of the consular post"<sup>16</sup>—an obligation which is considered "indispensable to the creation and maintenance of consular relations" (L. T. Lee, *Vienna Convention on Consular Relations*, p. 81). As noted expressly by this Court in paragraph 19 of its Order of 15 December 1979, under Article 5 of the Vienna Convention on Consular Relations the consular functions for the performance of which full facilities are to be accorded

"include the functions of protecting, assisting and safeguarding the interests of nationals; . . . the purpose of these functions is precisely to enable the sending State, through its consulates, to ensure that its nationals are accorded the treatment due to them under the general rules of international law as aliens within the territory of the foreign State".

Obviously any obstruction of the performance of consular functions prejudices the ability of the United States to assist and safeguard the interests of United States nationals in Iran, particularly those private United States nationals currently being held hostage at the Embassy premises.

premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State."

Article 33 provides: "The consular archives and documents shall be inviolable at all times and wherever they may be."

<sup>16</sup> Article 28 provides: "The receiving State shall accord full facilities for the performance of the functions of the consular post."

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligation under Article 28 in that it has in effect completely deprived the United States consular officers at the United States diplomatic mission in Tehran of their ability to perform their consular functions. The violation, as noted, is particularly serious because it affects the interests of all United States nationals still in Iran. Indeed the seizure and detention of United States nationals at the diplomatic mission, particularly those who are not members of the mission, itself frustrates the proper performance of consular functions under the circumstances described.

## 3. FREEDOM OF MOVEMENT

(a) *The Obligation*

Pursuant to Article 34 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to ensure "freedom of movement and travel in its territory" to United States consular officers, subject only to valid exceptions based upon national security<sup>17</sup>.

As with purely diplomatic officers, freedom of movement for consular officers is a prerequisite for the adequate performance of their consular functions. A consular officer in particular is expected to maintain contact with nationals of the sending State in order to further and protect their interests, and for this purpose free movement is essential (see B. Sen, *op. cit.*, p. 256).

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligation under Article 34 in that it has failed to ensure any freedom of movement whatever for United States consular officers at the United States diplomatic mission in Tehran. This violation adversely and seriously affects the interests of other United States nationals in Iran.

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<sup>17</sup> Article 34 provides:

"Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post."

Article 35 in pertinent part provides:

"1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin."

#### 4. FREEDOM OF COMMUNICATION

##### (a) *The Obligation*

Pursuant to Article 35 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to "permit and protect freedom of communication on the part of the consular post for all official purposes" and to ensure that "official correspondence of the consular post shall be inviolable".

The principle of freedom of communication between consular officers and other officials of the sending State, while subject to certain exceptions, was nevertheless rooted in international practice prior to the Consular Convention (see L. T. Lee, *Consular Law and Practice*, pp. 270-274). Such freedom of communication is "essential for the discharge of consular functions" and forms part of "the foundation of all consular law" (ILC Commentary on 1961 draft Article 35, *Official Records*, Vol. II, UN doc. A/CONF.25/16/Add.1, p. 23). As the Commission's Commentary also makes clear, this protective principle encompasses official consular communications of all kinds, whether they be communications with the government or officials of the sending State, with other missions or consulates, or with international organizations. In communicating with the sending government or its missions and consulates wherever located, the consular post is to be permitted to employ any appropriate means, including couriers, bags, and code messages. It has been stated that any obstruction to freedom of communication would render meaningless the inviolability of consular archives and documents and, most importantly, would derogate from the fundamental principle that the receiving State shall accord full facilities for the performance of consular functions (L. T. Lee, *Vienna Convention on Consular Relations*, pp. 99-100).

##### (b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 35 in that it has failed to protect and has denied free communication for official purposes on the part of United States consular officers at the United States diplomatic mission in Tehran, and has failed to ensure and has infringed the inviolability of official correspondence. This violation constitutes another serious infringement of the interests of the United States and its nationals in Iran.

#### 5. CONTACT WITH NATIONALS

##### (a) *The Obligation*

Pursuant to Article 36 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to ensure that United States consular officers "shall be free to communicate with nationals of the sending State and to have access to them", that United States nationals in Iran "have the same freedom with respect to communication with and access to consular officers of the sending State", and that United States consular officers have the right to visit United States nationals who are in "prison, custody or detention"<sup>18</sup>.

<sup>18</sup> Article 36 provides:

"I. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending

The right of consular officers in peacetime to communicate freely with co-nationals has been described as implicit in the consular office, even in the absence of treaties (L. T. Lee, *Consular Law and Practice*, p. 269; B. Sen, *op. cit.*, p. 257; Satow, *op. cit.*, p. 218). As Article 5 of the Convention makes plain, a principal function of the consular officer is to provide varying kinds of assistance to nationals of the sending State, and for this reason the channel of communication between consular officers and nationals must at all times remain open. Indeed, such communication is so essential to the exercise of consular functions that its preclusion would render meaningless the entire establishment of consular relations (I *Yearbook of the International Law Commission 1961*, pp. 32-38; L. T. Lee, *Consular Law and Practice*, p. 269). Article 36 establishes rights not only for the consular officer but, perhaps even more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others.

(b) *The Breach*

The Government of Iran has violated, and continues to violate, its obligations under Article 36 in that it has failed to ensure that the United States consular officers at the United States diplomatic mission in Tehran may communicate with or have access to other United States nationals in Iran, including those United States nationals who are currently held hostage. It has also failed to ensure that such other United States nationals in Iran may communicate with or have access to these consular officers. It has encouraged and supported a situation in which, in fact, United States nationals are held essentially incommunicado in the grossest violation of consular norms and accepted standards of human rights.

## 6. NON-DISCRIMINATION

(a) *The Obligation*

Pursuant to Article 72 of the Vienna Convention on Consular Relations, the Government of Iran is under an international legal obligation to the United States to preclude discrimination in the application of the provisions of the Convention,

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State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communications with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended."

except in certain instances involving reciprocity or more favourable treatment<sup>19</sup>.

As with diplomatic relations, the general rule of non-discrimination as applied to consular relations has been described as deriving from the principle of the sovereign equality of States (ILC Commentary on 1961 draft Article 70, *Official Records*, Vol. II, UN doc. A/CONF.25/16/Add.1, p. 40).

(b) *The Breach*

As in the case of the Vienna Convention on Diplomatic Relations, the actions of the Government of Iran cannot be regarded under Article 72 as justified in any way. In fact the Government of Iran has violated, and continues to violate, its obligation under Article 72 in that it has applied, without justification, adverse and flagrantly discriminatory treatment to the performance of consular functions by the United States in Iran.

**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**

Concerned with the grave problem of the use of terrorism against internationally protected persons, including diplomatic agents, the United Nations General Assembly in 1971 requested the International Law Commission to prepare a set of draft articles addressed to the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (resolution 2780 (XXVI)). The comments of numerous States were transmitted to the International Law Commission and reflected the General Assembly's depth of concern. Among them, the Government of Iran stated:

"1. Consideration of the question of the protection of diplomats ... has made it possible to reaffirm the importance of the basic rule of diplomatic law, namely that concerning the inviolability of diplomatic premises and the respect due to the person of the diplomat.

2. Demonstrations of violence against diplomats might paralyse the smooth operation of inter-State relations. In order to perform his functions, the diplomat must be protected from any hostile act by any person whatsoever.

3. The Imperial Government of Iran endorses the idea that the International Law Commission should prepare a draft international convention designed to strengthen the means of protection provided for under international instruments now in force." (II *Yearbook of the International Law Commission* 1972, pp. 337-338.)

In presenting its draft articles to the General Assembly in 1972, the International Law Commission noted that

"[v]iolent attacks against diplomatic agents and other persons entitled to special protection under international law not only gravely disrupt the very mechanism designed to effectuate international co-operation for the safe-

<sup>19</sup> Article 72 provides:

"1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention."

guarding of peace, the strengthening of international security and the promotion of the general welfare of nations but also prevent the carrying out and fulfilment of the purpose and principles of the Charter of the United Nations." (II *Yearbook of the International Law Commission* 1972, p. 312.)

On 14 December 1973 the General Assembly adopted by consensus the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (the New York Convention). (Resolution 3166 (XXVIII).) In the resolution of adoption the General Assembly also noted the "serious threat to the maintenance and promotion of friendly relations and co-operation among States created by the commission of such crimes". It re-emphasized the importance of principles of international law concerning the inviolability of, and special protection to be afforded to, internationally protected persons and the obligations of States in that regard. The Preamble to the Convention thus states that "crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations" and that "the commission of such crimes is a matter of grave concern to the international community ...".

The importance attributed by States to the New York Convention is evident from the statements made at the General Assembly in explanation of vote after adoption of the Convention. Many of those statements explicitly reflect the understanding that the Convention expresses firmly established principles of international law and further strengthens these principles by providing a mechanism for their reinforcement. Thus the representative of Canada stated that the purpose of the Convention was to "reaffirm this very important rule of inviolability in explicit terms and to provide strong and specific remedies to ensure that it is observed" (UN doc. A/PV.2202, p. 100). The representative of Italy stated that the Italian Government "welcomes the fact that the new Convention confirms and restates the principles incorporated in the Vienna Conventions and codifies rules aimed at making them more effective" (UN doc. A/PV.2202, p. 106). The representative of the United Kingdom declared that the Convention "is clearly founded on the acceptance by all parties of the complete illegality, without qualification, of such attacks" (UN doc. A/PV.2202, p. 111). The representative of Portugal stated that the Convention unequivocally reaffirms the principle that a diplomat cannot be attacked regardless of the motives invoked to justify such an act" (UN doc. A/PV.2202, p. 129). The representative of Spain expressed the view that the Convention was "a matter of strengthening rules embodied in customary international law, which are already contained in various multilateral conventions" (UN doc. A/PV.2202, p. 141).

The actions of the Government of Iran constitute serious violations of the New York Convention in the following respects.

## 1. CO-OPERATION

### (a) *The Obligation*

Pursuant to Article 4 of the New York Convention, the Government of Iran is under an international legal obligation to the United States to "co-operate in the prevention of the crimes" set forth in Article 2 of the Convention<sup>20</sup>. Those

<sup>20</sup> Article 2 provides:

"1. The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

crimes include the "intentional commission of: (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person; (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; (c) a threat to commit any such attack; (d) an attempt to commit any such attack; and (e) an act constituting participation as an accomplice in any such attack ...". The obligation of the Government of Iran to co-operate in the prevention of these crimes specifically includes the taking of "all practicable measures to prevent preparations in [its] territories for the commission of those crimes" and "exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes"<sup>21</sup>.

The requirement of preventive measures, as referred to in Article 4, is consistent with the principles of customary international law and the more special requirements to ensure inviolability and protection as set forth in the Vienna Conventions on Diplomatic Relations and Consular Relations (ILC Commentary on 1972 draft Article 3, II *Yearbook of the International Law Commission 1972*, p. 317). The United States representative, in explaining his vote on the resolution of adoption, stated that the "United States understands this obligation to refer to doing the utmost to prevent attempts to commit such crimes or conspiracy to commit such crimes" (UN doc. A/PV.2202, p. 135). The preventive measures required would vary with the situation and would include police or judicial action as the circumstances might demand. Moreover, the obligation to take such measures is too important to bow to considerations of cost: even though "the host or receiving State might have to devote considerable resources to preventive measures ... it is its clear duty to take all necessary

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person."

Article 4 provides:

"States Parties shall co-operate in the prevention of the crimes set forth in Article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes."

<sup>21</sup> The category of "internationally protected persons" includes, under Article 1, paragraph 1 (b), any representative or official of a State who, at the time when and in the place where a crime against him or his official premises is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity. The category clearly encompasses persons who are entitled to the benefits of Article 29 of the Vienna Convention on Diplomatic Relations. See Wood, "The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents", 23 *International and Comparative Law Quarterly*, p. 801 (1974); ILC Commentary on 1972 draft Article 1, II *Yearbook of the International Law Commission 1972*, p. 314.



protective measures" (ILC Commentary on 1972 draft Article 3, II *Yearbook of the International Law Commission 1972*, p. 317).

(b) *The Breach*

The Government of Iran has violated, and continues to violate, the provisions of Articles 2 and 4 of the New York Convention. The events which have occurred at the United States diplomatic mission in Tehran to date include the intentional and knowing commission of attacks upon the persons and liberty of internationally protected persons, violent attacks upon the official premises and the private accommodations of internationally protected persons likely to endanger their persons and liberty, threats to commit further such attacks, and acts constituting participation as accomplices in such attacks. These actions could not be excused even if the worthiest of motives were involved. Far from co-operating in the prevention of these crimes and taking "all practicable measures" to prevent their preparation, the Government of Iran has actually sponsored and endorsed their commission. In fact it has approved and praised these crimes and insisted on their prolongation in an effort to achieve political advantage. In addition, the events in Tehran indicate a continuing disposition to permit or commit still further attacks upon the persons or liberty of internationally protected persons—specifically, the threatened continued detention and punishment of the hostages. Again, far from co-operating in preventing these proposed new crimes, the Government of Iran officially threatens their commission.

2. PROSECUTION

(a) *The Obligation*

Pursuant to Article 7 of the New York Convention the Government of Iran, being well aware of the crimes which have been committed against the official premises and staff of the United States diplomatic mission in Tehran, is under an international legal obligation to the United States to submit the case against the offenders to competent Iranian authorities for the purpose of prosecution<sup>22</sup>.

Article 7 has been described as the key provision of the entire Convention. (Wood, *op. cit.*, p. 810. See also ILC Commentary on 1972 draft Article 6, II *Yearbook of the International Law Commission 1972*, p. 318.) Although Article 7 allows the prosecutorial authorities to decide for themselves whether or not to prosecute (as the Commentary cited above makes clear), that determination must be made in utmost good faith in the light of all the circumstances. The standard under Article 7 surely can be no less rigorous than that relating to a denial of justice through a failure or refusal to punish persons committing offences against another State's nationals.

(b) *The Breach*

The Government of Iran has violated, and continues to violate, this obligation in that it has taken no steps whatsoever to apprehend those who have committed the crimes at the United States diplomatic mission in Tehran or to submit the case against such persons to competent authorities for the purpose of prosecution or extradition. Indeed, the Government, including apparently the public prosecutor's staff and the judiciary, have expressly stated their support for the criminal activities involved.

<sup>22</sup> Article 7 provides:

"The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State."

**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**

In Article II, paragraph 4, of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran of 1955, the Government of Iran pledged that United States nationals within its territory would receive "the most constant protection and security"<sup>23</sup>.

This broad guarantee of security and protection is made more specific in the Treaty with respect to nationals of one party who are in custody or detained in the territory of the other party. Thus Article II, paragraph 4, of the Treaty requires Iran to provide "in every respect ... reasonable and humane treatment" to United States nationals in custody in Iran. Moreover, Articles II and XIX provide unambiguously that any such detained national is entitled to communicate with his own government to avail himself of the services of his consular officials<sup>24</sup>.

<sup>23</sup> Article II, paragraph 4, provides:

"Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of his country shall without unnecessary delay be notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed all facilities reasonably necessary to his defence and given a prompt and impartial disposition of his case."

<sup>24</sup> Article XIX provides:

"A consular officer shall have the right within his district to: (a) interview, communicate with, assist and advise any nationals of the sending State; (b) inquire into any incidents which have occurred affecting the interests of any such national; and (c) assist any such national in proceedings before or in relations with the authorities of the receiving State and, where necessary, arrange for legal assistance to which he is entitled. A national of the sending State shall have the right at all times to communicate with a consular officer of his country and, unless subject to lawful detention, to visit him at the consular office."

The Treaty of Amity contains the following further consular provisions of pertinence to this case:

Article XIII provides:

"1. Consular representatives of each High Contracting Party shall be permitted to reside in the territory of the other High Contracting Party at the places where consular officers of any third country are permitted to reside and at other places by consent of the other High Contracting Party. Consular officers and employees shall enjoy the privileges and immunities accorded to officers and employees of their rank or status by general international usage and shall be permitted to exercise all functions which are in accordance with such usage; in any event they shall be treated, subject to reciprocity, in a manner no less favourable than similar officers and employees of any third country.

2. The consular offices shall not be entered by the police or other local authorities without the consent of the consular officer, except that in the case of fire or other disaster, or if the local authorities have probable cause to believe that a crime of violence has been or is about to be committed in the consular office, consent to entry shall be presumed. In no case shall they examine or seize the papers there deposited."

Article XVIII provides:

"Consular officers and employees are not subject to local jurisdiction for acts done in their official character and within the scope of their authority. No consular officer or employee shall be required to present his official files before the courts or to make declaration with respect to their contents."

It is plain that the actions acquiesced in or encouraged by the Government of Iran are

These treaty provisions, which are standard formulations and appear in other similar treaties of the United States and other countries<sup>25</sup>, reflect a long-established<sup>26</sup> and well-developed body of international law concerning the treatment of aliens<sup>27</sup>. The effect of the Treaty is to translate these generally recognized and extensively applied principles of international law into a concrete and explicit set of bilateral obligations.

## 1. IRAN'S OBLIGATION TO PROVIDE CONSTANT PROTECTION AND SECURITY TO UNITED STATES NATIONALS IN IRAN

### (a) *The Plain Meaning of the Provision*

On its face, and as applied to the facts of this case, the meaning of the undertaking of Iran—that United States nationals within its territory “shall receive the most constant protection and security”—is plain and peremptory. Although the breadth of this language leaves room for interpretation, it is clear that, whatever the precise meaning, Iran is failing in its prescribed duty in permitting United States nationals to be held hostage by a volatile mob for a period of months.

In other words, the precise content ascribed to the phrase “the most constant protection and security” may well depend on the circumstances of any particular case, but if this provision of the Treaty means anything at all (as it must), it precludes the Government of Iran from acquiescing in the holding of United States nationals hostage at the United States Embassy. That acquiescence plainly has not given those nationals “the most constant protection and security” under any possible reading of those words. Indeed, the very act of taking hostages to extort concessions from a foreign State has in recent days been recognized by the United Nations General Assembly to be illegal and criminal<sup>28</sup>.

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inconsistent with these provisions. United States consular officers have been denied their privileges and immunities, have not been permitted to exercise their functions, have been treated in a discriminatory fashion and have been threatened with subjection to local jurisdiction; and United States consular offices have been entered without the consent of the consular officer and papers deposited there have been seized.

<sup>25</sup> See, e.g., United States of America-Federal Republic of Germany Treaty of Friendship, Commerce and Navigation of 1954, Articles I, III, and V; United Kingdom-Iran Treaty of Commerce, Establishment and Navigation of 1959, in particular Article 8 (i) which speaks of “constant and complete protection and security”.

<sup>26</sup> See, Goebel, “The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars”, 8 *American Journal of International Law*, p. 802 (1914), which traces the origins of this body of international law to the concept of *Gastrecht* or “rights of hospitality” which existed between early teutonic tribes.

<sup>27</sup> See generally, 8 M. Whiteman, *Digest of International Law*, pp. 697 *et seq.* (1967); 5 G. Hackworth, *Digest of International Law*, pp. 471-851 (1943); 6 J. B. Moore, *International Law*, pp. 605-1037 (1906); 2 C. C. Hyde, *International Law*, pp. 871-1012 (2nd ed., 1945); E. Borchard, *Diplomatic Protection of Citizens Abroad* (1915); A. Freeman, *International Responsibility of States for Denial of Justice* (1938); C. Rousseau, *Droit International Public*, pp. 119 *et seq.* (1973); J. C. Castel, *International Law*, pp. 1069 *et seq.* (1976); D. P. O’Connell, *International Law*, pp. 941 *et seq.* (1970); S. Oda, “The Individual in International Law”, in Sorensen, *Manual of Public International Law*, pp. 469, 483, 485 (1968); A. von Verdross and K. Zemanek, *Volkerrecht*, at p. 292 (4th ed., 1959); L. Sohn and R. Baxter, “Convention on the International Responsibility of States for Injuries to Aliens”, Article 5, in F. V. Garcia-Amador, L. Sohn, R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, pp. 179 *et seq.* (1974).

<sup>28</sup> On 17 December 1979, the General Assembly adopted by consensus the Convention against the Taking of Hostages. It recognizes “that the taking of hostages is an act which endangers innocent human lives and violates human dignity”, and binds States Parties to submit for prosecution or to extradite any person who violates the Convention by an act of hostage-taking. The text of the Convention is found at Annex 55 of this Memorial.

(b) *Provision for Constant Protection and Security Imports the Minimum Standard of Treatment Due to All Aliens*

It seems indisputable that the duty to afford "the most constant protection and security" to nationals of another State involves an affirmative obligation to take appropriate measures to ensure that aliens so protected are treated in a way that would guarantee to them at least that minimum standard of treatment which is recognized by the international community as due to all aliens. That a State has such a responsibility under international law, independent of any specific treaty commitment, is manifest<sup>29</sup>. As was stated in the *Neers* case, "The propriety of governmental acts [with respect to the treatment of aliens] should be put to the test of international standards"<sup>30</sup>.

So measured, the obligation to afford the most constant protection and security must mean no less than that treatment of an alien is unlawful if it "amount[s] to an outrage, to bad faith, to a wilful neglect of duty, or to any insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency"<sup>31</sup>. The applicability of such an internationally recognized minimum standard of treatment<sup>32</sup> was recognized by the Court in its Order of 15 December 1979 when it stated that "the purpose of [Article 5 of the Vienna Convention of 1963] is precisely to enable the sending State, through its consulates, to ensure that its nationals are accorded the treatment due to them under the general rules of international law as aliens within the territory of the foreign State" (para. 19).

It is not necessary for the purposes of this case to define precisely what is required by an internationally recognized minimum standard of treatment. Whatever the outer limits of the law may be, it is well established that, at its core, it means that aliens are entitled to be free from arbitrary or discriminatory arrest and detention and must not be treated in a cruel, inhuman or degrading manner<sup>33</sup>.

<sup>29</sup> See, *inter alia*, the *B. E. Chattin Case (United States of America v. Mexico)*, *Opinions of the Commissioners* [1927], p. 422; *Réclamations Britanniques Dans La Zone Espagnole du Maroc* (Accord Anglo-Espagnol du 29 Mai 1923, "Rapport sur les responsabilités de l'Etat dans les situations visées par les réclamations britanniques"), II *Recueil des Sentences Arbitrales*, pp. 613, 639.

<sup>30</sup> *L. F. G. Neer and Pauline E. Neer (United States of America v. Mexico)*, *Opinions of the Commissioners* [1927], pp. 71, 73.

<sup>31</sup> *Neer, op. cit.*, at p. 73.

<sup>32</sup> See, in particular, *George W. Hopkins Claim (United States of America v. Mexico)*, *Opinions of the Commissioners* [1927], p. 42 where the tribunal stated that "it not infrequently happens that under the rules of international law applied to controversies of an international aspect a nation is required to accord to aliens broader and more liberal treatment than it accords to its own citizens under its municipal laws". See also, *The Harry Roberts Claim (United States of America v. Mexico)*, *Opinions of the Commissioners* [1927], p. 100, in which the tribunal rejected the argument that the claimant was entitled to no more than national treatment. The tribunal held, "... equality [of treatment] is not the ultimate test of the propriety of the acts of authorities under international law. The test, broadly speaking, is whether aliens are treated in accordance with ordinary standards of civilization." See generally, E. Borchard, "The Minimum Standard of Treatment of Aliens", 38 *Michigan Law Review*, p. 445 (1940).

<sup>33</sup> On freedom from arbitrary arrest and detention, see *Chattin, op. cit.*, and, generally, I M. Whiteman, *Damages in International Law*, pp. 287 *et seq.* Whiteman records and catalogues numerous cases in which a State was held responsible for acts constituting arbitrary arrest and detention. On cruel and inhumane treatment, see *The Harry Roberts Claim, op. cit.* and I M. Whiteman, *Damages in International Law*. The Court recognized in the *Corfu Channel Case, Merits, Judgment, I.C.J. Reports 1949*, p. 4 at p. 22, that "elementary considerations of humanity, even more exacting in peace than in war" belonged to the "general and well recognized principles" creating obligations under international law. See also A. von Verdross and K. Zemanek, *Volkerrecht*, p. 81 (4th ed., 1959).

(c) *Provision for Constant Protection and Security Imports Fundamental Standards of Human Rights*

It has been and remains the established position of many States, including the United States, that States have an international legal obligation to observe certain minimum standards in their treatment of aliens. It is the position of the United States in this case that Iran's commitment to afford United States nationals in Iran "the most constant protection and security" obligates Iran, at the very least, to comply with those minimum standards.

In urging the latter position upon the Court, the United States recognizes that, as pointed out by Garcia-Amador, the question whether such minimum standards of treatment for aliens exist as a matter of customary international law has been a subject of some controversy<sup>34</sup>. It has been argued that no such standard can or should exist, but such force as that position may have had has gradually diminished as recognition of the existence of certain fundamental human rights has spread throughout the international community. The existence of such fundamental rights for all human beings, nationals and aliens alike, and the existence of a corresponding duty on the part of every State to respect and observe them, are now reflected, *inter alia*, in the Charter of the United Nations<sup>35</sup>, the Universal Declaration of Human Rights<sup>36</sup> and corresponding portions of the international Covenant on Civil and Political Rights<sup>37</sup>, regional conventions and other instruments defining basic human rights<sup>38</sup>, and the international law relating to acts of terrorism, including the taking of hostages<sup>39</sup>.

In view of the universal contemporary recognition that such fundamental human rights exist for nationals and aliens alike, Iran's obligation to provide "the most constant protection and security" to United States nationals in Iran includes an obligation to observe those rights—and yet it is indisputable that the Government of Iran has violated that obligation. For example, a host of States, including Iran, are parties to the International Covenant on Civil and Political Rights<sup>40</sup>, and Articles 9 and 10 of that Covenant provide as follows:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

.....  
 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

By allowing and endorsing the arbitrary and inhumane detention of United States nationals in Tehran, the Government of Iran has plainly violated these fundamental principles, which today are principles not only of customary international law but of the modern, conventional law of human rights. As observed by this Court in its Order of 15 December 1979, the conduct of the

<sup>34</sup> F. V. Garcia-Amador, "State Responsibility in the Light of the New Trends of International Law", 49 *American Journal of International Law*, pp. 339, 343.

<sup>35</sup> Charter of the United Nations, Articles 1, 55 and 56.

<sup>36</sup> Universal Declaration of Human Rights. See in particular Articles 3, 5, 7, 9, 12 and 13.

<sup>37</sup> International Covenant on Civil and Political Rights. See in particular Articles 7, 9 and 12.

<sup>38</sup> See, for example, the Charter of the Organization of American States, Article 5; the 1948 American Declaration of the Rights and Duties of States; the 1955 European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>39</sup> See, for example, the United Nations Convention against the Taking of Hostages, Annex 55 to this Memorial.

<sup>40</sup> The United States is a signatory.

Government of Iran has exposed and is exposing the United States nationals in Tehran "to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm" (at para. 42). That being so, it necessarily follows that Iran has violated its treaty obligation to provide United States nationals in Iran with "the most constant protection and security".

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

As Hackworth states, "The rule of international law is well settled that an alien who has been taken into custody by the authorities of a State is entitled to receive from those authorities just and humane treatment, regardless of the offence with which he is charged"<sup>41</sup>. The commitment spelled out in Article II, paragraph 4, and Article XIX of the Treaty of Amity, Economic Relations, and Consular Rights is a reflection and emphatic reiteration of this well-settled rule<sup>42</sup>.

As previously explained, the facts of this case compel the conclusion that the treatment of the hostages now being held at the United States Embassy falls far below what could be described as humane and reasonable treatment. Moreover, the facts establish beyond any doubt that the Government of Iran has not permitted the hostages to communicate with their Government or to have access to United States consular officials.

Thus, in these vital respects as well it is clear beyond dispute that the Government of Iran stands in flagrant violation of its international obligations, as those obligations are prescribed by customary international law and specified by the terms of the Treaty of Amity, Economic Relations, and Consular Rights.

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<sup>41</sup> 5 G. Hackworth, 5 *Digest of International Law*, p. 606.

<sup>42</sup> See, in this regard, the Universal Declaration of Human Rights, *supra*, in particular Articles 5, 7, and 9; International Covenant of Civil and Political Rights, in particular Articles 7, 9, and 10; see also UN General Assembly resolution 3452 (XXX), "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", in particular Articles 1, 2, 3 and 4; and the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/CONF/6/1, Annex IA. Note also the Draft Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment adopted by the Economic and Social Council on 10 May 1979, resolution 1979/34.

## 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**

Various Iranian spokesmen have stated or implied that some of the members of the United States Embassy in Tehran may have been engaged in functions (specifically, information-gathering or intelligence work) that are not contemplated by Article 3 of the Vienna Convention on Diplomatic Relations<sup>1</sup> and that such actions, and the use of Embassy premises for such purposes, justify Iran's failure to accord inviolability to United States diplomatic agents and premises under Articles 22 and 29-35 of the Vienna Convention on Diplomatic Relations. But even if—contrary to fact—the Government of Iran had proved to the Court that in one or more respects the United States or the members of its Embassy had violated one or more obligations under the Vienna Convention, there would be no ground for finding that such violations excuse Iran from the legal obligations previously described in this Memorial.

It may be noted at the outset that reliance on Article 3 of the Vienna Convention on Diplomatic Relations as a comprehensive catalogue of functions of diplomatic missions would not be justified. The introductory phrase of that Article, which includes the words, "*inter alia*", makes plain that Article 3 was not intended to list exhaustively all proper diplomatic functions or to state definitive limitations on diplomatic activity.

Conceivably Iran might nevertheless point to the fact that Article 3 (1) (d) of the Convention lists, among the functions of a diplomatic mission, "ascertaining by all lawful means conditions and developments in the sending State" (italics added) and argue on that basis that, if any United States diplomatic agent in Iran had gathered information by means which were not lawful under Iranian law, such conduct would have violated Article 3 (1) (d) and would now provide justification for Iranian violations of other provisions of the Convention.

Such an argument would suffer from two vitiating deficiencies. First, there are absolutely no facts before this Court suggesting that any United States national violated any Iranian law. Secondly, and even more importantly, even if, *arguendo*, such facts were before the Court, it is clear as a matter of customary international law—which in this respect is codified and reflected in Article 9 of

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<sup>1</sup> Article 3 provides:

"1. The functions of a diplomatic mission consist, *inter alia*, in:

- (a) representing the sending State in the receiving State;
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving State;
- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention, shall be construed as preventing the performance of consular functions by a diplomatic mission."

the Vienna Convention on Diplomatic Relations<sup>2</sup>—that the sole remedy available to Iran as against such supposed unlawful activities by foreign diplomatic agents would be to notify the United States that the accused persons were *persona non grata* and thus to require their recall to the United States<sup>3</sup>. No matter what evidence the Government of Iran may believe it possesses as against any United States diplomatic agent, member of the administrative or technical staff, or consular officer, such evidence could not possibly justify the Iranian conduct which has taken place at the United States Embassy in Tehran.

On a related theme Iran might also argue that if United States personnel violated the laws of Iran, such conduct violated Article 41 of the Vienna Convention on Diplomatic Relations—requiring respect for “the laws and regulations of the receiving State” and non-interference in its “internal affairs”—and thereby excused Iran from its treaty obligations to respect the inviolability of such personnel and of the premises of the Embassy<sup>4</sup>. The legislative history of Article 41 conclusively shows, however, that even if, *arguendo*, Iran could prove such violations to the Court, Iran could not properly rely on that Article to excuse it from performance of the obligations imposed by other articles of the Convention. Paragraphs (1) and (4) of the authoritative commentary of the International Law Commission on the text of Article 41 explain that the introductory phrase of paragraph 1 of that Article—“Without prejudice to their privileges and immunities”—means that “failure by a diplomatic agent to fulfil his obligations does not absolve the receiving State from its duty to respect the agent’s immunity”. Similarly, paragraph 4 of the Commentary states that failure to fulfil the duty laid down in paragraph 3 of Article 41 “does not render Article [22] (inviolability of the mission’s premises) inoperative ...”<sup>5</sup>.

<sup>2</sup> Article 9 provides:

“1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.”

<sup>3</sup> Both the United States and Iran itself have followed the prescribed procedure in the past. In 1956, for example, a Soviet military attaché in Tehran was suspected of espionage activity, and the Government of Iran, recognizing the attaché’s diplomatic status, expelled him. C. E. Wilson, *Diplomatic Privileges and Immunities*, p. 63, n. 115 (1967). Similarly, in 1978 the United States declared a Soviet diplomat *persona non grata* in roughly similar circumstances. *United States v. Enger*, 472 F. Supp. 490 (D.N.J. 1978).

<sup>4</sup> Article 41 provides:

“1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.”

<sup>5</sup> II *Yearbook of the International Law Commission* 1958, p. 104.



It is accordingly clear that alleged violations by the United States of its obligations under the relevant treaties would not—even if proved—detract from the governing obligations which Iran owes to the United States in this case. Nor would such alleged violations in any way mitigate the multiple, profound and proven violations of those obligations by the Government of the Islamic Republic of Iran. The consequent responsibility of the Iranian Government under international law to the Government of the United States will be addressed in the next Part of this Memorial.

## PART VI

## THE RELIEF SOUGHT BY THE GOVERNMENT OF THE UNITED STATES

The United States respectfully requests that the Court grant the relief specified below.

**A. The Proposed Declaration by the Court of Iran's Violations of the Legal Obligations It Owes to the United States**

The multiple and profound violations by the Islamic Republic of Iran of its international obligations to the United States, under the four treaties on which reliance has been placed, has been demonstrated in the foregoing Parts of this Memorial. The Court is accordingly requested to adjudge and declare that Iran has violated and is in continuing violation of these international obligations.

The purpose of such a declaration is to "ensure recognition of a situation at law, once and for all and with binding force as between the Parties, so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned". *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13, p. 20.*

**B. The Proposed Determination by the Court that Iran Shall Perform Its Specific Legal Obligations towards the United States**

A declaration by the Court as to the applicability of the relevant treaty provisions to the conduct involved will remove any uncertainty as to the legal status of that conduct, but it cannot of itself constitute appropriate satisfaction in a case of this kind. In this respect the present case contrasts with the very different circumstances of the *Corfu Channel* case (*Merits, Judgment, I.C.J. Reports 1949, p. 4 at p. 36*), where this Court held that its declaration of a violation of Albania's sovereignty constituted in itself appropriate satisfaction. In that case the United Kingdom had conducted a mine sweeping operation in the Corfu Channel after two British destroyers had struck mines with considerable loss of life. Before the minesweeping operation took place, the Albanian Government stated that "it did not consider it inconvenient that the British fleet should undertake the sweeping of the channel of navigation" but maintained that any sweeping without its consent would be a "deliberate violation of Albanian territory and sovereignty". It was accordingly clear that Albania had sustained no actual damage from the minesweeping operation and that, in circumstances where no further minesweeping was contemplated, the declaration by the Court that "the action of the British Navy constituted a violation of Albanian sovereignty" did indeed constitute "appropriate satisfaction" (*ibid.*, pp. 33, 35, 36).

In the extraordinary circumstances of this case, however, Iran is engaged in continuing, damaging, illegal conduct, of an irreparable character, and it is therefore incumbent on the Court to prescribe, in a judgment on the merits binding upon Iran, the specific steps which Iran must take to cease its violations

of its international obligations. This Court should declare not only that the existing situation is illegal, but that Iran must bring that situation to an end—and at once. As the Court held in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion, I.C.J. Reports 1971*, p. 16 at p. 54:

“A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon Members of the United Nations, to bring that situation to an end. As this Court has held, referring to one of its decisions declaring a situation as contrary to a rule of international law: ‘This decision entails a legal consequence, namely, that of putting an end to an illegal situation (*I.C.J. Reports 1951*, p. 82).’”

The Court’s reference was to its judgment in the *Haya de la Torre* case, *I.C.J. Reports 1951*, p. 71 at p. 82, where, having found that Colombia had granted asylum irregularly, the Court held that it was “bound to terminate it”. No less can the Government of Iran be bound here to terminate its illegal holding of the hostages and its occupation of the premises of the United States Embassy in Tehran.

The steps which Iran must take are in fact clearly and essentially set forth in the Order of the Court of 15 December 1979, and in the repeated resolutions of the Security Council, particularly that of 31 December 1979. They are specified in full particularity in the final conclusions of this Memorial.

### **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**

The United States further requests that the Court adjudge and declare that the United States is entitled, in its own right and in the exercise of its right of diplomatic protection of its nationals, to the payment of reparations by Iran for the latter’s violations of the international legal obligations which it owes to the United States in respect of the seizure of its Embassy and Consulates and the holding of its nationals as hostages.

The Court’s jurisprudence establishes that “the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.” (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; see also *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 174, at p. 184.) Indeed, in the *Corfu Channel* case (*Merits, Judgment, I.C.J. Reports 1949*, p. 4 at pp. 23-24), this Court stated that it follows from the establishment of the responsibility of a State for the breach of an international obligation “that compensation is due”.

Reparation must, as far as possible, “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed” (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). Though the damage suffered by individuals may serve as a convenient scale for the calculation of the reparation due to the State, the damage suffered by the State itself must also be considered (*ibid.*, at p. 28).

In the case before the Court, the United States asserts its right to full

compensation for the injuries suffered both by the United States as a State and by its nationals as victims of Iran's unlawful actions. It may be noted that, in respect of the rule of the nationality of claims, all those for whom the right of diplomatic protection is asserted were nationals of the United States at the time of their seizure and remain so.

It may also be noted that in this case, involving a direct violation by a State of treaty obligations which it owes to another State, there can be no proper suggestion that the United States nationals involved should have exhausted local remedies. Since direct injury to United States interests is involved, the exhaustion rule is not applicable. *Award of the Arbitration Case Between the Government of the United States of America and the Government of His Majesty the King of Egypt concerning the Claim of George J. Salem*, 2 *Reports of International Arbitral Awards*, p. 1194; *Swiss Confederation v. Federal Republic of Germany*, *International Law Reports*, Vol. 25, 1958-1, pp. 33, 42; *Case concerning the Air Services Agreement of 27 March 1946 (United States of America v. France)*, *Arbitral Award of 9 December 1978*, paragraph 30 (unpublished); T. Meron, "The Incidence of the Rule of Exhaustion of Local Remedies", in 35 *British Year Book of International Law*, pp. 83-84 (1959); A. Freeman, *The International Responsibility of States for Denial of Justice*, pp. 404-405 (1938). As the then Professor Roberto Ago, the International Law Commission's Special Rapporteur on State Responsibility, stated concerning cases where both the rights of a State and the rights of private persons have been involved, "it was generally the infringement of the rights of the State which took precedence"<sup>1</sup>. Moreover, the rule of the exhaustion of local remedies is not applicable here because, quite obviously, in Iran today there are no local remedies to exhaust.

In view of the continuing character of Iran's unlawful activities, it is not now possible to assess all of the elements, still less the full extent, of the reparations due to the United States and its nationals. The United States accordingly proposes to reserve to a later stage of the proceedings the presentation of documentation and argumentation in respect of the elements, dimensions, and evaluation of its claims.

At this time, however, it is appropriate for the Court to adjudge and declare the principle that reparation is due to the United States in this case, on its own behalf and on behalf of its nationals. The *Fisheries Jurisdiction* case (*Federal Republic of Germany v. Iceland*), *Merits, Judgment, I.C.J. Reports 1974*, p. 175 at pp. 203-206, indicates that, under proper circumstances, such a request will be granted. There the Court stated that "[i]t is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence and to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed" (*ibid.*, at p. 204). This is exactly what the United States proposes in the present case.

Enunciation of the right to compensation in this case would not be a truism or a superfluous act. This Court can best uphold the rule of law in the international community by emphasizing that serious breaches of international law are not without consequence. Affirmation of entitlement to reparation will serve, though not satisfy, this purpose. When the present crisis has passed with the freeing of the hostages, the United States hopes to begin early discussions with Iran on the resolution of outstanding disputes. To facilitate the commencement of these discussions and their progress toward a mutually satisfactory resolution of all claims, the United States requests the Court to confirm that the United States must be made whole with respect to all injuries suffered by it and its nationals for which Iran is internationally responsible.

<sup>1</sup> 1 *Yearbook of the International Law Commission 1977*, p. 265.

#### D. Final Conclusions

For the foregoing reasons, the Government of the United States respectfully requests that the Court adjudge and declare as follows:

- (a) that the Government of the Islamic Republic of Iran, in permitting, tolerating, encouraging, adopting, and endeavouring to exploit, as well as in failing to prevent and punish, the conduct described in the Statement of the Facts, violated its international legal obligations to the United States as provided by:
- Articles 22, 24, 25, 26, 27, 29, 31, 37, 44 and 47 of the Vienna Convention on Diplomatic Relations;
  - Articles 5, 27, 28, 31, 33, 34, 35, 36, 40 and 72 of the Vienna Convention on Consular Relations;
  - Article II (4), XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran; and
  - Articles 2, 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- (b) that, pursuant to the foregoing international legal obligations;
- (i) the Government of the Islamic Republic of Iran shall immediately ensure that the premises of the United States Embassy, Chancery and Consulates are restored to the possession of the United States authorities under their exclusive control, and shall ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;
  - (ii) the Government of the Islamic Republic of Iran shall ensure the immediate release, without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or who are or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;
  - (iii) the Government of the Islamic Republic of Iran shall as from that moment, afford to all the diplomatic and consular personnel of the United States the protection, 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;
  - (iv) the Government of the Islamic Republic of Iran shall, in affording the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled, including immunity from any form of criminal jurisdiction, ensure that no such personnel shall be obliged to appear on trial or as a witness, deponent, source of information, or in any other role, at any proceedings, whether formal or informal, initiated by or with the acquiescence of the Iranian Government, whether such proceedings be denominated a "trial", "grand jury", "international commission" or otherwise;
  - (v) the Government of the Islamic Republic of Iran shall submit to its competent authorities for the purpose of prosecution, or extradite to the United States, those persons responsible for the crimes committed against the personnel and premises of the United States Embassy and Consulates in Iran;

(c) that the United States of America is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals held hostage, of reparation by the Islamic Republic of Iran for the violations of the above international legal obligations which it owes to the United States, in a sum to be determined by the Court at a subsequent stage of the proceedings.

(Signed) Roberts B. OWEN,  
Agent for the Government of  
the United States of America.

12 January 1980.

### STATEMENT OF VERIFICATION

DEPARTMENT OF STATE

WASHINGTON

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. In the circumstances of this case, the United States has had to rely on newspaper, television and radio reports for a number of the facts stated in the Memorial. The facts stated in the Memorial of the United States to the Court are, to the best of my knowledge and belief, true.

(Signed) David D. NEWSOM.

11 January 1980.

## ANNEXES TO THE MEMORIAL

## Annex 1

WASHINGTON STAR, EXCERPT, 10 NOVEMBER 1979, P. A7 (ITALICS ADDED)

## IRAN'S VOWS TO PROTECT US EMBASSY DETAILED

By Henry S. Bradsher, *Washington Star* Staff Writer

The Iranian Government promised three times to protect the US Embassy in Tehran, a US official says, but when militants attacked it last Sunday the promised help failed to arrive.

American diplomats and Marine guards held out in the main embassy building for almost three hours before being captured. Iranian protective forces were stationed just five minutes away, the official said.

His brief account was given to reporters yesterday in denying charges that the US Government was unprepared for trouble in Tehran. Later, other sources supplied additional details of the situation leading up to the taking of some 60 American hostages.

After an initial period of uncertainty when the Embassy fell, the Carter administration now has taken a number of initiatives to try to obtain the hostages' release. It has flatly rejected the militants' demand for the return of deposed Shah Mohammad Reza Pahlavi.

The initiatives will take time to produce results, the sources said. It is still too early to tell which ones might be productive.

These sources, familiar with the background to the hostage situation, said the administration had been aware of a probably hostile Iranian reaction to admitting the Shah to the United States. When the administration decided to accept the advice of his doctors that he needed medical treatment in New York, the subject was discussed with the Government of Iranian Prime Minister Mehdi Bazargan.

The US Chargé d'affaires in Tehran, L. Bruce Laingen, discussed the situation with Bazargan's foreign minister, Ibrahim Yazdi. Twice before the Shah arrived in New York, October 22, and once again later. Laingen received assurances that the Government would carry out the internationally recognized obligation to protect foreign embassies.

Bazargan's government was already looking shaky. Frustrated by his inability to control the situation in Iran and repeated conflicts with religious authorities, he had several times offered his resignation to Ayatollah Ruhollah Khomeini, who has dominated Iran since the Shah fell in January.

## YAZDI'S WORD ACCEPTED

But Yazdi had been a close colleague of Khomeini's and was rumoured to be on his shadowy Revolutionary Council, so Yazdi's word seemed to carry weight from the religious as well as the governmental authorities. And Yazdi was the man who had intervened with militants to free the US Embassy staff when it was captured once before, on February 14.

The staff numbered around 1,000 just before the Shah fell. After the February incident, it was slashed to 80. By last Sunday, 73 Americans were assigned.

Security plans were carefully made for them so they could delay any attackers until help arrived. But US officials have repeatedly emphasized this week that no embassy can become a fortress to hold off armed attack on its own. Its protection must ultimately depend on the foreign government in which it is located.

The State Department felt during the spring that the situation in Iran was stabilizing. It told US businessmen who had left during the riots against the Shah that they could return to Iran if necessary. (They were advised Monday night to get out again.)

Secretary of State Cyrus R. Vance met Yazdi at the United Nations in September and discussed better relations. At other levels co-operation between the two Governments was improving.

Then came the Shah's arrival in New York. Khomeini began broadcasting harshly anti-American statements.

A large demonstration against the US admission of the Shah was scheduled for Thursday, November 1. Laingen was apprehensive of an attack on the Embassy then. But the demonstrators were kept in another part of Tehran, and police around the Embassy were strengthened.

#### A MILITANT KHOMEINI CALL

The State Department relaxed a bit—until it read the next day a statement issued by Khomeini. He called for students "to expand with all their might their attacks against the United States".

On Sunday, a working day in Moslem countries, Laingen, the embassy's security officer and a political officer went to the Foreign Ministry on routine business. While they were there, students or others claiming to be students marched on the embassy.

*Foreigners outside it saw the police fade away.* The attackers poured into the 27-acre compound. The Americans and some foreigners working for them retreated according to plan to the two-story office building and locked its heavy doors and barred windows. Someone in the building telephoned the operations centre at the State Department. For almost three hours a running account of events was relayed here.

At 3.11 a.m. Sunday, as the seriousness of the situation became apparent, the assistant secretary of state for the area, Harold H. Saunders, was telephoned at home. Vance was later phoned, and other officials around town were also patched into the call from Tehran.

They listened to the action: the attackers had broken into the basement, the 13 Marine guards had been forced to abandon the first floor, closing the steel doors to the second floor—the guards had been told not to use their firearms—and finally the second floor had been penetrated.

Diplomats and secretaries were busily shredding and burning embassy files, although some were captured. No firearms were used, and the Marines had used tear gas only outdoors, for fear of worsening the situation.

Finally, the person on the phone described Americans being rounded up and marched out. He spoke quietly, trying not to be noticed. Then he put the phone down.

With the line still open, officials here could hear shouting in the background. Then the line went dead. It was 4.57 a.m. here, midday there.

The State Department had gotten through to Laingen at the Foreign Ministry. Where was the promised protection? The ministry seemed to be powerless.

Something that is still unclear here had happened to the authority of Bazargan's Government. On Tuesday he offered his resignation again. This time Khomeini accepted it.



## Annex 2

EXCERPT FROM TELEPHONE INTERVIEW WITH SADEQ TABATABA'I. FBIS, DAILY REPORT, 6 NOVEMBER 1979, PP. R14, R16

*TABATABA'I ON OCCUPATION OF EMBASSY, BAZARGAN  
ALGIERS VISIT*

LD051328 Tehran Domestic Service in Persian, 1140 GMT, 5 Nov. 79 LD.

*[Text]* Sadeq Tabataba'i, the government spokesman, in a telephone interview with the Voice of the Iranian Islamic Republic, has provided some explanations regarding the prime minister's visit to Algiers and his meeting with Brzezinski. He also spoke about the occupation of the American Embassy. We draw your attention to this telephone interview: [begin recording].

\* \* \*

*[Question]* Since the occupation of the Embassy by those following the Imam's policy, has there been any contact between American officials and the Government?

*[Answer]* I have no knowledge of this, but yesterday the American Embassy chargé d'affaire's immediately contacted the Foreign Ministry and stated that he lacks security and that he would need protection. So, on orders of the Government, the Revolution Guards entered to prevent clashes there. Last night the brothers who are occupying the Embassy thanked the guards for their presence and for maintaining security there [end recording].

## Annex 3

EXCERPT FROM INTERVIEW WITH ABU SHARIF. FBIS, DAILY REPORT, 4 DECEMBER 1979, PP. R37, R40

NC031330 Beirut AS-SAFIR in Arabic, 1 Dec. 79, p. 10 NC.

[Interview in Tehran with Abu Sharif, operations commander of the Iranian Revolution Guards—date not given.]

\* \* \*

*[Question]* What was the Revolution Guards Corps' role in the occupation of the US Embassy?

*[Answer]* As a matter of fact, we played no role in the occupation of the Embassy, which was occupied by students supporting Imam Khomeini. The guard's role was to protect the safety of the hostages and secure the area. There were signs of a serious plot to explode the situation around the Embassy. Our task was to protect the safety of both the hostages and the students.

## Annex 4

EXCERPT FROM SPEECH BY AYATOLLAH KHOMEINI. FBIS, DAILY REPORT, 29 OCTOBER 1979, PP. R2, R3

LD282400 Tehran Domestic Service in Persian, 2030 GMT, 28 Oct. 79 LD.  
[Speech by the Imam Khomeini to members of the Islamic Association of

Students of the Mofidi College of Translation in Qom on 28 October—  
recorded.]

*[Excerpts]* In the name of God, the compassionate, the merciful:

\* \* \*

I am not referring to the American nation. I mean the American Government. So you can see how the superpowers treat us, and yet we are still bowing to them in humility and working for them. Let the pens that work for them be broken! Let the tongues that speak in their favour be cut off! Just think of it: They are sending drugs they do not allow in their country to the Third World. To hell with what happens to us as long as they get their money! This has been the state of affairs right from the start. They never gave us anything that was useful to us.

All the problems of the East stem from these foreigners, from the West, and from America at the moment. All our problems come from America. All the problems of the Muslims stem from America—from an America that has strengthened Zionism to such an extent and is strengthening to such an extent that it is massacring our brothers in their multitudes.

#### Annex 5

STATEMENT BY AYATOLLAH KHOMEINI. FBIS, DAILY REPORT, 2 NOVEMBER  
1979, PP. R1-R2

LD012250 Tehran Domestic Service in Persian, 2030 GMT, 1 Nov. 79 LD.

*[Text]* We have just received the following statement issued by the office of Imam Khomeini in Qom:

In the name of God, the merciful, the compassionate. Four November is the anniversary of the day when the hated régime attacked the University of Tehran and massacred our dear students.

The régime, opposed to all manifestations of civilization and progress in the country, one day attacked the Feyziyeh theological school [in Qom] and other Islamic schools throughout Iran, and another day it attacked Tehran University and colleges and universities throughout Iran, the centres of knowledge and scholars.

Now, with the anniversary of the attack on the University, it is necessary for all the great spiritual figures of Qom, Tehran and other towns near Tehran to take part in a ceremony to be held at Tehran University to bring the two thinking minds closer together. As for the spiritual figures in other cities, they should also take part in similar ceremonies held in other universities to mark the day and, thus, by their presence, foil the divisive plots aimed at these two gigantic forces. These spiritual figures should join pupils, students and professors in order to achieve this goal. Our enemies use every opportunity, especially on this day, to hatch all sorts of plots. They are determined to use any pretext to disturb our people's peace. It is, therefore, up to the dear pupils, students and theological students to expand with all their might their attacks against the United States and Israel, so they may force the United States to return the deposed and criminal Shah, and to condemn this great plot. It is also up to our dear university students and university staff and theological students and university staff to maintain their unity with everything in their power and support these two fronts with all their might. God bless you all.

*[Signed]* Ruhollah Mosavi Khomeini.

## Annex 6

MESSAGE FROM MUSLIM STUDENT FOLLOWERS OF THE IMAM'S POLICY. FBIS,  
DAILY REPORT, 6 NOVEMBER 1979, PP. R3-R4

LD051554 Tehran Domestic Service in Persian, 1030 GMT, 5 Nov. 79 LD.

[Message from the Muslim Student Followers of the Imam's Policy to the leader of the Islamic revolution of Iran—read by announcer.]

[Text] On numerous occasions you have shouted out that westernization is the curse of our intellectuals. Now, with a hundred regrets, we are witnessing that westernized, liberal intellectuals who, at the top of many executive organs of the country, have left open the way for the influence of the United States and Israel.

How can we tolerate this, when the responsible officials sit around one table with American wolves, while you angrily shout that the United States is the major enemy of the Muslim and oppressed masses. However, it seems natural for government officials who believe in the step-by-step policy, as an extension of their record for the past eight months—a record that allows the Government to sit around one table with the murderers of our [word indistinct] martyrs and hold talks with the great conspirators about the safeguarding the [word indistinct] interests of the martyrs. The same person [presumably Bazargan] who does not consider the principal step of the revolution to be the elimination of the economic, cultural and political sovereignty of the West has left open the way for the infiltration and propagation of dependent capitalism and the decadent, Western moral standards.

Yes, Imam, we could not tolerate this any more. It was you who cried out that it is up to the pupils, university students and theology students to extend their attacks against the United States and Israel, with full strength, to force the United States to extradite the deposed, criminal Shah.

And so, in following your orders, and with faith in the pursuit of your path which is the path of God, we decided to take a step, small as it was, by occupying the Embassy of the US mercenaries in Iran and voice your divine wrath and that of our Muslim nation, the wrath of the nation which cannot tolerate the existence of the US spy lair and the centre of CIA conspiracies in the heart of her revolution. The wrath of the nation does not accept the lack of revolutionary decisiveness in her government regarding the extradition of the Shah by the United States, the wrath of the nation which cannot accept all the delay in exposing and abrogating the diplomatic, military and economic contracts between Iran and the United States.

Now, on the anniversary of the martyrdom of our martyrs who, while chanting Allahu Akbar [God Is Great], became the targets of US and Israeli bullets, we vow to you that, hand-in-hand and at your command, we will continue the fight against international criminals, headed by the United States, to the total destruction of their sovereignty.

Imam, your path is being pursued.

[Signed] The Muslim Student Followers of the Imam's Policy.

## Annex 7

EXCERPT FROM INTERVIEW WITH SAYYED AHMAD KHOMEINI

[See Selected Document 1, Appendix C, No. 34, pp. 97-98, supra] until the words "to contact them": line 30.

## Annex 8

INTERVIEW WITH BANI ASADI. FBIS, DAILY REPORT, SUPPLEMENT 39,  
13 DECEMBER 1979, P. 8

LD130236 Hilversum in English to Central and West Africa, 2030 GMT, 12 Dec. 79 LD.

*[Text]* The students who have been occupying the American Embassy in Tehran for 35 days now are practising Muslims but they use coarse and unflexible methods. These are the words of Hoseyn Bani Asadi, the former deputy prime minister in Bazargan's government and the first person who has been able to provide some background information on the people who are holding 50 Americans hostage. Our Middle East correspondent (James Dorsey) sent us this report from Tehran:

Bani Asadi knows the Embassy occupiers personally and says they are between 20 and 25 years old and that most of them are engineering students. During the months prior to the Embassy takeover, the students had been working on an Iranian Government-financed development project for which Bani Asadi was responsible. The former deputy prime minister remarked that the students were particularly active in organizing opposition to the Government. They accused the Government of being bureaucratic and of sticking stubbornly to rules and regulations. The students wanted the government to continue financing the development project without meddling with or stipulating the substance of the programme.

Mr. Bani Asadi believes that the root of the conflict lies in the opposing views of the Ayatollah Khomeini and former Prime Minister Mehdi Bazargan. Mr. Bazargan was primarily concerned about giving the Iranian revolution a strong foundation, while the Ayatollah and the students wanted above all to broaden the basis of the revolution. Mr. Bani Asadi sees these two approaches as two sides of the same coin, pointed out that every individual and every society must grow in order to exist, but must also exist in order to grow.

The former deputy prime minister says that the students occupying the Embassy have failed to understand that point. Mr. Bani Asadi does not agree with the assumption that the students will not listen to Khomeini now that they have tasted power. If the Ayatollah decides to end the occupation, he says, then the occupation will be ended. All Khomeini has to do, according to Bani Asadi, is to stop broadcasting news about the American Embassy on Iranian television and radio and the students will rapidly become isolated.

## Annex 9

EXCERPT FROM INTERVIEW WITH SADEQ GOTBZADEH. *EXCELSIOR*, MEXICO CITY, 26 DECEMBER 1979 IN SPANISH, INFORMAL UNITED STATES TRANSLATION

(By *Excelsior* correspondent Victor Payan)

*[Text]* Tehran, 25 Dec. (PL)—Foreign Minister Sadeq Gotbzadeh said this afternoon that if the United States continues to pressure the Iranian nation, there will be no need for an international tribunal to judge the hostages at the US Embassy in this capital; things will be handled in a manner totally different from the present cordial manner. The Foreign Minister added that things have gone beyond what the Iranians can stand, and they are no longer willing to tolerate the arrogance of the United States. Therefore, the Foreign Minister said he will meet with the Imam Khomeini tomorrow or the next day to ask him to

deal more vigorously with this matter, in view of the serious problems the United States is causing.

Gotbzadeh, who is considered to be the Islamic Government's most controversial official and who recently had a serious conflict with the students, threatened to take vigorous measures regarding the future of the hostages who have been inside the US Embassy for the past 51 days.

During an interview with local newsmen and two foreign correspondents, William Haak of Sao Paulo de Brasil and the *Excelsior* correspondent, the Foreign Minister said there is no reason for this nation to continue tolerating the boldness of the US Government. The United States is doing everything possible to bring about an economic blockade and cause all kinds of problems.

"We have the hostages and we should not care if Carter continues to bark. The only thing Carter wants is to use the hostages to be re-elected. Thus, Carter continues to try to discredit us in everyone's eyes while we are showing the entire world what the US Embassy is like. Despite this, we are behaving like human beings and have even allowed the hostages to celebrate Christmas with clergymen invited especially for this purpose."

The Foreign Minister also said the Iranians are sick and tired of the foreign press, which only serves imperialist interests and distorts the truth about what is happening in this country.

"This is not talk for its own sake", said Gotbzadeh. He added that the best example of the news media's distortion of the facts is the statement recently attributed to him saying "I wanted the hostages to be released without a trial of any kind. This is totally untrue."

The Foreign Minister said angrily that this lie could have caused serious damage. The media tried to deceive the students with the lie that the hostages will be released without being charged. There was, he added, another distortion of the truth when the Western information media said the students were against me.

He was asked for his viewpoint on the students and if he knew their political beliefs and party. He responded: "I know only a few of the students, and I cannot answer this question because their political party or who they trust does not matter."

"The fact is that the seizing of the Embassy was approved by the Imam and, consequently, by the people. As far as I am concerned, I will do whatever I have to do."

#### Annex 10

#### MESSAGE FROM IMAM KHOMEINI'S OFFICE IN QOM AND STATEMENT NO. 28 OF THE MUSLIM STUDENT FOLLOWERS OF THE IMAM'S POLICY. FBIS, DAILY REPORT, 13 NOVEMBER 1979, P. R15

LD101722 Tehran Domestic Service in Persian, 1630 GMT, 10 Nov. 79 LD.

[10 November message from Imam Khomeini's office in Qom to Hojjat ol-Eslam Seyyed Mohammad Mosavi Kho'ini, stationed in the "US spy nest", following meeting between papal envoy and Imam Khomeini—read by announcer.]

[Text] In His exalted name; dear fighting brother, Hojjat ol-Eslam Seyyed Mohammad Mosavi Kho'ini, this bureau hereby notifies you that, according to Imam Khomeini's order, it is necessary to admit His Excellency Annibale Bugnini, the Vatican's esteemed envoy to Iran, so that he may prepare a report on the conditions there for His Excellency Pope John Paul II.

We pray to God for the success of the untiring struggles of you and the other brothers and sisters.

Imam Khomeini's office; 10 November 1979.

LD101727 Tehran Domestic Service in Persian, 1630 GMT, 10 Nov. 79 LD.  
[Statement No. 28 of the Muslim Student Followers of the Imam's Policy  
"occupying the US spy base in Tehran"—read by announcer.]

*[Text]* In the name of God, the merciful, the compassionate: His Excellency Annibale Bugnini, the esteemed Vatican ambassador to the Islamic Iranian Republic, on the basis of an order issued by the leader of the Iranian revolution, His Excellency Imam Khomeini, you are hereby invited to come to the place where US hostages are being kept; it is on Ayatollah Taleqani St. and used to be called the US Embassy. You are invited to visit and see for yourself the place and the hostages and subsequently report to His Excellency Pope John II.

*[Signed]* The Muslim Student Followers of the Imam's Policy.

#### Annex 11

EXCERPT FROM STATEMENT NO. 32 OF THE MUSLIM STUDENT FOLLOWERS OF THE IMAM'S POLICY. FBIS, DAILY REPORT, 15 NOVEMBER 1979, PP. R5-R6

[Statement No. 32 of the Muslim Student Followers of the Imam's Policy stationed at the "den of American espionage"—read by announcer.]

*[Text]* In the name of God, the Compassionate, the merciful, addressed humbly to the entire aware and fighting Iranian nation at home and abroad: Your revolutionary move against the great Satan of the age, world-devouring America, has revived the hope of freedom from the claws of this criminal in the hearts of all oppressed on earth. The cries of "Death to America!" by brave Muslim Iranian youth are reverberating in all corners of the globe and teaching a lesson on liberty. Panic-stricken America, in order to extricate itself from its most severe impasse and to save itself from a definite political death, is resorting to any means, no matter how insignificant it might be, including publishing and putting out various views of individuals, parties and groups, as well as views of certain officials of the country, in such a way as to make the direction of this move and revolution look ambiguous to public opinion at home and abroad, and, by exaggerating the instances of differences of views between political organs and groups or between political figures, to convey to the world that the target of this move is not clear and that it will, therefore, come to nothing.

For this reason, in order to neutralize this kind of American plot, we deem it necessary to remind you of the following points:

1. The great divine move, which is in process against America the plunderer, is the continuation and continuity of the Islamic revolution of Iran.

2. It belongs to all the various strata of the Iranian nation; it is not dependent upon any particular party, organization or group; its leadership is in the hands of the able and great leader of the Islamic revolution of Iran, Imam Khomeini; and it is only the viewpoints of the leadership which determine the general direction of and measures related to this move.

#### Annex 12

DECREE OF AYATOLLAH KHOMEINI. FBIS, DAILY REPORT, 19 NOVEMBER 1979,  
P. R11

LD171017 Tehran Domestic Service in Persian, 0930 GMT, 17 Nov. 79 LD.  
[Decree issued 17 November by Imam Khomeini, addressed to Hojjat ol-Islam Mosavi Kho'ini—read by announcer.]

*[Text]* In the name of God, the compassionate, the merciful. Your Excellency Hojjat ol-Eslam Mosavi Kho'ini and the respected brothers and sisters, students stationed in the centre of espionage: The centre of espionage and conspiracy called the American Embassy and those people who hatched plots against our Islamic movement in that place do not enjoy international diplomatic respect.

The extensive threats and propaganda of the American Government are not of the slightest significance to our nation; nor is their military threat wise, nor is their economic embargo significant. Carter is making one mistake and that is that he thinks that all governments are standing with their eyes closed to do his bidding. This great mistake will also soon be made clear to him, and its first signs can already be seen. The Iranian nation has arisen so that these dens of espionage will not be able to continue their shameful deeds. The den of espionage and those professional spies will remain as they are until Mohammad Reza Pahlavi is returned to be tried and until he has returned all that he has plundered. However, because Islam has a special respect for women and blacks who have spent ages under American pressure and tyranny and who might have come to Iran under pressure, therefore, we will mitigate their cases if it is proved that they have not committed acts of espionage.

Dear students, please hand over the blacks and the women, if it is proven that they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran. The noble Iranian nation will not give permission for the release of the rest of them. Therefore, the rest of them will be under arrest until the American Government acts according to the wish of the nation. Greeting be upon you.

*[Signed]* Ruhollah Mosavi Khomeini, 17 November 1979.

#### Annex 13

STATEMENT NO. 37 OF THE MUSLIM STUDENT FOLLOWERS OF THE IMAM'S POLICY

*[See Selected Document I, Appendix C, No. 30, p. 88, supra]*

#### Annex 14

RESOLUTION OF THE MUSLIM STUDENT FOLLOWERS OF THE IMAM'S POLICY.  
FBIS, DAILY REPORT, 21 NOVEMBER 1979, PP. R11-R13

LD211320 Tehran Domestic Service in Persian, 1016 GMT, 21 Nov. 79 LD.  
[Resolution issued by Muslim Student Followers of the Imam's Policy; read by unidentified speaker at demonstration outside US Embassy in Tehran—live.]

*[Summary]* "1. The Iranian nation regards its Islamic revolution, under Imam Khomeini's leadership, at this juncture in history as an all-embracing struggle against world-devouring America.

2. The Iranian nation regards the American Government, this mother of corruption of the century, as its enemy No. 1, and will continue its relentless struggle against it until final victory.

3. The Iranian nation does not regard Mohammad Reza Pahlavi as a political refugee, and, as witnessed by all freedom-loving people in the world, regards this filthy creature as a professional criminal and a fugitive murderer.

4. The granting of sanctuary of Mohammad Reza Pahlavi, the condemned and fugitive criminal of Iran, by the American Government is an act contrary to international law, and thus the Iranian nation regards the American Government as guilty and strongly denounces it.

5. The American Government, now that it has in its hands the fugitive murderer and thief of Iran, Mohammad Reza Pahlavi, is dutybound in accordance with international law, before it is too late, to hand over this

condemned criminal to the Iranian nation and to return to Iran all the assets he has plundered from Iran.

6. The Iranian nation does not regard the US Embassy as a base of diplomatic activity; rather, based on proof, circumstantial evidence and definitive documents, it regards it as a base of espionage and conspiracy against the Iranian Islamic Republic and against the region, and thus regards the occupation of this den of espionage by the Muslim students following the Imam's policy as 100 per cent, legal and a revolutionary act.

7. The American hostages must be tried in Iran, and after exposure of their treacheries committed on orders from the American Government, they must be punished, unless the American Government hands over the deposed Shah to the Iranian nation, in which case they will be commuted by one degree [as heard], their trial will be foregone and they will be expelled from Iran."

8. America's threat of economic blockade or military threat will have no effect upon the resolve of the Iranian nation.

9. The Iranian nation praises the American black clergy in supporting the Iranian position.

10. The Iranian nation strongly denounces the restrictions imposed on Iranian students in the United States.

11. We denounce the distortion and lies spread by the US media against the Iranian Islamic Revolution.

12. All governments must know that giving sanctuary to the Shah will be *flagrant opposition to Iran's revolution and that they will be responsible for such act.*

13. The Iranian nation bears no hostility toward the American nation.

14. The Iranian nation supports the Revolution Council's measures so far in cutting off ties with the United States.

15. *The Iranian nation will declare a boycott of US goods.*

16. We call upon all Islamic countries to wage a struggle against the great Satan, America.

17. We demand struggle against oppressors led by the United States.

*[Signed] The Muslim Student Followers of the Imam's Policy.*

#### Annex 15

INTERVIEW WITH "STUDENT LEADERS". FBIS, DAILY REPORT, 26 NOVEMBER 1979, PP. R13-R14 (italics added)

NC232045 Paris AFP in English, 2040 GMT, 23 Nov. 79 NC.

[By Bernard Estrade.]

*[Text]* Tehran, 23 Nov. (AFP)—Trying US hostages for espionage will amount to putting imperialism on trial, the leaders of the militant Iranian students occupying the American Embassy said today.

"We would prefer to try the Shah himself, and, if he is turned over, we will release the hostages. Otherwise, we will try them", a group of them said in an interview with AFP inside the occupied Embassy building.

A half dozen young Iranians, serious and unshaven in appearance, met with two AFP correspondents late today in what used to be one of the Embassy's "investigation unit" offices.

Access to the office is through an armoured door that had plainly been opened with a blow torch. Despite the soundproofing of the Embassy, the strangely-muffled voices of Iranian speakers who incessantly harangue the crowds in front of the Embassy could be heard.

The student leaders seemed surprised by the question, "Do you think President Carter will give in and turn over the Shah?"



"It is not impossible. It is even probable", they replied. "In our ideology, we believe that if an entire people wish for something, they obtain it."

Asked about various compromise formulas being worked on, the students [words indistinct] of views is that of the (Ayatollah Ruhoolah Khomeini), and we follow only him. It has been decided that the Shah must be turned over."

They seem to reject—publicly at least—any thought of mediation. Acting foreign Minister Abolhassan Bani-Sadr has been attempting to organize a mediation effort, but he does not have Ayatollah Khomeini's support.

No date has been set for the trial, and the students refuse to say if they have decided how long it will be before the trial starts. When asked about the possible sentences if the accused are found guilty, the students replied simply that, "there are degrees of espionage and degrees in the sentences. They are set by Islamic law."

The student leaders, who are enrolled in Tehran's engineering and technical schools, denied that the hostages were subjected to "intense psychological pressure".

"Our ideology states that prisoners of war should be treated in a humane manner, and they are" they said.

*They said that the hostages have been told they will be tried.* The hostages include women (although the occupiers refuse to say how many) and two non-diplomat American citizens who happened to be in the Embassy at the time of the take-over.

Do the hostages know what they are accused of? "They know better than us", is the response.

The students said they released (?five) Asian-origin embassy employees because "their guilt was not proved". They claimed that "no more" non-Americans remain among the hostages, a statement disputed by other reports.

As for their threats that the Embassy would be blown up in the case of an American military intervention, they said, "technically, everything is ready" but would add no more.

#### Annex 16

EXCERPTS FROM INTERVIEW WITH AYATOLLAH KHALKHALI. FBIS, DAILY REPORT, SUPPLEMENT 39, 13 DECEMBER 1979, PP. 31-34

LD071371 Turin *La Stampa* in Italian, 6 Dec. 79, p. 3 LD.

[Igor Man undated interview in Tehran with Ayatollah Khalkhali: "Khomeini's Hangman Speaks".]

*[Text]* Tehran—"One must be inflexible. Many, too many, counter-revolutionaries have infiltrated into the centres of power to soften the revolutionary process. But they will not prevail. We must be tough, in accordance with the teachings of Lenin, Fidel Castro, Mao and Ho Chi Min—and I will also include Simon Bolivar and Allende." These thundering remarks were made by Ayatollah Khalkhali, bursting into the room where I had been waiting for 2 hours. Small, thick-set, with a ferret-like glance shielded by horn-rimmed spectacles and a well-groomed beard, the terrible hangman had just returned from Qom, where the Imam received him at length "with the usual affection".

\* \* \*

*[Question]* Somebody had described you as the Robespierre of the Khomeini revolution. Do you accept the comparison? (The Ayatollah did not know who Robespierre was and I had to explain it to him.)

*[Answer]* I have set myself only one objective, namely to save the people from

the scoundrels who have oppressed them, who have degraded our country. Do not heed false propaganda: I am neither Hitler nor Mussolini, but an impartial, calm and fair judge.

*[Question]* But it is said that you had two entirely innocent Kurdish messengers shot and that when you realized the mistake you commented: "Never mind, we will have two more martyrs."

*[Answer]* Rubbish.

*[Question]* It is also said that apart from having a certain defendant shot, you also had his brother, who supported him, shot. (This time he did not answer and indicated with a peremptory gesture of his gnarled hands that I continue.) Who appointed you top judge of the revolutionary tribunal?

*[Answer]* I owe the post to the benevolence of the holy Imam.

*[Question]* How many people have you sentenced to death?

*[Answer]* I do not remember, I have lost count.

*[Question]* Have you never had any hesitation, a moment of doubt, before passing sentence?

*[Answer]* Never. My revolutionary spirit is inspired by the sacred principles of Islam.

\* \* \*

He continued: "I have reached the conclusion that all the world's ills stem from the CIA, SAVAK, and the Zionist secret service. Some agents have fallen into our hands, but how many others there are at large? And the news agencies such as AP and Reuters, with their distortions, contribute to helping Carter in his plan to oppress the peoples. Carter is an agent of Zionism; that is why he has granted asylum to a false invalid, a criminal who has killed at least 150,000 innocent Persians. I would class with him Kissinger and Rockefeller, who for filthy financial concerns persuaded Carter to host the assassin Reza."

*[Question]* Do you like so many others, believe that the United States will eventually allow the Shah to be extradited?

*[Answer]* No, it would lose face. Now they have taken him to San Antonio: Do you know why? Because they know that armed groups sent by us want to kill him.

*[Question]* So they will never give you the Shah: What, then?

*[Answer]* We will be forced to try the hostages, as long as no graver events occur first (carried out by the hostages).

*[Question]* Who might try them: You, perhaps?

*[Answer]* If the Imam orders me to I will be very pleased to preside over the court. I believe that this task might be assigned to me because I am impartial, firm and just and I am thoroughly acquainted with the laws.

*[Question]* If you know the laws you are well aware that one cannot occupy an embassy and take hostages.

*[Answer]* Of course embassies are sanctuaries, but the American Embassy is an exceptional case: It was a nest of spies and led the uprisings in Kordestan and Baluchistan. I have seen the documents.

*[Question]* Have you also seen the hostages?

*[Answer]* I have seen them and discovered they had a dossier on me.

*[Question]* If you had to judge the hostages how would you set about doing so?

*[Answer]* With the enlightened spirit of justice. I hope that some of them might be acquitted, indeed many of them.

*[Question]* What about the others?

*[Answer]* The firing squad.

*[Question]* Do you not see any chance of them being pardoned?

[Answer] After the verdict has been passed and only then, the Imam could pardon them. He can even pardon a murderer.

[Question] Of the many prisoners who have passed through your hands, who impressed you the most and why?

[Answer] Hoveyda. He behaved like a wretch, crying, begging for mercy, saying he repented and denying his master. Then general (Khosrodad), chief of the famous "immortals". He was a disgusting man who wet his pants. Finally general (Bidabadi), who was in charge of martial law in Tabriz. He told me: "It is right that you are killing me, we did the same." As he walked to the gallows he thought of his children and said: "Goodbye children."

[Question] Let us recap: The United States does not hand over the Shah, you try the hostages, sentence them to death and US reprisals start. What then?

[Answer] What reprisals? Carter cannot go against the whole Western world which is thirsting for oil and anxious to work with us. What war? It is technically impossible, and, in any event, would inflame the world.

[Question] So it is an insurmountable crisis? (Khalkhali) had a purple wool blanket brought and wrapped it round himself stretching out on the rugs. Then he said: "There could be a solution, as I have already suggested. If Farah were to kill her husband in his sleep everything would be solved as if by magic. Above all, Farah would be able to return to Iran. We would give her a luxurious home and would even be able to find her a good husband", he said, breaking into hearty laughter in which all the 12 faithful sitting round us joined.

The final question was: Do you not fear for your life? I am told that you go around with a Spanish pistol on your belt and under a heavy armed guard. "The pistol was given to me by the pasdars to thank me after the sentencing of Hoveyda. It is a very precious memento, but if anybody attacks me either I would kill him or the pasdars which the Imam has given me would see to it. However, I do not fear anything: I am a just man, an enlightened judge and a faithful servant of the revolution. Okay, right?" And he dismissed me.

### Annex 17

VIEWS OF AYATOLLAH KHALKHALI. FBIS, DAILY REPORT, SUPPLEMENT 39,  
13 DECEMBER 1979, P. 8

LD122214 London BBC Television Network in English, 2100 GMT, 12 Dec. 79 LD.

[Text] The Ayatollah Khomeini in a fresh attack on the United States accused them tonight of creating diversion to stifle Iran's anti-American campaign. This was seen as a reference to Washington's attempts to solve the hostages crisis through the United Nations, the International Court and Mr. Cyrus Vance's tour of European capitals.

But Iran's leading revolutionary judge, Sheykh Khalkhali, a close friend of the Ayatollah, promised today that none of the hostages will be sentenced to death, even if they were put on trial as spies. They're our guests, he said, and we don't like treating guests this way.

LD121952 London BBC Television Network in English, 1920 GMT, 12 Dec. 79 LD.

[Text] Sheykh Khalkhali, Iran's leading revolutionary judge, has said that none of the American Embassy hostages will be sentenced to death even if they are put on trial as spies.

And Sheykh Khalkhali said he wanted the 50 hostages released soon. But there has been no word from the students at the Embassy.

## Annex 18

EXCERPTS FROM INTERVIEW WITH AYATOLLAH KHALKHALI. *THE TIMES*,  
LONDON, 21 DECEMBER 1979, PP. 1, 6

[Text] Qom, 20 Dec.—Ayatollah Sadeq Khalkhali was sitting on the floor of his guest-room surrounded by Revolutionary Guards who had been wounded in Kordestan. One of them had taken off his sock to show him his swollen left foot where a bullet had cut the nerve. Another exercised an artificial hand, creaking and clicking his steel fingers as the Ayatollah expressed his sympathy.

It was hot in the little room and the bespectacled divine was wearing only pyjamas and a white apron. "You are from *The Times* of London?" he asked, glancing in my direction. "Well, look at these men." He paused and then began to giggle in a high-pitched voice: "The rebels did this. I will pull them out by the roots—I will kill all of them."

As chief justice in Iran's Islamic Courts, Ayatollah Khalkhali is in a position to do just that. He has personally ordered the execution of more than 200 former members of the Shah's régime, including Amir Abbas Hoveyda, the longest-serving prime minister in the imperial government. His supporters call him "the wrath of God" and his critics—who are legion—uncharitably claim that he not only enjoys his work but has maintained a lifelong habit of strangling cats.

Ayatollah Khalkhali does not look the part. He is a small man with a pointed beard and a kindly smile which he exhibits when making inappropriate jokes. Asked by a reporter two weeks ago how he felt now that the number of executions in Iran was decreasing, he replied with a chuckle: "I feel hungry." It would be a serious mistake, however, to imagine that Iran's most feared judge does not take his vocation seriously.

"If an Islamic judge realizes that someone is guilty of corruption on earth or of waging war against God", he said, "the judge will condemn the accused, even if he claims he is innocent. Most important thing in Islamic justice is the wisdom of the judge. . . . Even if a man denies the charges against him, it means nothing if the judge decides otherwise."

Ayatollah Khalkhali has no time for reporters who ask why so many Iranians were executed after the revolution. "The people who were executed were the principal retainers of the previous hated régime", he said. "They had exploited this nation. They had been responsible for killings, tortures and unlawful imprisonment. I am surprised that you ask such questions."

Ayatollah Khalkhali displays equally little patience when asked if his much-publicized determination to engineer the assassination of the ex-Shah accords with the principles of Islamic justice. "We know that America will not return the Shah", he said. "So we have to kill him—there is no other choice. If it was possible to bring him here and try him we would kill him afterwards. But since we cannot try him—and since we are sure that he should be executed—we will kill him anyway. No one tried Mussolini. And who tried the Frenchmen who were executed for collaborating with Hitler's soldiers in the Second World War?"

He said today that he had already ordered a commando squad to go to Panama to kill the Shah and his family. "I do not know if they have left Iran yet", he said, then broke into that familiar chuckle as he ventured into Spanish. "They all have pistols."

Since the murder of the Shah's nephew in Paris almost two weeks ago, European and American police forces have paid a good deal of attention to the threats of Ayatollah Khalkhali. INTERPOL—and the Ayatollah's intended victims—would therefore probably pay some attention to the names which Judge Khalkhali included in his assassination list today.

"Since the most important agents of the former régime are no longer present

in this country", he said, "I have to look for other work. But we are looking for some of these people. We are looking for Sharif Emami (former prime minister), General Palizban, Hushang Ansari (former minister of finance), Ardeshir Zahedi (former ambassador in Washington), Gholamali Oveysi (former martial law administrator), Qarabaghi (former chief of staff in the Shah's army), Farah (the Empress), Hojabr Yazdani (former banker), Valian (former minister of agriculture), Jamshid Amouzegar (former prime minister) and Shahpur Bakhtiar (former prime minister). We also want the Shah and his brother and Ashraf (the Shah's twin sister). Wherever we can find these people, we will kill them."

Unashamed at publicly naming his own "hit list", the Ayatollah takes an unexpectedly moderate attitude towards the 50 American Embassy staff held hostage in Tehran.

"I regard these people as innocent", he said without hesitation. "They are our guests. I want them to be released and go back to their homes. Even if they are spies, that is not enough reason to keep them. Every embassy has spies in it. We cannot execute any spies according to Islamic laws. They will only be executed if they are directly responsible for ordering a murder. Even if we try the hostages, we do not want to condemn them. We want to condemn Carter and the American Government."

#### Annex 19

AYATOLLAH KHALKHALI'S VIEWS. FBIS, DAILY REPORT SUPPLEMENT 46,  
24 DECEMBER 1979, PP. 17-18

PA 221435 Paris AFP in English, 1408 GMT, 22 Dec. 79 PA.

Meanwhile, the Ayatollah Khalkhali in Qom denied saying that the hostages would be freed. "If it is proven that spies who worked against the Islamic Republic are among them, they will be sentenced to death."

#### Annex 20

DISCUSSION WITH SHAR' MAGISTRATES. FBIS, DAILY REPORT, SUPPLEMENT 45,  
21 DECEMBER 1979, PP. 30-31

LD211221 Tehran ETTELA'AT in Persian, 18 Dec. 79, p. 2 LD.

[Unattributed report: "Hostages Trial To Take Place Under Supervision of Shar'—religious law—Magistrate and Revolution Council".]

[Text] A group of foreign correspondents held a discussion with Shar' magistrates and Islamic Revolution Court judges at Evin prison yesterday afternoon.

In this discussion, Shar' Magistrate Ayatollah Mohammad Gilani first spoke of the training which judges of these courts receive at the theological seminaries, then continued:

"The trial of the hostages will take place when permission is received from Imam Khomeini. It will be held under the supervision of the Shar' magistrate and the Islamic Revolution Council, in accordance with the precepts of Islam and in observance of the noble verses of the glorious Koran, and they will be treated with justice. However, pseudodiplomats and spies fall outside this rule. In Islam, spies are considered to be 'ayyun' [eyes], for which the Islamic law prescribes the severest punishment, and the

imam of the muslims may even kill spies or turn them into slaves. In any event, it is up to the imam of the Muslims to make the final decision, and he may even pardon or free them."

Replying to a question put by one of the correspondents on the engagement of defence lawyers for the American spies, the Shar' magistrate said:

"A court of Islamic justice will be formed for these 'eyes' and spies, so that they can defend their lives themselves. Of course, it is unclear whether these individuals include any hardened enemies of the Islamic state, and it is possible that there are some innocent people among them."

In reply to a question from a correspondent about certain sessions of the revolutionary courts being held in camera, the Shar' magistrate said "Although, according to the rules, the president of the court has the authority to declare sessions in camera, we have convened open courts only, and up to now nobody has been convicted in a secret court".

A question was then asked about the detention of individuals imprisoned for distributing pamphlets in support of a political party. The Shar' magistrate replied:

"We do not put on trial or imprison individuals who have distributed pamphlets, but individuals, such as members of the Forqan group, accused of murdering great intellectuals like Ayatollah Motahar the martyr and brother 'Iraqi."

In reply to a question from another correspondent as to the difference between common law and Islamic law, the Shar' magistrate replied: "Common law is the product of the human mind, while Islamic law is divinely inspired and is thus more felicitous for human beings."

Another correspondent asked: "Is there any objection to anyone coming from Al-Azhar [Islamic university in Cairo] to defend the spies?"

The Shar' magistrate replied:

"The spies may engage lawyers conversant with Islamic precepts, but the crime of these individuals is so evident that no informed human being will agree to defend such criminals. However, if the highest authorities of Al-Azhar certify that these lawyers are well-versed in Islamic law, Islam will accept them."

In conclusion, Ayatollah Mohammad Gilani replied to another question, which was whether the spies would be executed if convicted. In reply, he said:

"The individuals may receive the Imam's pardon. As I indicated previously, three punishments are possible, depending on the Imam personally. The Imam may kill them, or pardon them, or even detail them to work in the court as slaves, as our workers and slaves. This depends on the Imam personally."

## Annex 21

SPEECH BY FORMER FOREIGN MINISTER YAZDI. FBIS, DAILY REPORT,  
SUPPLEMENT 37, 11 DECEMBER 1979, PP. 7-8

LD101832 Tehran Domestic Service in Persian, 1630 GMT, 10 Dec. 79 LD.  
[Text] At the invitation of the Islamic Association of the Pars News Agency today Mr. Ebrahim Yazdi took part in a meeting of employees of this organization. In a speech at the meeting he stated in connection with the issue of the hostages and occupation of the former American Embassy in Iran: In the

event the deposed Shah leaves America, in my view, we should put the 50 American hostages on trial. But our aim should not be a personal trial of these 50 hostages, for if this is the case, we will face defeat; the aim should be to put America on trial. This is the first incidence in the history of anti-imperialist struggles that a coup-making country is being dragged to trial in the country where the coup has taken place.

He said: Iran's relations with America after the revolution were cool and in a state of decline, but the deposed Shah's trip to America marked the beginning of a new phase in our relations with America. When I say relations, I mean mere relations regardless of their being good or bad. America admitted the deposed Shah, and it did not have to do so.

Yazdi then described his proposed plan for setting up a tribunal for trying America in Iran and said: I have proposed that on the one hand, a committee should be commissioned by the Imam to collect evidence and documents from America itself, and on the other hand, a book should be opened for the registration of names of people who have given martyrs or wounded since 19 August [presumably 1953] so that these individuals can participate as witnesses at the tribunal.

Similarly, prior to the formation of the tribunal, the 50 hostages of the former American Embassy should be informed of the date of their trial so that each of them may obtain an attorney for themselves. Even if America prevents the appointment of an attorney, the families of these individuals would force America to send attorneys. Dr. Yazdi said: If we wish to give this tribunal international dimensions, then to say that 10 or more of these hostages are CIA members is not sufficient. Now that we are situated in an epoch-making time dimension, we can hold such a trial. The subject of the trial should be US foreign policy, and the world mass media will never be able to censor this trial.

He added: If we managed to hold the tribunal in this form, we would win a victory; this would be the first such move in the world, which would be a great victory for the whole nation.

Yazdi said at the end of his speech: I have discussed with the Imam my proposal regarding the manner in which the tribunal should be set up for trial. He has accepted it and has also issued instructions.

## Annex 22

EXCERPTS FROM INTERVIEW WITH SADEQ GOTBZADEH. FBIS, DAILY REPORT, SUPPLEMENT 37, 11 DECEMBER 1979, PP. 10-12

LD102200 Tehran in English to Europe, 1930 GMT, 10 Dec. 79 LD.

[Text] Following is the press interview of Mr. Sadeq Gotbzadeh, the foreign minister of the Islamic Republic of Iran, with ABC reporters, one stationed in Tehran and the (?others) by satellite. (?We are) broadcasting the full text of the interview. We should warn you (?of the faulty taping) of some pieces of this interview while being (?relayed) by satellite. However, we're going ahead with the full text. Although some questions are not audibly discernible, we're sure that you can get the gist of the questions by the (?reply) that is given [begin recording].

[Answer] Well, my proposition was very simple. First of all, we are going to investigate the American foreign policy in the last 25 years in Iran in which those Americans who have been here will testify before the grand jury of what they have done and, second, some of them are engaged in espionage and we have the documents.

[Question] [Words indistinct.]

[Answer] Well we have the documents here. That is for the international

grand jury to determine. We have the documents. (?Throughout) they have engaged in espionage. And, secondly, the fact that if there are in future times certain amount [words indistinct] of them are not really guilty of anything, that given the circumstances (?and) everything is right and the United States stops this type of (?rhetoric) and the act of vengeance and trying to incite hatred in the American people, we may consider releasing those hostages who are not engaged in espionage. This is what I've said (?anyway).

[Question] [Words indistinct.]

[Answer] Well, let's establish this international tribunal first and then see the result that's coming up.

[Question] Mr. Foreign Minister, I'm not an attorney but it seems as if you say some of the Americans are already guilty of spying, but we haven't had the trial yet.

[Answer] Well, you're not exactly—you're not an attorney, because if you were an attorney you would certainly understand the terms. I say we have some documents, that they have been engaged in espionage and I also said this is what always happens—the documents are presented to the grand jury and the grand jury determines what would be the case. I didn't pronounce the name guilty yet.

[Question] Let me ask you this: Is it more important to put the Americans on trial or are we talking about trying American foreign policy?

[Answer] Well, these Americans here have been instruments of the American policy in the past few years that they have been here and it is precisely the American foreign policy here which is going to be on trial. Only to show—and I should emphasize that very clearly—only to show that our demand for the return of the Shah as a symbol of the crimes and as an American puppet is justifiable to the whole world. And you will see that will be the case.

[Question] [Words indistinct.]

[Answer] I hope as soon as possible we are going to hold that and I hope the next ten days will come with certain (?definite answers).

[Question] [Words indistinct.]

[Answer] Well, we are contemplating to have some international jurists or the people who have the reputation of dignity and integrity and work for the justice as well as some Iranians will be in the tribunal.

\* \* \*

[Answer] Oh absolutely! Whatever the Ayatollah decides in the final analysis no one in Iran will resist it and even that news that I have been hearing from you, your station, concerning Tabriz (?and the rest) [words indistinct] as usual and Ayatollah is in full command of the country and he's sort of giving the directives to us and we are applying his policy.

[Question] [Words indistinct.]

[Answer] No, I haven't seen them but I didn't need to see them. Some of those people whom I trust—they have seen them and they told me that they are well and all right and we also have decided to have an international sort of team to see the hostages and report to the whole world that nothing has happened to them. And I am sure you will see them in that investigation team and you'll realize that they haven't done anything to them so far.

[Question] Mr. Foreign Minister, do you think at this point after 37 days of the Americans being held—you are stating your point time after time that you are still going to get the United States to give up the former Shah?

[Answer] Well, that position is certainly unchangeable and that is what I'm trying to convey this message over and over. Apparently there has been some misunderstanding about my statements, that I am making the process of his return possible for the United States Government, that they save their face and we are helping the United States Government to save face. The return of the



Shah is the basic demand and that has not been changed definitely [words indistinct].

Thank you, Mr. Gotbzadeh.

### Annex 23

INSTRUCTION ISSUED BY AYATOLLAH KHOMEINI. FBIS, DAILY REPORT,  
SUPPLEMENT 39, 13 DECEMBER 1979, p. 11

LD131058 Tehran Domestic Service in Persian, 1030 GMT, 13 Dec. 79 LD.  
["Instruction" issued 13 December by Imam Khomeini, the leader of the Iranian Islamic Revolution—read by announcer.]

*[Text]* In the name of God, the compassionate, the merciful. Your Excellency, Sadeq Gotbzadeh, the Foreign Minister of Iran: It is essential that as soon as possible you form an international investigating committee in consultation with the Revolution Council to review the aggressive policy of the US Government in Iran, particularly during the period of the rule of the deposed, traitorous Shah, and to expose it to international public opinion so that the international organizations which, under US influence, have condemned Iran, as it were, become better acquainted with the US Government's crimes against our deprived people. Likewise, in order to counter the adverse and aggressive US propaganda regarding the hostages in their den of espionage you may invite an independent international delegation to visit them. And peace be upon you.

13 December 1979. *[Signed]* Ruhollah Musavi Khomeini.

### Annex 24

EXCERPT FROM ANNOUNCEMENT BY FOREIGN MINISTER GOTBZADEH. FBIS,  
DAILY REPORT, SUPPLEMENT 49, 28 DECEMBER 1979, p. 4

LD281158 Tehran Domestic Service in Persian, 1030 GMT, 28 Dec. 79 LD.  
*[Text]* At the conclusion of last night's Revolution Council session, Sadeq Gotbzadeh announced at a meeting with domestic and foreign correspondents: If an economic boycott is imposed on Iran by the UN Security Council, the hostages at the US Embassy in Tehran will be put on trial.

He accused the United States of interpreting the good will shown by Iran as a sign of weakness. Gotbzadeh said: The continuation of US pressures on Iran, particularly plans for imposing an economic boycott through the UN Security Council, will destroy the chances of forming an international jury to investigate Iran's complaints against the United States of America. Gotbzadeh said: By continuing such pressures the formation of an international jury will be useless while the chances for forming an ordinary court for the trial of the hostages will improve.

### Annex 25

EXCERPT FROM INTERVIEW WITH "STUDENTS". FBIS, DAILY REPORT,  
6 NOVEMBER 1979, p. R8

LD052356 Tehran Domestic Service in Persian, 2030 GMT, 5 Nov. 79 LD.  
The students said: The US Embassy's important documents were destroyed during the Embassy occupation by the Embassy staff, and other documents and

matters that have been obtained will be reported to the nation after consideration and, if necessary, the documents obtained will be delivered to the Imam.

### Annex 26

EXCERPTS FROM INTERVIEW WITH AHMAD KHOMEINI. FBIS, DAILY REPORT,  
20 NOVEMBER 1979, PP. R1-R3

LD191809 [editorial report LD] Tehran Domestic Service in Persian at 1135 GMT on 19 November broadcasts a 20-minute recording of an interview granted by Seyyed Ahmad Khomeini, Ayatollah Khomeini's son, to a Tehran Radio reporter at Mehrabad airport on the morning of 19 November.

\* \* \*

Ahmad Khomeini was then asked:

"The Imam, in his order, used this phrasing, so far as I can remember: Those whose spying activities have not been proved yet, and the second [word indistinct] is that the place was not an embassy but a nest of espionage. But there are different aspects of espionage, there are those who are directly involved in spying activities and those who provide services so that the spies can carry on with their work. Does the meaning of this sentence and the investigations and selection made by our student brothers in the den of espionage include those who provided services and were not directly involved in spying activities, or is it to be taken to mean that enough evidence has not been acquired yet to show that they are spies?"

Khomeini answered:

"You see, that place was clearly not an ordinary embassy. When the students entered the building, the equipment there showed that it was the centre of CIA activities in the Middle East. That is to say that a huge amount of equipment worth millions of tomans was found, with some units worth up to 300 or 400 million tomans. How can an embassy justify having such equipment? It is obvious that it was not an embassy, but a den of espionage."

Khomeini went on:

"Now about the point that those who are being released on the order of the Imam are only those whose spying activities have not been proved, the evidence found in there shows that some of these people are formal members of the CIA. They will demonstrate this point in their revelation statements. What activities were carried out in this embassy, for example, the embassy decided on the kind of sabotage to be carried out in Kordestan and Khuzestan, decided on the closure of schools and what should be done to close the schools and decided on the kind of demonstrations to be held, even those in defence of *Ayandegan*, *Peygham-e Emruz* and a few other newspapers which I do not remember now, and Tehran *Mosavar*.

These all show that what kind of people had contacts with them and what activities they carried out to insure their own interests. Therefore, we are sure that this was not an ordinary embassy, but was a den of espionage, and those who have been released now are not spies. We are investigating the dossiers of those others who will, God willing, be released by this evening, who might number as many as 10."

## Annex 27

EXCERPTS FROM INTERVIEW WITH AHMAD KHOMEINI. FBIS, DAILY REPORT, SUPPLEMENT 41, 17 DECEMBER 1979, PP. 21-22

LD162312 Belgrade Tanjug in English, 2026 GMT, 16 Dec. 79 LD.

[Text] Tehran, 16 December Tanjug—Bombs have been planted in the US Embassy in Tehran. In case of attack the Embassy will be blown up. Americans being held in the Embassy are not hostages, they are people awaiting trial. Ayatollah Khomeini alone can decide on their possible liberation.

These are some of the main stands expressed by Ayatollah Khomeini's elder son, Ahmad, in an interview to the Italian magazine *Panorama*.

Ahmad Khomeini maintains that Iranian students have discovered some very important documents on the basis of which the 50-odd Americans held in the US Embassy will be tried. The documents—secret reports, assessments and plans of intervention in Iran—were found in the Embassy's "lead chamber". The special device which was to have destroyed them was only partially successful.

The prisoners were confronted with the documents, Ahmad Khomeini stated. Many of them were in contact with people close to the Shah and the US Embassy [as received]. Everything will be revealed at the process, and those who have had contact with "this group of spies" will be tried in court, if they are caught [as received].

Khomeini's son does not believe that Khomeini will order the release of the prisoners. "He has told us that at this moment when we have evidence in our hands, it is not important whether the Shah (is dead) or alive, or whether he will return to Iran or remain in the United States. In any case, the spies will be put on trial, Khomeini's son stated."

## Annex 28

EXCERPTS FROM "STUDENT" INTERVIEW. FBIS, DAILY REPORT, 3 DECEMBER 1979, PP. R26-27

LD020141 Tehran in English to Europe, 1930 GMT, 1 Dec. 79 LD.

[Text] In a press interview held this afternoon with foreign correspondents at the former United States Embassy in Tehran, students following the path of Imam revealed the following document [begin unidentified speaker recording]:

The Muslim students following the path of Imam Khomeini. In the name of God, the beneficent, the merciful. To the people of the world. Arise, O infinite oceans of humans. From the leader of the Iranian Islamic Revolution, Imam Khomeini.

\* \* \*

[Words indistinct] is only a single example of documents proving the facts that this Embassy has not conformed to the normal duties of an embassy. For it participated in acts of espionage applied against the will of the Iranian nation. The rest of the documents will be exposed and simplified in official courts. The embassy in Tehran was a centre for CIA. Plans were monitored against our people and we feel strongly that nations have a right to oppose any foreign involvement in their internal affairs. We also believe strongly that the normal people of the world and specifically the people of America have been deliberately kept uninformed towards the realities. They have not been properly informed of the nature of their government. We believe that the realization of these truths will bring about an awakening in the American nation. We know that when the

Americans find the reality they will support our just cause and demand that the ex-Shah be sent back to Iran for open trial and (? judgment).

#### Annex 29

INTERVIEW WITH SADEQ TABATABA'I. FBIS, DAILY REPORT, 9 NOVEMBER 1979,  
P. R11

LD082037 Tehran in English to Europe, 1930 GMT, 8 Nov. 79 LD.

[Text] Government spokesman Sadeq Tabataba'i, today in an interview with Radio Luxembourg, said that 60 Americans who were taken hostages in the American Embassy are not innocent. Tabataba'i added: The documents found in the Embassy show that the US Government has (?a) hand in Kordestan's crisis. He added that the hostages are treated well. Tabataba'i stressed that negotiations will start to release the hostages just when the United States sends the deposed Shah back to Iran.

#### Annex 30

EXCERPT FROM INTERVIEW WITH FOREIGN MINISTER GOTBZADEH. FBIS,  
DAILY REPORT, SUPPLEMENT 48, 27 DECEMBER 1979, P. 9

NC261517 Paris AFP in English, 1512 GMT, 26 Dec. 79 NC.

[Text] Tehran, 26 Dec. (AFP)—Iranian Foreign Minister Sadeq Gotbzadeh said today that he did not know exactly how many hostages were currently being held at the occupied United States Embassy here.

In an interview with French State television, Mr. Gotbzadeh said: "All I know about the number of hostages is what I've learned from the media." "The US State Department doesn't know exactly how many (hostages) there are, and personally I've never tried to find out. It's a matter I'll be looking into", he added.

(In Washington yesterday a State Department spokesman reiterated that the figure of 50 hostages was the correct one, despite an earlier statement from four Christian clergymen allowed into the Embassy to conduct Christmas Eve services that they had seen only 43 American hostages.)

#### Annex 31

"STUDENT" STATEMENT NO. 13. FBIS, DAILY REPORT, 6 NOVEMBER 1979,  
P. R12

LD061106 Tehran Domestic Service in Persian, 1030 GMT, 6 Nov. 79 LD.

[Statement No. 13 of the Muslim Students Following the Imam's Policy—read by announcer.]

[Text] In the name of God, the compassionate, the merciful: Here is a warning to the fugitive chargé d'affaires of the American Embassy. We warn you, chargé d'affaires of the American Embassy as a spy who has been directing America's espionage house in Iran, to surrender to the Muslim students stationed at the Embassy as soon as possible. Rest assured that your prolonged telephone contact with Washington yesterday from an unknown place in Tehran will achieve no solution for you, for the will of our nation is no plaything in political relations and will not be so, and the nation will stand firm until its true demand is achieved.

Muslim brothers and sisters, certain individuals or groups, on the pretext of trying to arrest the chargé d'affaires of the American Embassy, may attack certain embassies or ministry buildings. We warn you that this will be a deviationist move, whose objective is nothing other than to divert the revolutionary action of the occupation of America's house of espionage, which is supported by all the Iranian nation.

### Annex 32

FOREIGN MINISTRY ANNOUNCEMENT. FBIS, DAILY REPORT, 8 NOVEMBER 1979,  
P. R14

LD080428 Tehran Domestic Service in Persian, 0330 GMT, 8 November 1979  
LD.

[Announcement issued 7 November by the Ministry of Foreign Affairs—read by announcer.]

[Text] In His Exalted name: Following the contacts and the queries that have been made, the Ministry of Foreign Affairs of the Islamic Republic of Iran wishes to announce that as of 1100 on Sunday, 4 November, the chargé d'affaires of the American Embassy in Tehran, together with two of his companions, was in the Ministry of Foreign Affairs and, as the protection of foreign nationals is the duty of the Iranian Government, he is staying in this ministry.

The matter was immediately brought to the attention of the prime minister, His Eminence the Ayatollah Montazeri, Mr. Bahonar and Dr. Beheshti, and then the Revolution Council. All of them without exception emphasized that the protection and security of these people is among the religious and legal duties of the Government and should be carried out. Therefore, the armed forces of the committees have been asked to insure greater security for them.

The US State Department announced last night that the representatives of American President Jimmy Carter—who are carrying a message for the leader of the Islamic revolution of Iran, Imam Khomeini—after the broadcast of Imam Khomeini's message to the effect that no Iranian official has the right to meet Jimmy Carter's representatives, stopped their journey at midpoint in Istanbul and will not come to Iran.

### Annex 33

"STUDENT" STATEMENT NO. 20. FBIS, DAILY REPORT, 9 NOVEMBER 1979,  
P. R3

LD081143 Tehran Domestic Service in Persian, 1030 GMT, 8 Nov. 79 LD.

[Text] Statement No. 20 of the Muslim student followers of the Imam's policy has been issued as follows:

In the name of God, the compassionate, the merciful. In the light of revelation statement No. 2 and of other documents captured, Bruce Laingen, chargé d'affaires of the American Embassy in Tehran, is a plotting spy, and in view of the fact that the said person has ignored our previous warning and has not surrendered this is to declare that with effect from 8 November, that is today, the fugitive chargé d'affaires in Iran, who is staying at the Foreign Ministry, will be regarded as one of the American hostages and has no right whatsoever to leave his place. Thus, a special team will be sent to the Foreign Ministry to guard him.

## Annex 34

STATEMENTS OF FOREIGN MINISTER GOTBZADEH. FBIS, DAILY REPORT,  
3 DECEMBER 1979, PP. R20-R21

LD011121 Tehran Domestic Service in Persian, 1030 GMT, 1 Dec. 79 LD.

[Text] Interviewed by a correspondent of the Voice and Profile of the Islamic Republic of Iran, Sadeq Gotbzadeh said: I have never said in any interview that the chargé d'affaires of the US Embassy and two of his companions could leave Iran. Rather, it has been announced that, if the US Embassy's chargé d'affaires and his two companions, who have sought asylum in the Iranian Ministry of Foreign Affairs, should leave this ministry, the ministry would not accept any responsibility for them.

## STUDENTS DECLARE LAINGEN HOSTAGE

NC011045 Paris AFP in English, 1044 GMT, 1 Dec. 79 NC.

[Text] Tehran, 1 Dec. (AFP)—The militant Iranian students occupying the US Embassy here said today that the American chargé d'affaires, Bruce Laingen, and two other US diplomats thought to be in the Foreign Ministry building were their hostages.

The Islamic students, who spoke to the AFP by telephone, said that Mr. Laingen and the other diplomats were under their surveillance.

Iranian Foreign Minister Sadeq Gotbzadeh said during a press conference yesterday that Mr. Laingen and the other two were "free to leave the country when they wished". But he added it would be difficult to protect them on the route from the ministry building to the airport.

## Annex 35

EXCERPTS FROM INTERVIEW WITH FOREIGN MINISTER GOTBZADEH. FBIS,  
DAILY REPORT, 3 DECEMBER 1979, PP. R37-38

LD021410 Paris Domestic Service in French, 1200 GMT, 2 Dec. 79 LD.

[Interview with Iranian Foreign Minister Sadeq Gotbzadeh by Paris radio reporters Yves Mourousi in Paris and Yves-Paul Vincent in Tehran—live.]

\* \* \*

[Mourousi] So you are ready to wind up the affair if the Shah is handed back to you. And tell me, are you going to hand the three diplomats who are at your place to the students, so that they join the other hostages at the Embassy?

[Gotbzadeh] As I said very clearly yesterday, they have come to us at the Ministry of Foreign Affairs and they are there now. They are free.

[Mourousi] In their movements. . . .

[Gotbzadeh] Free to wait there; we are going to insure their safety, their safety there, but the moment they go away, the moment they leave the Ministry of Foreign Affairs, we are no longer responsible. So they are there, they are safe.

## Annex 36

EXCERPTS FROM INTERVIEW WITH FOREIGN MINISTER GOTBZADEH. FBIS,  
DAILY REPORT, 6 DECEMBER 1979, PP. R29-30

LD051655 Paris *Le Figaro* in French, 4 Dec. 79, p. 3 LD.

[Special correspondent Thierry Desjardins undated Tehran interview with

Iranian Foreign Minister Gotbzadeh: "Sadeq Gotbzadeh: 'The Hostages Will Be Tried By the Students'"]

[Text] Tehran—"The ball is in the Americans' court. We have done all we can." It is 0800. Sadeq Gotbzadeh, the Ayatollah's foreign minister, receives me in his office on the 11th floor of radio house. He had three hours sleep last night, but this man, "built like a tank", is as firm as a rock.

He lights his pipe and goes on: "As soon as we learned that the Shah was benefiting from US asylum we did all we could to avoid any escalation. First we asked for two Iranian doctors to be allowed to examine the Shah to see if he was really sick, so that we could at least explain the US attitude to our own public. The Washington administration categorically refused. Then the embassy affair began. We tried to sort things out by proposing a legal process which would have permitted the Shah's extradition. The American response was to stop buying our oil (which is rather to our advantage in any case). Then the Americans turned their attention to Iranian students living in the United States. We have formal reports stating that some people have died. Young Iranian men have been killed and Iranian girls raped over there, and all in the name of humanity. Well, not one American has been struck in the streets here, you can bear witness to that. Our public's reaction to all this has been very sober. And then we began to think that our efforts to defuse the crisis were being interpreted in the United States as a sign of weakness on our part and that the United States, like a spoiled child, wanted to get all its own way. Then nothing was possible any longer. And now it is up to the Americans to make a move."

"Send Back the Shah."

[Question] But what can Carter do?

[Answer] Basically, send back the Shah.

[Question] He cannot do that, and you well know it.

[Answer] That is his problem.

[Question] Would the opening of the files on the Shah's fortune defuse the crisis?

[Answer] It could ease the atmosphere but would not resolve the problem.

[Question] So the hostages will be tried?

[Answer] Yes.

[Question] By whom?

[Answer] By the students themselves.

[Question] When?

[Answer] I don't know.

[Question] As regards the chargé d'affaires and his two colleagues who are at the Foreign Ministry, you recently said yourself that they are free to go, which is difficult for international public opinion to believe.

[Answer] No. There was a misunderstanding. I said, and I repeat, that those three men asked to be granted the right of asylum at the ministry. That asylum was granted. Therefore, as long as they remain in the ministry I am personally responsible for insuring that nothing happens to them, but those men too have no doubt committed crimes. So as soon as they leave the ministry precincts they will fall back into the hands of justice, and then I will be the first to demand that they be arrested and tried.

### Annex 37

"STUDENT" STATEMENT, UNNUMBERED. FBIS, DAILY REPORT, 4 JANUARY 1980, p. 10

LD041140 Tehran Domestic Service in Persian, 1124 GMT, 4 Jan. 80 LD.  
[Statement issued by the Muslim Student Followers of the Imam's Policy

in connection with the summoning of the "former" US Embassy chargé d'affaires—read by announcer.]

[Text] In the name of God, the merciful, the compassionate. The Islamic Republic of Iran Foreign Ministry. It is necessary to notify Mr. Bruce Laingen, the chargé d'affaires of the US espionage den in Tehran, to report to the espionage den, in order to explain the discovered intelligence documents. It is up to the Foreign Ministry to take responsibility for his transfer to the espionage den.

[Signed] The Muslim Student Followers of Imam's Policy.

[Dated] 4 January 1980.

#### Annex 38

EXCERPT FROM MESSAGE FROM FOREIGN MINISTRY SUPERVISOR BANI-SADR.  
 FBIS, DAILY REPORT, 13 NOVEMBER 1979, P. R37

LD101237 Tehran Domestic Service in Persian, 1030 GMT, 12 Nov. 79 LD.

[Message from the "supervisor" of the Ministry of Foreign Affairs of the Islamic Republic of Iran to the "US Nation"—read by announcer.]

[Text] O Americans, since the day when the students entered the US Embassy—it would be better if we said one of the important US administrative and espionage centres in the world—the propaganda machines have begun the dissemination of constant propaganda aimed at deceiving you Americans and the people of the world to the effect that under an Islamic government no standard or law is respected, that a tradition which for centuries has enjoyed respect by mankind has been violated, and that an embassy which is part and parcel of your country's soil is attacked and those who enjoy political immunity are taken as hostages.

However, they do not tell you Americans that the Embassy of your Government in Iran bears no resemblance to an embassy. Despite the fact that prior to and following the fall of your last puppet the majority of the documents were taken away from the Embassy, the remainder of the documents were also burned in three hours, despite the fact that all the computer sets were generally destroyed, the sets left behind and the captured documents leave no room for doubt that the Embassy was the real centre of power in Iran during the era of the former Shah and that Iran's real court was your government Embassy in Tehran. Now ask your Government whether it permits other countries to turn their embassies in the United States into centres of government and interference in trivial and major affairs and of espionage in the country and in the region?

#### Annex 39

INTERVIEW WITH AYATOLLAH BEHESTI. STERN, HAMBURG, 29 NOVEMBER 1979,  
 IN GERMAN, INFORMAL UNITED STATES TRANSLATION

[Stern] It is understandable that the Persians wish to bring the Shah back to Persia to put him on trial here. Yet the extraterritorial status of an embassy is something like a basic law in the civilized relations between peoples. Have the laws of civilization been rendered invalid in the Iran of the mullahs and ayatollahs?

[Beheshti] It was not the government which stormed the Embassy.

[Stern] But it approved it later . . .

[Beheshti] . . . We approved it because this is the understandable reaction of a long oppressed society against a superpower. We have not treated any other



country this way. Take Great Britain. When a group wanted to occupy the British Embassy it was prevented from doing so by another group. What was involved in the case of the US Embassy was a thrust against a great enemy of the Iranian people.

[Stern] But the "enemy" is not sitting here in the Embassy but at best in Washington. The people whom you are holding hostages are not the "murderers of your youth", as you are saying time and again.

[Beheshti] But they supported the murderers and spied for them.

[Stern] If spies are discovered in a foreign embassy it is standard procedure to expel them but not to take them as hostages.

[Beheshti] It is standard procedure, but not revolutionary. If we were talking here about diplomatic traditions, then I would say you are right. But we have a revolution. And they have laws of their own. Being revolutionaries we support the youth because this action is the only way to make the world familiar with their ideas, goals and feelings of revenge. The world must understand that.

[Stern] Dr. Beheshti, you have lived in the West for many years. You are familiar with the mentality of the Western people. Do you really believe that a superpower like the United States can afford to extradite a fatally ill former ally without losing face?

[Beheshti] The US Government did not accommodate the Shah after his fall—why did it have to do so now?

[Stern] I told you: for humanitarian reasons.

[Beheshti] Sir, this is a point which our people do not understand. Humanitarian reasons! An enemy of humanity cannot be treated in a humanitarian way.

[Stern] We must repeat the question: Do you really believe that the United States will extradite the Shah?

[Beheshti] Everything is possible in this world. We understand that the Americans condemn the taking of hostages and describe it as inhuman. But keep in mind that our courts called on the Shah to stand trial before them, but he did not come. Now he is in the hands of the US Government. Does the international custom which you just cited not command that the Shah be turned over to those who are entitled to legal prosecution?

[Stern] There is, after all, no extradition agreement between the United States and Iran.

[Beheshti] The fact is that by their refusal to extradite the Shah the Americans were the first to violate the commandment of humanity. We only paid back in kind.

[Stern] What does the Koran have to say about this primitive way of revenge thinking?

[Beheshti] It allows it, but it also says that forgiving is better.

[Stern] And yet, you want to put the hostages on trial—with the chance that they might be sentenced to death.

[Beheshti] Whoever really has engaged in espionage will have to answer for it.

[Stern] Do you have proof of espionage?

[Beheshti] Everybody knows that, after all. There will be proof indeed.

#### Annex 40

INTERVIEW WITH SEYYED HOSEYN. FBIS, DAILY REPORT, 3 DECEMBER 1979,  
P. R 19

LD030901 [Editorial report] Paris Le Monde in French, 30 November, publishes on pages 1 and 3 a 1,400-word Eric Rouleau Tehran dispatch outlining the circumstances of Iranian Foreign Minister Bani-Sadr's dismissal and discussing

*the policy which the former foreign minister had followed. Rouleau points out that Bani-Sadr thought the hostages affair could lead to the collapse of the Islamic republic—a view not shared by the "Qom strategists".*

"Seyyed Hoseyn, Imam Khomeini's grandson and adviser to us on Monday, 26 November: 'The occupation of the US Embassy is particularly profitable both in the Third World and in Iran itself.' Hoseyn's theory, which is as well-argued as Mr. Bani-Sadr's, could be summarized as follows:

1. The blows dealt against US imperialism have absorbed all the internal conflicts which were undermining the Islamic Republic, and have united the entire population, regardless of class and political leanings, under the Imam's banner. The Embassy's occupation is the most popular event that has occurred since the monarchy was overthrown. 'It has enabled us to open the door to a strategic alliance between the Islamic movement and the secular and left-wing groups and to a tactical alliance with the Soviet bloc', Seyyed Hoseyn told us in particular.

2. 'The Third World and Muslim peoples, especially the Arabs now regard the Iranian Revolution as their own.' The occupation of the US Embassy has been seen by them as an exciting challenge to the most powerful of the two superpowers. 'We have therefore liberated these peoples from fear, from "psychological occupation", which is more effective than any other, to which US imperialism subjected them', Seyyed Hoseyn stated, the seizure of diplomats as hostages is not regarded by Third World populations as a violation of international law about which, moreover, they understand very little. 'The poor and underprivileged despise the legal and meddlesome minds of the rich and powerful', Seyyed Hoseyn added and he is considered to be as 'radical' as his grandfather."

#### Annex 41

EXCERPT FROM INTERVIEW WITH AYATOLLAH KHOMEINI. FBIS, DAILY REPORT, 30 NOVEMBER 1979, P. R8

LD300350 Tehran Domestic Service in Persian, 0125 GMT, 30 Nov. 79 LD.

[Interview of Ayatollah Khomeini by "European correspondents" on 29 November in Qom; questions in English—recorded.]

[Excerpts] [Announcer] Radio and European press correspondents are here, some of whom come from such small countries as Belgium, Spain, Italy, Greece, and who previously (?spent some time) in Iran. They were here last year during the revolution [words indistinct].

[Khomeini] In the name of God, the compassionate, the merciful. What I expect from the correspondents is that what I have to say should not be confused: It should be published just as I say it, without adding to it or shortening it. They should not bring in their opinions on what I have written and should not to fall under the influence of evil propaganda. They should reflect Iran's problems just as I state them.

[Question] We come from small European countries and (?we should know about) the American yoke [words indistinct]. After the last few days, Your Eminence, it appears evident that American intervention in Iran will have serious consequences for world peace. Your Eminence, do you think that the Americans are taking the risk just to protect the criminal Reza Pahlavi, or do you think they have some other aims as well?

[Answer] It is possible that they may have entertained other objectives since

we do not see such humanity in Carter and those who are in charge of affairs that they would be prompted by a love of mankind in refusing to return Mohammad Reza. The reason is simply that even in this issue, if these people were philanthropists they would not say: We, for the sake of a few men, will either subject 35 million people to an economic blockade so that—as they think—these people will perish from hunger. Nor would they say: We will start a war—whereby they would drag into blood and dust their country, our country and a great many others. All this makes one think that the issue is not one of philanthropy. There are other issues at work and one might possibly be stronger than others, that is, that they know what crimes they have committed through the agency of that corrupt person. They are aware of this. Perhaps a great many of the crimes perpetrated by Mohammad Reza were such that no one else but he and the Presidents knew anything about them; perhaps not even the government apparatus—neither ours nor theirs. These could be secrets. These crimes could be secrets kept by the President at the time and by Mohammad Reza. It appears to us that Mr. Carter is afraid of this. He is terrified now that if Mohammad Reza is put on trial and if we try him, besides his crimes which would be proved, other people's crimes, the crimes of the Presidents of this time, particularly Mr. Carter, the latest President, these people's crimes would also be proved.

And just as we have demanded—are demanding—the trial of Mohammad Reza and, God willing, we will yet try him, then we will also demand the trial of the Presidents, those who were partners in these crimes, no matter what post they occupy—whether they be Carter, Nixon, Johnson or anybody else. We will demand their trial. And the fear which Carter now has is precisely this. He is afraid that his crimes might be proved and that we might prosecute him for those crimes and that he might lose his chance of being President, which he covets. For this reason he is in a state of panic.

He is therefore sparing no effort. He is resorting to any means. Probably not a day passes without (?messages) being received by our Foreign Ministry from abroad, from various countries to whom they have appealed. They keep appealing to us to release the hostages and so forth. Consequently, Mr. Carter's motive is not humanitarian, of that we are almost certain. He has become panicky, and rightly so, for traitors are normally in a state of panic. He was under the illusion that by staging certain manoeuvres he could acquire some prestige in America. All he is concerned about is getting re-elected. That is all he wants.

The thing is that Mr. Carter has not had a divine upbringing [*tarbiyat-e asmani*]. When you hear that during the past few days he has gone to church once in order to pray for the release of these hostages, you must realize that his prayers are like those of Mohammad Reza, who used to go to Mashhad for this purpose. This is precisely what one of our scholars, Ubeyd Zakan, used to say, that: Surprise, the cat is repenting.

This is the thing. Consequently, the possibility that he may be doing something for Mohammad Reza, on humanitarian grounds, is rather remote. So, this is entirely up to him; it is up to him to recognize the situation. Is he to conclude that in order to get re-elected he should start a war and ruin his own country? Is this how he assesses the situation—that he ought to start a war? If so, he will be defeated. There is no possibility that he ought to adopt a rational line and return this criminal who committed many crimes in this country for more than 50 years, who has killed our young people and plundered and wasted all our resources, should he decide to hand him over to us, then afterwards, if they [presumably Shah and associates] are found guilty, which they are for we consider them as guilty—anyway, once he returned them and also returns our property, then we might consider leaving them be [*ma mozayegeh nadarim keh inha ra tarkeshan konim*].

## Annex 42

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

[See Selected Document I, Appendix A, p. 46, supra]

## Annex 43

STATEMENT BY THE PRESIDENT OF THE UNITED NATIONS SECURITY COUNCIL,  
9 NOVEMBER 1979

S/13616.  
9 November 1979.

## STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

On 9 November 1979, following consultations among the members of the Security Council, the President of the Security Council made the following statement:

"Following consultations among the members of the Security Council, I am authorized as President of the Council to express the Council's profound concern over the prolonged detention of American diplomatic personnel in Iran. Speaking as President of the Security Council on behalf of the Security Council and, while not wishing to interfere in the internal affairs of any country, I must emphasize that the principle of the inviolability of diplomatic personnel and establishments be respected in all cases in accordance with internationally accepted norms. Therefore, I urge in the strongest terms that the diplomatic personnel being held in Iran be released without delay and provided protection. I further urge the Secretary-General to continue to use his good offices to assist towards this objective."

## Annex 44

STATEMENTS BY THE PRESIDENT OF THE UNITED NATIONS GENERAL ASSEMBLY,  
9 NOVEMBER AND 20 NOVEMBER 1979

GA/6076.  
9 November 1979.

## ASSEMBLY PRESIDENT'S STATEMENT ON AMERICAN HOSTAGES

A spokesman made the following statement today on behalf of the President of the General Assembly, Salim A. Salim (United Republic of Tanzania):

"The President has been following the developments in Iran with greatest concern. He is very much concerned at the safety and security of American personnel now held as hostages.

He has been in consultation with a number of delegations, including the chargé d'affaires of Iran.

He is scheduled to meet the chargé d'affaires again today at 12.30 p.m.

The President is sending a personal message to the Ayatollah, appealing for the release of the hostages."

GA/6096.  
20 November 1979.

ASSEMBLY PRESIDENT REPEATS APPEAL FOR RELEASE OF UNITED STATES  
HOSTAGES IN IRAN

The following statement on behalf of the President of the General Assembly, Salim A. Salim (United Republic of Tanzania), was made today:

The President wishes to express his personal gratification and appreciation at the release of the 13 American hostages which took place yesterday. At the same time, however, he reiterates his deep concern at the continued detention of the remaining diplomatic personnel at the Embassy. In this respect, the President recalls the appeal he had addressed to Ayatollah Khomeini on 9 November 1979 that all the hostages be released immediately. The President wishes to reiterate this appeal and to express his particular concern that the remaining hostages be released without delay.

The President is convinced that the call for the release of the hostages represents the collective concern of the international community who clearly feel strongly that the sanctity of diplomatic premises and diplomatic personnel must be respected, without any exceptions, at all times. It is the fervent hope of the President that the action by the Iranian authorities to release the 13 hostages will be followed with the release of all the other hostages.

The President feels that whatever the bilateral differences and areas of concern between the United States and Iran, it is crucial that international law and practice governing the treatment of diplomatic missions and their agents be scrupulously observed.

Annex 45

PROVISIONAL VERBATIM RECORD OF THE TWO THOUSAND ONE HUNDRED AND  
SEVENTY-SECOND MEETING OF THE UNITED NATIONS SECURITY COUNCIL

S/PV.2172.  
27 November 1979.

Held at Headquarters, New York, on Tuesday, 27 November 1979, at 3 p.m.

President:	Mr. Palacios de Vizzio	(Bolivia)
Members:	Bangladesh	Mr. Kaiser
	China	Mr. Chen Chu
	Czechoslovakia	Mr. Hulinsky
	France	Mr. Leprette
	Gabon	Mr. N'Dong
	Jamaica	Mr. Mills
	Kuwait	Mr. Bishara
	Nigeria	Mr. Clark
	Norway	Mr. Ålgård
	Portugal	Mr. Futscher Pereira
	Union of Soviet Socialist Republics	Mr. Troyanovsky
	United Kingdom of Great Britain and Northern Ireland	Sir Anthony Parsons
	United States of America	Mr. McHenry
	Zambia	Mr. Lisaka

This record contains the original text of speeches delivered in English and

interpretations of speeches in the other languages. The final text will be printed in the *Official Records of the Security Council*.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, *within one week*, to the Chief of the Official Records Editing Section, Department of Conference Services, Room A-3550, Alcoa Building, 866 United Nations Plaza, and incorporated in a copy of the record.

*The meeting was called to order at 3.55 p.m.*

Adoption of the Agenda.

*The agenda was adopted.*

Letter dated 25 November 1979 from the Secretary-General addressed to the President of the Security Council (S/13646).

*The President* (interpretation from Spanish): I wish to inform members of the Council that I have received letters from the representatives of Iran and Sri Lanka in which they request to be invited to participate in the Security Council's discussion of the item on its agenda. In accordance with the usual practice I propose, with the consent of the Council, to invite those representatives to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and Rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, Mr. Salamation (Iran) took a place at the Council table; Mr. Fernando (Sri Lanka) took the place reserved for him at the side of the Council Chamber.*

*The President* (interpretation from Spanish): The Security Council will now begin its consideration of the item on its agenda.

The Security Council is meeting today in response to a request by the Secretary-General contained in a letter dated 25 November 1979 from the Secretary-General addressed to the President of the Security Council (S/13646).

I wish to draw the attention of members of the Council to document S/13650, which contains the text of a letter dated 27 November 1979 from the Chargé d'Affaires of the Permanent Mission of Iran to the United Nations addressed to the President of the Security Council.

I now call on the Secretary-General.

*The Secretary-General*: Mr. President, may I first of all express my appreciation to you and to the members of the Security Council for having convened this highest organ of the United Nations for international peace and security in response to my letter of 25 November. This demonstrates clearly the overriding concern of the Council to find a peaceful solution of the crisis which has arisen between the United States and Iran.

As members of the Council are aware, within the past three weeks I have been continuously involved in efforts to find means of resolving this very serious problem. Similar efforts have been made by you, Mr. President, as well as by many governments. I take this opportunity to express my sincere appreciation for these efforts.

We all know the basic elements of the problem before us. The Government of the United States is deeply concerned at the seizure of its embassy in Tehran and the detention of its diplomatic personnel, in violation of the relevant international conventions. The Government of Iran seeks redress for injustices and abuse of human rights which, in its view, were committed by the previous régime.

A major concern, of course, must be for the fate of the individuals involved.

But apart from the humanitarian, legal and psychological aspects of the problem there can be no question that the international community has become increasingly disturbed at the dangerous level of tension arising from this situation. This threatens the peace and stability of the region and could well have very grave consequences for the entire world. In the prevailing circumstances it became clear to me that the efforts I have mentioned, which were conducted with good faith and determination, could not for the time being overcome the very difficult obstacles with which we were faced. Although at times in the past few days agreement seemed close, in the end the gap appeared to be too wide to be bridged at this stage.

It was in the light of these developments and of the escalation of tension that I concluded that the present crisis poses a serious threat to international peace and security. Accordingly, in the exercise of my responsibility under the Charter, I asked for the urgent convening of the Security Council. I may mention here that this move was supported and welcomed by the Governments of Iran and the United States. As you are aware, Mr. President, it was also unanimously supported by the members of the Council in the consultations which took place yesterday. I earnestly hope that this Council can be of assistance in helping the parties to find ways and means to reconcile their differences. In this connection I was pleased to have confirmation today that the Foreign Minister of Iran will come to New York to participate in our deliberations.

Although in the past weeks we have discussed various formulae which might prove useful in resolving this very serious crisis, I do not think it would be appropriate for me to make any detailed proposals at this time. I am sure that the parties concerned are as anxious as anyone to see an end to the present deplorable situation and I would urge them to make every effort to avail themselves of the opportunities offered by the machinery of the United Nations. In the meantime I appealed to them to exercise the maximum restraint and to avoid any actions which could further inflame the situation.

I believe that the Security Council can be of great assistance in these difficult days and that it has a right and a duty to assist in resolving a situation which poses grave dangers to the structure of international peace. I am confident that the Council will make every effort to do this, guided by the principles of justice and international law.

Before concluding, Mr. President, I wish to pay a tribute to you personally and to the members of this Council for your very helpful and responsible handling of the preparatory consultations. We all realize the very delicate and unusual nature of this situation. I wish to say how grateful I am for your constructive response.

*The President:* I would like to thank the Secretary-General for his statement.

I wish to refer to the letter of the Secretary-General dated 25 November 1979 (S/13646), on the basis of which the Council is meeting and which reads as follows:

"I wish to refer to the grave situation which has arisen in the relations between the United States and Iran. The Government of the United States is deeply disturbed at the seizure of its Embassy in Tehran and the detention of its diplomatic personnel, in violation of the relevant international conventions. The Government of Iran seeks redress for injustices and abuse of human rights which, in its view, were committed by the previous régime. The international community is increasingly concerned that the dangerous level of tension between these two countries threatens peace and stability in the region and could have disastrous consequences for the entire world.

In my opinion, therefore, the present crisis poses a serious threat to international peace and security. Accordingly, in the exercise of my responsibility under the Charter of the United Nations, I ask that the

Security Council be convened urgently in an effort to seek a peaceful solution of the problem in conformity with the principles of justice and international law." (S/13646.)

I also wish to refer to the letter dated 27 November 1979 from the Chargé d'Affaires of the Permanent Mission of Iran to the United Nations addressed to me (S/13650), by which he requested that formal deliberations of the Security Council be postponed out of respect for the most holy days of Tassua and Ashura, days highly revered and commemorated for centuries in many Islamic countries, particularly Iran, and in order to enable His Excellency Mr. Abolhasan Bani-Sadr, the Foreign Minister of Iran, to arrive in New York so as to be able to participate in full debate by the Security Council as of Saturday evening, 1 December 1979.

After consultations, the Council has, therefore, agreed to adjourn its meeting until 1 December 1979 at 9 p.m., subject to the understanding that it will reconvene before then if the situation demands it.

I also wish to draw the attention of the Security Council to the fact that on 9 November 1979, following consultations among members of the Security Council, I issued the following statement on behalf of the members of the Security Council, urgently asking for the release and protection of American diplomatic personnel who have been detained in Iran since 4 November 1979:

"Following consultations among the members of the Security Council, I am authorized as President of the Council to express the Council's profound concern over the prolonged detention of American diplomatic personnel in Iran. Speaking as President of the Security Council [on] behalf of the Security Council, and while not wishing to interfere in the internal affairs of any country, I must emphasize that the principle of the inviolability of diplomatic personnel and establishments be respected in all cases in accordance with internationally accepted norms. Therefore, I urge in the strongest terms that the diplomatic personnel being held in Iran be released without delay and provided protection. I further urge the Secretary-General to continue to use his good offices to assist towards this objective."

On behalf of the Security Council, I strongly reiterate this appeal.

In view of the serious threat to international peace and security, the Security Council will not relent in its urgent efforts to seek a peaceful solution of the problem in conformity with the principles of justice and international law.

*(continued in Spanish)*

The Security Council will reconvene on 1 December 1979, at 9 p.m., to continue its consideration of the item on its agenda.

*The meeting rose at 4.15 p.m.*

#### Annex 46

#### SECURITY COUNCIL RESOLUTION 457 (1979)

ADOPTED BY THE SECURITY COUNCIL AT ITS 2178th MEETING ON 4 DECEMBER 1979

*The Security Council,*

*Having considered* the letter dated 25 November 1979 from the Secretary-General (S/13646),

*Deeply concerned* at the dangerous level of tension between Iran and the United States of America, which could have grave consequences for international peace and security,



*Recalling* the appeal made by the President of the Security Council on 9 November 1979 (S/13616), which was reiterated on 27 November 1979 (S/13652),

*Taking note* of the letter dated 13 November 1979 from the Foreign Minister of Iran (S/13626) relative to the grievances of Iran,

*Mindful* of the obligation of States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

*Conscious* of the responsibility of States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Reaffirming* the solemn obligation of all States parties to both the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 to respect the inviolability of diplomatic personnel and the premises of their missions;

1. *Urgently calls on* the Government of Iran to release immediately the personnel of the Embassy of the United States of America being held in Tehran, to provide them protection and to allow them to leave the country;

2. *Further calls on* the Governments of Iran and of the United States of America to take steps to resolve peacefully the remaining issues between them to their mutual satisfaction in accordance with the purposes and principles of the United Nations;

3. *Urges* the Governments of Iran and of the United States of America to exercise the utmost restraint in the prevailing situation;

4. *Requests* the Secretary-General to lend his good offices for the immediate implementation of this resolution and to take all appropriate measures to this end;

5. *Decides* that the Council will remain actively seized of the matter and requests the Secretary-General to report urgently to it on developments regarding his efforts.

#### Annex 47

EXCERPT FROM AN INTERVIEW WITH FOREIGN MINISTER GOTBZADEH. FBIS,  
DAILY REPORT, 18 DECEMBER 1979, PP. 2-3

LD171430 Tehran Domestic Service in Persian, 1030 GMT, 17 Dec. 79 LD.

[Text] Sadeq Gotbzadeh, the Minister for Foreign Affairs of the Islamic Republic of Iran, yesterday afternoon, Sunday, answered questions by reporters about the verdict of The Hague court and also the issue of the study of the US aggressive policy in Iran in an interview held at the Ministry of Foreign Affairs.

In reply to a question regarding the verdict of The Hague court on the release of the US hostages and the handing-over of the US Embassy, the Minister for Foreign Affairs said: We frankly announced in the communiqué we sent them that the issue of the hostages is part of a greater issue; that is, the crimes of the Shah in Iran during his shameful reign and the enforcement of the aggressive US policy in Iran during the past 25 years. Therefore, if this issue were to be appraised, all of its parts should be appraised. Hence, we do not recognize the legitimacy of the court in appraising one part of the issue.

The prefabricated verdict of the court was clear to us in advance; for this reason Iran's chargé d'affaires at The Hague was ordered to officially reject the decision of The Hague court. Of course, the United States will pursue the effects of this verdict and will take it to the United Nations and the Security Council and will try to threaten us and subject us to economic sanctions.

The United States will continue the games it has been playing, which of course has no effect on our will. As we have done so far, what we believe in we will continue to do and will advance (tooth and nail).

#### Annex 48

##### STATEMENT OF SECRETARY OF STATE VANCE BEFORE THE SECURITY COUNCIL, 29 DECEMBER 1979

We meet tonight at a moment when the principles upon which this great international body rests are being sharply challenged in Iran. More than eight weeks have passed since our Embassy was seized and our people and those from other nations were taken hostage in Tehran. On three separate occasions, this Council has unanimously expressed the will of the international community that the hostages be released immediately.

From the outset, the Secretary-General, with the full co-operation of the United States, has laboured unceasingly for a peaceful solution. The President of the General Assembly has twice urged Iran to release the hostages. The International Court of Justice has spoken, clearly and unanimously. Governments and world leaders of varying political and religious faiths have appealed for the release of our people. And the US Government has, with determination, persistence, and patience, pursued every peaceful channel available to us.

The response of those who perpetuate this crisis—the terrorists who have invaded our Embassy and the Government of Iran which supports them—has been defiance and contempt. They have placed themselves beyond the world's law and beyond the moral imperatives that are common to the world's cultures and religions.

At the heart of this matter are 50 men and women—still captive, still isolated, still subjected to the most severe strains. The World Court in its unanimous decision expressed concern that continuation of these conditions of imprisonment “exposes the human beings concerned to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm”. Claims that the hostages are well ring hollow, for the international community has been denied either consistent or comprehensive access to them.

But let us be clear: it is not only 50 American men and women who are held hostage in Iran. It is the international community. This is far more than a conflict between the United States and Iran. Iran has placed itself in conflict with the structure of law, with the machinery of peace all of us have painstakingly built.

The time has come for the world community to act, firmly and collectively, to uphold international law and preserve international peace. We must give practical meaning to the principles and purposes of our Charter.

As long as Iran remains indifferent to the voices of reason and mercy that have been raised from every corner of the world, as long as it refuses to recognize the common rules of international behaviour, it must accept the consequences of its deliberate actions.

On 25 November the Secretary-General, acting under Article 99 of the Charter, took the extraordinary step of requesting an urgent meeting of the Council to deal with this crisis, stating that “the present crisis poses a serious threat to international peace and security”. The Council's resolution [457] of 4 December, adopted unanimously, expressed the Council's deep concern at the dangerous level of tension and spoke of possible grave consequences for international peace and security.

These statements, along with the many statements of concern by member States, make clear the judgment of the international community that Iran's act

of taking and holding hostages represents a violation of the law of nations and threatens international peace and security. If Iran continues to hold the hostages, after the Council and the world community have unanimously called for their release, action against Iran under Chapter VII of the Charter is not only justified but required to promote a peaceful solution of this crisis.

It is therefore incumbent upon all of us as members of this Council to take the steps necessary to insure that the Council's earlier unanimous decision is implemented. My Government therefore seeks a resolution which would condemn Iran's failure to comply with earlier actions of the Security Council and of the International Court calling for the immediate release of all the hostages. The resolution would further provide for two additional steps:

*First*, request the Secretary-General to intensify his good office's efforts, noting his readiness to go personally to Tehran and to report back to the Council by a specified date;

*Second*, decide that, if the hostages have not been released when the Council meets again at the early specified date, the Council will at that time adopt specific sanctions under Article 41 of the Charter.

We believe that the continued solidarity of the international community will serve to demonstrate that an early resolution of the problem is to the benefit of all. The prolongation of this crisis is in no one's interest.

We are not unmindful of the grievances of the Iranian people. We respect Iran's sovereignty and independence and the right of the Iranian people to decide their own form of government. As we have repeatedly emphasized, once the hostages are released unharmed, we are prepared, in accordance with the UN Charter, to seek a resolution of the issues between us.

With the hostages' release, the way will be clear for Iran to present its grievances in any appropriate forum. The United States, however, cannot respond to claims of injustice while our citizens are held in unjust captivity in violation of the resolutions and orders of the world's primary peacekeeping institutions. As a great American President, Abraham Lincoln—a man of deep compassion and understanding—once declared: "There is no grievance that is a fit object of redress by mob law."

Our patience and forbearance have been severely tested in these past weeks. They are not unlimited. We have made clear from the beginning that we prefer a peaceful solution to the other remedies that are available to us under international law. It is in the interest of such a peaceful solution that today we call upon this body to act.

Let us act now to preserve the web of mutual obligation which binds us together and shields us from chaos and from disorder. For there can be no evasion of *this central point*: if the international community fails to act when its law is flouted and its authority defied, we not only diminish the possibility for peace in this crisis; we belittle this institution of peace itself.

Effective action by the Security Council can breathe new life into the provisions of the Charter and the decisions of this Council. It can remind all of us, now and in the future, of our solemn obligation to heed the judgments of this body and to preserve its central place in the maintenance of international peace and security.

Let us move together, in a manner that is clear and convincing, to demonstrate that the rule of law has meaning, and that our machinery of peace has practical relevance. Let us protect, as we must, the basic process that permits nations to maintain civilized relations with one another.

Through the decision we urge on this Council, we together can hasten the day when this order is resolved. And through our demonstrated commitment to the purposes of our Charter, we will strengthen both the principles and the institutions that serve world peace and protect us all.

## Annex 49

OFFICIAL FRENCH, SPANISH, RUSSIAN AND CHINESE TEXTS OF THE OPTIONAL  
PROTOCOLS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES

Les Etats parties au présent Protocole et à la Convention de Vienne sur les relations diplomatiques, ci-après dénommée "la Convention", qui a été adoptée par la Conférence des Nations Unies tenue à Vienne du 2 mars au 14 avril 1961,

Exprimant leur désir de recourir, pour ce qui les concerne, à la juridiction obligatoire de la Cour internationale de Justice pour la solution de tous différends touchant l'interprétation ou l'application de la Convention, à moins qu'un autre mode de règlement n'ait été accepté d'un commun accord par les Parties dans un délai raisonnable,

Sont convenus des dispositions suivantes :

Article premier

Les différends relatifs à l'interprétation ou à l'application de la Convention relèvent de la compétence obligatoire de la Cour internationale de Justice, qui, à ce titre, pourra être saisie par une requête de toute partie au différend qui sera elle-même Partie au présent Protocole.

Article II

Les parties peuvent convenir, dans un délai de deux mois après notification par une partie à l'autre qu'il existe à son avis un litige, d'adopter d'un commun accord, au lieu du recours à la Cour internationale de Justice, une procédure devant un tribunal d'arbitrage. Ce délai étant écoulé, chaque partie peut, par voie de requête, saisir la Cour du différend.

Article III

1. Les parties peuvent également convenir d'un commun accord, dans le même délai de deux mois, de recourir à une procédure de conciliation avant d'en appeler à la Cour internationale de Justice.
2. La Commission de conciliation devra formuler ses recommandations dans les cinq mois suivant sa constitution. Si celles-ci ne sont pas acceptées par les parties au litige dans l'espace de deux mois après leur énoncé, chaque partie sera libre de saisir la Cour du différend par voie de requête.

Los Estados Partes en el presente Protocolo y en la Convención de Viena sobre Relaciones Diplomáticas, que en adelante en este documento se denominará "la Convención", aprobada por la Conferencia de las Naciones Unidas celebrada en Viena del 2 de marzo al 14 de abril de 1961,

Expresando su deseo de recurrir a la jurisdicción obligatoria de la Corte Internacional de Justicia en todo lo que les concierne respecto de las controversias originadas por la interpretación e aplicación de la Convención, a menos que las partes hayan aceptado de común acuerdo, dentro de un plazo razonable, alguna otra forma de arreglo,

Han convenido en lo siguiente:

#### Artículo I

Las controversias originadas por la interpretación e aplicación de la Convención se someterá obligatoriamente a la Corte Internacional de Justicia, que a este título podrá atender en ellas a demanda de cualquiera de las partes en la controversia que sea Parte en el presente Protocolo.

#### Artículo II

Dentro de un plazo de dos meses, después de la notificación por una a otra de las partes de que, a su juicio, existe un litigio, éstas podrán convenir en recurrir a un tribunal de arbitraje en vez de recurrir a la Corte Internacional de Justicia. Una vez transcurrido ese plazo, cualquiera de las partes podrá someter la controversia a la Corte mediante una demanda.

#### Artículo III

1. Dentro del mismo plazo de dos meses, las partes podrán convenir en adoptar un procedimiento de conciliación antes de recurrir a la Corte Internacional de Justicia.
2. La comisión de conciliación deberá formular sus recomendaciones dentro de los cinco meses siguientes a su constitución. Si sus recomendaciones no fueran aceptadas por las partes en litigio dentro de un plazo de dos meses después de haber sido formuladas, cualquiera de las partes podrá someter el litigio a la Corte mediante una demanda.

Государства, являющиеся участниками настоящего Протокола, а также  
Венской конвенции о дипломатических сношениях, принятой Конференцией Орга-  
низации Объединенных Наций, проходившей в Вене с 2 марта по 14 апреля  
1961 года, которая ныне называется "Конвенцией",

выражая свое желание обратиться по всем затрагиваемым им вопросам в  
любом споре относительно толкования или применения Конвенции и обязатель-  
ной юрисдикции Международного Суда, если стороны в споре не смогут в те-  
чение разумного срока урегулировать его иными способами,

согласиться о нижеследующем:

#### Статья I

Споры по толкованию или применению Конвенции подлежат обязательной  
юрисдикции Международного Суда и соответственно могут передаваться в этот  
Суд по желанию любой стороны в споре, являющейся участником настоящего  
Протокола.

#### Статья II

В течение двух месяцев после того, как одна сторона уведомила другую  
о том, что по ее мнению существует спор, стороны могут договориться о пере-  
даче спора не в Международный Суд, а в арбитраж. По истечении указанного  
срока спор может быть передан Международному Суду по желанию любой из  
сторон в споре.

#### Статья III

1. В течение тех же двух месяцев стороны в споре могут договориться о  
применении консультативной процедуры до передачи спора в Международный  
Суд.
2. Согласительная комиссия должна сделать свои рекомендации в течение пя-  
ти месяцев со дня ее создания. Если ее рекомендации не будут приняты сто-  
ронами в споре в течение двух месяцев со дня сообщения им этих рекомендаций,  
то спор может быть передан Суду по желанию любой стороны в споре.

本議定書及自一九六一年三月二日至四月十四日在維也納舉行之聯合國會議所通過之維也納外交關係公約（以下簡稱“公約”）之各當事國

表示對於公約之解釋或適用上發生爭端而涉及各當事國之一切問題，除當事各方於相當期間內商定其他解決方法外，願接受國際法院之強制管轄。

直議定條款如下：

### 第一條

公約之解釋或適用上發生之爭端均屬國際法院強制管轄範圍。因此爭端之任何一造如係本議定書之當事國，得以請求將爭端提交國際法院。

### 第二條

當事各方得於一方認為有爭端存在並將此意通知他方後兩個月內，協議不將爭端提交國際法院而提交公斷法庭。此項期間屆滿後，任何一方得以請求將爭端提交國際法院。

### 第三條

一、當事各方得於同一兩個月期間內協議在將爭端提交國際法院前採用和解程序。

二、和解委員會應於派設後五個月內作成建議。爭端各造倘於建議提出後兩個月內未予接受，任何一造得以請求將爭端提交國際法院。

308-498 375

### Annex 50

UNITED STATES RESPONSE TO IRANIAN DRAFTING SUGGESTION REGARDING THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS AND CONSULAR RIGHTS

Sent to: AmEmbassy, Tehran 954.

11/9/54.

Treaty Article XIII-2. View established practice many nations of using terms "interpretation or application" in clauses providing for adjudication by Interna-

tional Court, deletion "application" might seriously curtail means settlement disputes under US-Iran Treaty. Iran has subscribed to following agreements containing both terms: Sweden-Iran commercial air service agreement signed Tehran 31 October 1949; Convention on Privileges and Immunities of UN, 1946; Treaty of Peace with Japan, 1951; Protocol limiting cultivation poppy plant, etc., 1953. Use of both terms standard in US bilateral and multilateral treaty provisions relating to Court.

Adjudication cases under proposed treaty falls under paragraph 1 of Article 36 of Statute (matters specially provided for in treaties) rather than paragraph 2 (compulsory jurisdiction). Contrary to Abdoh's statement, however, paragraph 2 confers jurisdiction on Court in legal disputes on matters other than interpretation, the following pertinent here: existence any fact which if established would constitute breach international obligation; nature and extent reparation for breach international obligation. However, paragraph 2 not applicable to this treaty because Iran has not recognized compulsory jurisdiction.

Issue raised in proposed deletion fundamental, and if Iran persists solution appears very difficult. Consideration could possibly be given as last resort to provision for some procedure for effective arbitration as substitute for Court clause; the arbitration would need to cover, however, "interpretation or application".

DULLES.

### Annex 51

#### LIST OF TREATIES OF FRIENDSHIP, COMMERCE AND NAVIGATION

- Belgium*, Treaty of friendship, establishment and navigation. Signed at Brussels 21 February 1961. Entered into force 3 October 1963. 14 *UST* 1284; *TIAS* 5432; 480 *UNTS* 149.
- Republic of China*, Treaty of friendship, commerce and navigation, with protocol. Signed at Nanking 4 November 1946. Entered into force 30 November 1948. 63 Stat. 1299; *TIAS* 1871; 25 *UNTS* 69.
- Denmark*, Treaty of friendship, commerce and navigation, with protocol and minutes of interpretation. Signed at Copenhagen 1 October 1951. Entered into force 30 July 1961. 12 *UST* 908; *TIAS* 4797; 421 *UNTS* 105.
- France*, Convention of establishment, protocol, and declaration. Signed at Paris 25 November 1959. Entered into force 21 December 1960. 11 *UST* 2398; *TIAS* 4625; 401 *UNTS* 75.
- Greece*, Treaty of friendship, commerce and navigation. Signed at Athens 3 August 1951. Entered into force 13 October 1954. 5 *UST* 1829; *TIAS* 3057; 224 *UNTS* 279.
- Iran*, Treaty of amity, economic relations, and consular rights. Signed at Tehran 15 August 1955. Entered into force 16 June 1957. 8 *UST* 899; *TIAS* 3853; 284 *UNTS* 93.
- Ireland*, Treaty of friendship, commerce and navigation, with protocol. Signed at Dublin 21 January 1950. Entered into force 14 September 1950. 1 *UST* 785; *TIAS* 2155; 206 *UNTS* 269.
- Israel*, Treaty of friendship, commerce and navigation, with protocol and exchange of notes. Signed at Washington 23 August 1951. Entered into force 3 April 1954. 5 *UST* 550; *TIAS* 2948; 219 *UNTS* 237.
- Italy*, Treaty of friendship, commerce and navigation protocol, additional protocol, and exchange of notes. Signed at Rome 2 February 1948. Entered into force 26 July 1949. 63 Stat. 2255; *TIAS* 1965; 79 *UNTS* 171.



- Japan*, Treaty of friendship, commerce and navigation, protocol, and exchange of notes of 29 August 1953. Signed at Tokyo 2 April 1953. Entered into force 30 October 1953. 4 *UST* 2063; *TIAS* 2863; 206 *UNTS* 143.
- Korea*, Treaty of friendship, commerce and navigation, with protocol. Signed at Seoul 28 November 1956. Entered into force 7 November 1957. 8 *UST* 2217; *TIAS* 3947; 302 *UNTS* 281.
- Luxembourg*, Treaty of friendship, establishment and navigation. Signed at Luxembourg 23 February 1962. Entered into force 28 March 1963. 14 *UNST* 251; *TIAS* 5306; 474 *UNTS* 3.
- Netherlands*, Treaty of friendship, commerce and navigation, with protocol and exchange of notes. Signed at The Hague 27 March 1956. Entered into force 5 December 1957. 8 *UST* 2043; *TIAS* 3942; 285 *UNTS* 231.
- Nicaragua*, Treaty of friendship, commerce and navigation, and protocol. Signed at Managua 21 January 1956. Entered into force 24 May 1958. 9 *UST* 449; *TIAS* 4024; 367 *UNTS* 3.
- Pakistan*, Treaty of friendship and commerce and protocol. Signed at Washington 12 November 1959. Entered into force 12 February 1961. 12 *UST* 110; *TIAS* 4683; 404 *UNTS* 259.
- Togolese Republic*, Treaty of amity and economic relations. Signed at Lomé 8 February 1966. Entered into force 5 February 1967. 18 *UST* 1; *TIAS* 6193; 680 *UNTS* 159.
- Viet-Nam*, Treaty of amity and economic relations. Signed at Saigon 3 April 1961. Entered into force 30 November 1961. 12 *UST* 1703; *TIAS* 4890; 424 *UNTS* 137.

#### Annex 52

##### MEMORANDUM ON DISPUTE SETTLEMENT CLAUSE IN TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION WITH CHINA

##### RELATIONSHIP OF ARTICLE XXVII OF THE TREATY BETWEEN THE UNITED STATES AND CHINA, SIGNED 4 NOVEMBER 1946, TO SENATE RESOLUTION 196 OF 2 AUGUST 1946

Article XXVII of the treaty provides that any dispute between the governments of the two high contracting parties as to the interpretation or the application of this treaty, which the high contracting parties cannot satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice unless the high contracting parties shall agree to settlement by some other pacific means.

Senate Resolution 196 of 2 August 1946 is the resolution by which the Senate gave its advice and consent to the deposit with the Secretary-General of the United Nations of a declaration under paragraph 2 of Article 36 of the Statute of the International Court of Justice recognizing as compulsory the jurisdiction of the International Court of Justice in all legal disputes arising concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation.

In giving its advice and consent to the deposit of the declaration, the Senate qualified the agreement to accept compulsory jurisdiction of the Court by adding a proviso that the declaration should not apply to (a) disputes which the parties might, pursuant to existing or future agreements entrust to other tribunals; (b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States; or

(c) disputes arising under a multilateral treaty except under certain specified conditions. It was further provided in the resolution that the declaration should remain in force for a period of five years and thereafter until the expiration of six months after notice of termination.

The negotiations which resulted in the signing of the present treaty began in February 1946. In May the present text of Article XXVIII was discussed informally by officers of the Department of State with the then chairman and other members of the Foreign Relations Committee. This fact is referred to not for the purpose of suggesting that there is any permanent commitment by those Senators in favour of the language of this article but as indicating that the Department was then seeking to develop a sound and generally acceptable compromissary clause for treaties of this type. The text of the article was submitted to the Chinese negotiators on 6 June and no question of its acceptance by China was raised in the negotiations. Senate Resolution 196 was adopted 2 August, and the treaty was signed 4 November 1946.

It would appear that the only part of the resolution which is significant in so far as Article XXVIII of this treaty is concerned is item (b) of the first proviso, which states that the declaration accepting compulsory jurisdiction of the Court shall not apply to disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States. There is, of course, no provision similar to this in the treaty. The Department of State feels that questions arising under this treaty are matters which the United States would wish to see submitted to the International Court of Justice, and that it would be in the public interest for the United States to be able to bring, without restriction, before that Court any disputes arising because of the interpretation or application by China of the provisions of this treaty in such a way as to be detrimental to the interests of the United States.

It is thought that Article XXVIII of the treaty is not in conflict with the intent and purpose of Senate Resolution 196. It is to be noted that the exception in item (b) applies with respect to the acceptance of compulsory jurisdiction as to four extensive categories of questions of which the interpretation of a treaty is only one. In this broad context, the exception stands as a possible protection against this country's being cited before the Court by any one of a large number of States, some of which might conceivably try to bring before the Court, as related to a question of international law, questions such as our policy as to immigration, the continental shelf, or some other domestic matter.

The compromissary clause (Article XXVIII) of the treaty with China, however, is limited to questions of the interpretation or application of this treaty; i.e., it is a special not a general compromissary clause. It applies to a treaty on the negotiation of which there is voluminous documentation indicating the intent of the parties. This treaty deals with subjects which are common to a large number of treaties, concluded over a long period of time by nearly all nations. Much of the general subject-matter—and in some cases almost identical language—has been adjudicated in the courts of this and other countries. The authorities for the interpretation of this treaty are, therefore, to a considerable extent established and well known. Furthermore, certain important subjects, notably immigration, traffic in military supplies, and the "essential interests of the country in time of national emergency", are specifically excepted from the purview of the treaty. In view of the above, it is difficult to conceive how Article XXVIII could result in this Government's being impleaded in a matter in which it might be embarrassed.

It may be added, in conclusion, that there is at least one precedent for this type of compromissary provision. It is contained in Articles 84 and 86 of the International Civil Aviation Convention (*Treaties and Other International Acts, Series 1591*), which was ratified by the President 6 August 1946. It would also appear that the jurisdiction of the Court in questions arising under the

constitution of the International Labour Organisation (*Treaty Series*, No. 874) is not limited by any conditions such as are established in Senate Resolution 196.

### Annex 53

#### DEPARTMENT OF STATE MEMORANDUM ON PROVISIONS IN COMMERCIAL TREATIES RELATING TO THE INTERNATIONAL COURT OF JUSTICE

Article XIX, paragraph 2, of the treaty with Belgium and Article XIV, paragraph 2, of the treaty with Viet-Nam provide that differences as to the interpretation or application of those treaties, if not resolved by diplomacy, are to be submitted to the International Court of Justice unless the parties agree to settlement by some other pacific means. In total, provisions relating to the International Court of Justice appear in 20 postwar commercial treaties. Provisions identical or nearly identical with those of the treaties with Belgium and Viet-Nam are to be found in 15 other treaties of this general type signed since the end of World War II, each of which has received Senate approval: China (1946), Denmark (1951), Ethiopia (1951), Iran (1955), Ireland (1950), Israel (1951), Italy (1948), Japan (1953), Korea (1956), Netherlands (1956), Nicaragua (1956), Pakistan (1959), and Uruguay (1948). All of these treaties except that with Uruguay have entered into force. Similar provisions appear in treaties with Colombia (1951) and Haiti (1955), upon which the Senate has not acted.

The only variations from the policy of including a provision in postwar commercial treaties in this form and wording occur in connection with the treaties with the Federal Republic of Germany and the Sultanate of Muscat and Oman. Article XXVII, paragraph 2, of the former provides that disputes as to interpretation or application of the treaty not adjusted by diplomacy or some other means shall be submitted to arbitration, or upon agreement of the parties, to the International Court of Justice. This provision, however, is qualified by paragraph 24 of the protocol to the treaty, which stipulates that when the Federal Republic of Germany becomes a member of the United Nations or a party to the Statute of the Court, the requirement of prior agreement by the parties become inoperative and disputes arising out of the treaty shall be submitted to the Court if not settled by diplomacy or some other agreed means. The Foreign Relations Committee noted in its report on the treaty (Ex. Rept. 10, 84th Cong., 1st sess.) that it did not seem appropriate to insist upon giving priority to the jurisdiction of the Court, while Germany was not a member of the United Nations or a party to the Statute of the Court but that when it attained such status the normal practice would be followed.

The treaty with the Sultanate of Muscat and Oman is the only treaty of 21 of this general type signed since 1945 from which the International Court of Justice provision has been omitted. The Sultan of Muscat refused to consent to any provision that would involve adjudication by a third party. His attitude is believed, as the committee noted in its report on the treaty (Ex. Rept. No. 1, 86th Cong. 1st sess.) to stem from dissatisfaction with the arbitration of his dispute with Saudi Arabia over control of the Buraimi Oasis.

The first treaty in which the International Court of Justice provision appears is that with the Republic of China signed in 1946. Prior to its inclusion in that treaty, Senator Connally, then chairman of the Committee on Foreign Relations, and other members of the committee were consulted regarding such a provision. All of them expressed approval.

The provision was discussed during hearings on the treaty (80th Cong., 2d scss., 26 April 1948). At that time the Department of State submitted a paper in explanation of the provision. This paper is reprinted in the hearings and

summarized in the committee's report on that treaty (Ex. Rept. No. 8, 80th Cong., 2d sess.) and on the treaty with Italy (Ex. Rept. No. 6, 80th Cong., 2d sess.).

This paper indicates that the provision in question is intended to fill the need for an agreed method of settling differences arising out of treaties of this type, that would be both sound and generally acceptable. It points out a number of the features which in its view make the provision satisfactory from this standpoint. These include the fact that the provision is limited to differences arising immediately from the specific treaty concerned, that such treaties deal with familiar subject-matter and are thoroughly documented in the records of the negotiation, that an established body of interpretation already exists for much of the subject-matter of such treaties, and that such purely domestic matters as immigration policy and military security are placed outside the scope of such treaties by specific exceptions. The paper indicates the Department's view not only that such a treaty provision would not operate in a manner detrimental to US interests but that it is in the interest of the United States to be able to have recourse to the International Court of Justice in case of treaty violation.

The International Court of Justice provision was not wholly an innovation at the time of its inclusion in the treaty with China, for a comparable provision had already been incorporated in the International Civil Aviation Convention (*TIAS* 1591); and like provisions have been included in a considerable number of agreements entered into since that time. Among these are the Treaty of Peace with Japan (*TIAS* 2490), the Universal Copyright Convention (*TIAS* 3324), and the Statute of the International Atomic Energy Agency (*TIAS* 3873). It may be noted that no case has arisen under a commercial treaty, or for that matter under any of the agreements mentioned above, which has occasioned submission of a dispute to the International Court.

#### Annex 54

##### CORRESPONDENCE RELATING TO THE DISPUTE SETTLEMENT PROVISION IN COMMERCIAL TREATY WITH THE NETHERLANDS

Desp. No. 89.

21 July, 1953.

From: AmEmbassy, The Hague.

To: The Department of State, Washington.

Ref: Embassy despatches 1419, 5 June; 1433, 9 June; 1472, 15 June; 1522, 25 June 1953.

\* \* \*

Subject: FCN Draft Treaty: Articles 1, 18, 19, 21, and 23 through 26.

The "first run" of all articles and the Protocol of the proposed Draft Treaty of Friendship, Commerce and Navigation has been effected and informal conversations have been held with the Ministry of Foreign Affairs on some of the Department's replies to queries contained in Embassy despatches relating to Netherlands observations on various articles of the Draft Treaty... [Portions of text other than those dealing with disputes settlement clause are omitted.]

... views or instructions of the Department with reference to the observations, suggestions or questions of the Netherlands on the items herein.

Approved by:

William H. BRAY,

Counselor of Embassy for Economic Affairs.

For the Ambassador:

Harold H. RHODES,

First Secretary of Embassy.

Enclosures:

- (1) Article 19, "Navigation".
- (2) Article 18, "Cartels and State Business Practices".
- (3) Article 21, "General Exceptions"; Article 1, "General Equitable Treatment"; Article 23, "Territorial Application".
- (4) Article 24, "Settlement of Disputes".
- (5) Article 25, "Termination of Existing Agreements"; Article 26, "Ratification and Termination".

Original, mat and copy to Department

\* \* \*

FCN ARTICLE 24, "Settlement of Disputes"

Encl. No. 4, Desp. No 89, 7/21/53.

FROM THE HAGUE.

The Ministry said that it would prefer to leave out paragraph 6 of Article 12 which it thought appeared superfluous in view of Article 24, but that it had no particular objection to its retention (see Enclosure 4 to Embassy despatch 1472 of 15 June 1953). The Ministry then added that it "would like to adapt paragraph 6 of Article 12 to the Draft FCN Treaty along the lines of paragraph 4 of Article 12 of the US Danish FCN Treaty". The Ministry's discussion of Article 24 and reference again to paragraph 6 of Article 12 indicated some vacillation of views. Its desire regarding paragraph 4 of Article 12 of the US-Danish Treaty however was indicated as relating only to the last sentence of that Article. In other words, it would prefer to substitute the sentence for paragraph 6 of Article 12 of the US-Netherlands Draft, if the paragraph is retained.

A legal advisor of the Ministry said that paragraph 2 of Article 24 leaves some doubt in the minds of Netherlands legal experts as to the question of "compulsion". He stated that the Netherlands has always preferred the compulsory concept. The idea he wished to convey was clarified in a discussion among members of the Ministry of Foreign Affairs and the representative of the Ministry of Economic Affairs present. They said that some wording such as "shall be submitted at the request of one of the parties" might be desirable. They, however, did not specifically propose the wording. Although the wording "shall be submitted" in line 3 was noted they were not certain that "compulsion" was clearly implied if either party were to make a request. Their spokesman said that they would like to know the US views on the subject.

No.: A-52 4 August 1953.

Subject: FCN treaty. Embassy despatch 89 of 21 July with enclosure.

To: The American Embassy, The Hague.

Department comments follow:

*Article XIX, para. 2...* [Portions of text other than those dealing with disputes settlement clause are omitted.]

\* \* \*

*Article XXIV, para. 2.* In the Department's view, the "compulsion" idea is implicit in the wording of this paragraph. Its purport is that either Party has the right, after the exhaustion of normal diplomacy, to bring the case to the Court; and the other Party is obligated in that event to submit to the jurisdiction of the Court.

Desp. No. 516.

22 December 1955.

From: AmEmbassy, The Hague.  
To: The Department of State, Washington.  
Ref: Embdesp. 515, 21 December 1955.

\* \* \*

Subject: Treaty of Friendship, Commerce and Navigation.

Transmitted as Enclosures Nos. 1 and 2 are two letters from the Netherlands Ministry of Foreign Affairs requesting written interpretation of specific aspects of the FCN Treaty between the Netherlands and the United States. Instructions are requested.

(1) Letter No. 174.354 (Enclosure No. 1) relates to the referral of disputes to the International Court of Justice (Article XXV).

(2) Letter No. 173.761 (Enclosure No. 2) asks for an interpretation of the term "costfree access to the courts" as used in Protocol, paragraph No. 6 (to become No. 5). [Letter No. 173.761 and response not included in this Annex.]

For the Ambassador:

Howard R. COTTAM,

Counselor of Embassy for Economic Affairs.

Enclosures:

1. Letter from M. A. Beclaerts van Blokland to Howard R. Cottam dated 20 December 1955 (No. 174.354).

2. Letter from M. A. Beclaerts van Blokland to Howard R. Cottam dated 20 December 1955 (No. 173.761).

MINISTRY OF FOREIGN AFFAIRS

THE HAGUE

Page 1.

Desp. No. 516.

20 December 1955.

174.354.

DEA

*Friendship Treaty*

Dear Howard:

During the course of the negotiations which have led to the draft Treaty of Friendship, Commerce, and Navigation which will be signed before long

between our two countries, it was agreed upon by both Delegations that Article XXV, second paragraph, should be taken to mean that the dispute referred to therein may be brought before the Court, either by the notification of a special Agreement or, in the absence thereof, by application of one of the Parties. Though this interpretation is in accordance with the generally accepted meaning of a provision as worded in our Treaty, I would like, in order to avoid any misunderstanding, to have this interpretation confirmed by letter.

Sincerely yours,

M. A. BEELAERTS VAN BLOKLAND.

Mr. Howard R. COTTAM,  
Acting Director of the I.C.A. Mission,  
Benoordenhoutseweg 7,  
The Hague.

#### DEPARTMENT OF STATE INSTRUCTION

UNCLASSIFIED

2505.

No.: A-121, 30 December 1955.

Subject: Treaty of Friendship, Commerce and Navigation.

To: The American Embassy, The Hague.

Reference is made to Embassy's despatch 516 of 22 December transmitting copies of two letters (174.354 and 173.761) dated 20 December from Mr. Beelaerts of the Dutch foreign office to Mr. Cottam regarding interpretation of, respectively, Article XXV (2) and Protocol paragraph 5 (old 6) of the subject draft treaty. Mr. Cottam, in his capacity as Counselor of Embassy for Economic Affairs, is authorized to reply in kind. The substantive passage to be included in each reply is set out below. It is presumed that this correspondence, inasmuch as it only confirms or clarifies mutual understanding of the treaty's terms without alteration thereof by either subtraction or addition, would be in the nature merely of negotiating record rather than of formal agreement annexed to the published text of the treaty.

1. In answer to letter 174.354, it may be stated:

"Our understanding accords with yours: namely, that the dispute referred to in Article XXV, paragraph 2, may be brought before the Court either by the notification of a special agreement defining the question to be decided or, in the absence thereof, by application of one of the Parties. Since this interpretation reflects the meaning which would normally be attributed to the language of the provision, I assume it is agreed to omit from the Protocol the paragraph to the same effect which was under consideration earlier in the negotiation."

2. In answer to letter 173.761, it may be stated:

... [Text omitted.]

DULLES.

Desp. No. 534.

3 January 1956.

From: AmEmbassy, The Hague.

To: The Department of State, Washington.

Ref.: Dept's. A-121, 30 December 1955, Embdesp. 516, 22 December 1955.

Subject: Treaty of Friendship, Commerce and Navigation.

In accordance with the Department's A-121 of 30 December 1955, two (2) letters were sent to Jhr. M. A. Beelaerts van Blokland from Mr. Howard R. Cottam, Counselor of Embassy for Economic Affairs, as follows:

“(1) This is a reply to your letter No. 147.354 dated 20 December 1955.

Our understanding accords with yours: namely, that the dispute referred to in Article XXV, paragraph 2, may be brought before the Court either by the notification of a special agreement defining the question to be decided or, in the absence thereof, by application of one of the Parties. Since this interpretation reflects the meaning which would normally be attributed to the language of the provision, I assume it is agreed to omit from the Protocol the paragraph to the same effect which was under consideration earlier in the negotiation.

(2) In reply to your letter No. 173.761 dated 20 December 1955, I offer the following explanatory note for your record of the FCN negotiations:”

... [Text omitted.]

For the Ambassador:

Howard R. COTTAM,

Counselor of Embassy for Economic Affairs.

#### Annex 55

### THE UNITED NATIONS CONVENTION AGAINST THE TAKING OF HOSTAGES

#### International Convention Against the Taking of Hostages

##### *The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

*Recognizing* in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

*Reaffirming* the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

*Considering* that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall be either prosecuted or extradited,

*Being convinced* that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking hostages as manifestations of international terrorism,

*Have agreed* as follows:



*Article 1*

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking, or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking

likewise commits an offence for the purposes of this Convention.

*Article 2*

Each State Party shall make the offences set forth in Article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

*Article 3*

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in Article 1. as the case may be, or to the appropriate authorities thereof.

*Article 4*

States Parties shall co-operate in the prevention of the offences set forth in Article 1, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

*Article 5*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in Article 1 which are committed:

(a) in its territory or on board a ship or aircraft registered in that State;

(b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) in order to compel that State to do or abstain from doing any act; or

(d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to

establish its jurisdiction over the offences set forth in Article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### *Article 6*

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the offence was committed;
- (b) the State against which compulsion has been directed or attempted;
- (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) the international intergovernmental organization against which compulsion has been directed or attempted;
- (g) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of Article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

#### *Article 7*

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

*Article 8*

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in Article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

*Article 9*

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(a) that the request for extradition for an offence set forth in Article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(b) that the person's position may be prejudiced:

(i) for any of the reasons mentioned in subparagraph (a) of this paragraph,  
or

(ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

*Article 10*

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in Article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of Article 5.

*Article 11*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth

in Article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

#### *Article 12*

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in Article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

#### *Article 13*

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

#### *Article 14*

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

#### *Article 15*

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties.

#### *Article 16*

1. 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 those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 17*

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article 18*

1. This convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article 19*

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

*Article 20*

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

*In witness whereof*, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on . . .

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## SELECTED DOCUMENTS EARLIER SUBMITTED

1. Declaration of David D. Newsom, Under Secretary of State, of 6 December 1979, with Appendices
2. Response by the United States, 11 December 1979, to questions presented by the Court on 10 December 1979
3. Response by the United States to a question presented by Judge Gros on 11 December 1979

[*See pp. 43-119, supra*]

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