

CASE CONCERNING UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN

Judgment of 24 May 1980

In its Judgment in the case concerning United States Diplomatic and Consular Staff in Tehran, the Court decided (1) that Iran has violated and is still violating obligations owed by it to the United States; (2) that these violations engage Iran's responsibility; (3) that the Government of Iran must immediately release the United States nationals held as hostages and place the premises of the Embassy in the hands of the protecting power; (4) that no member of the United States diplomatic or consular staff may be kept in Iran to be subjected to any form of judicial proceedings or to participate in them as a witness; (5) that Iran is under an obligation to make reparation for the injury caused to the United States; and (6) that the form and amount of such reparation, failing agreement between the parties, shall be settled by the Court. (The full text of the operative paragraph is reproduced below.)

These decisions were adopted by large majorities: (1) and (2)—13 votes to 2; (3) and (4)—unanimously; (5)—12 votes to 3; (6)—14 votes to 1 (the votes are recorded by name below).

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A separate opinion was appended to the Judgment by Judge Lachs, who voted against operative paragraph 5. Dissenting opinions were appended by Judge Morozov, who

voted against paragraphs 1, 2, 5 and 6, and by Judge Tarazi, who voted against paragraphs 1, 2 and 5.

Procedure before the Court (paras. 1–10)

In its Judgment, the Court recalls that on 29 November 1979 the United States of America had instituted proceedings against Iran in a case arising out of the situation at its Embassy in Tehran and Consulates at Tabriz and Shiraz, and the seizure and detention as hostages of its diplomatic and consular staff in Tehran and two more citizens of the United States. The United States having at the same time requested the indication of provisional measures, the Court, by a unanimous Order of 15 December 1979, indicated, pending final judgment, that the Embassy should immediately be given back and the hostages released (see Press Communiqué No. 80/1).

The procedure then continued in accordance with the Statute and Rules of Court. The United States filed a Memorial, and on 18, 19 and 20 March 1980 the Court held a public hearing at the close of which the United States, in its final submissions, requested it to adjudge and declare, *inter alia*, that the Iranian Government had violated its international legal obligations to the United States and must: ensure the immediate release of the hostages; afford the United States diplomatic and consular personnel the protection and immunities to which they were entitled (including immunity from

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criminal jurisdiction) and provide them with facilities to leave Iran; submit the persons responsible for the crimes committed to the competent Iranian authorities for prosecution, or extradite them to the United States; and pay the United States reparation, in a sum to be subsequently determined by the Court.

Iran took no part in the proceedings. It neither filed pleadings nor was represented at the hearing, and no submissions were therefore presented on its behalf. Its position was however defined in two letters addressed to the Court by its Minister for Foreign Affairs on 9 December 1979 and 16 March 1980 respectively. In these the Minister maintained *inter alia* that the Court could not and should not take cognizance of the case.

The Facts (paras. 11–32)

The Court expresses regret that Iran did not appear before it to put forward its arguments. The absence of Iran from the proceedings brought into operation Article 53 of the Statute, under which the Court is required, before finding in the Applicant's favour, to satisfy itself that the allegations of fact on which the claim is based are well founded.

In that respect the Court observes that it has had available to it, in the documents presented by the United States, a massive body of information from various sources, including numerous official statements of both Iranian and United States authorities. This information, the Court notes, is wholly concordant as to the main facts and has all been communicated to Iran without evoking any denial. The Court is accordingly satisfied that the allegations of fact on which the United States based its claim were well founded.

Admissibility (paras. 33–44)

Under the settled jurisprudence of the Court, it is bound, in applying Article 53 of its Statute, to investigate, on its own initiative, any preliminary question of admissibility or jurisdiction that may arise.

On the subject of admissibility, the Court, after examining the considerations put forward in the two letters from Iran, finds that they do not disclose any ground for concluding that it could not or should not deal with the case. Neither does it find any incompatibility with the continuance of judicial proceedings before the Court in the establishment by the Secretary-General of the United Nations, with the agreement of both States, of a Commission given a mandate to undertake a fact-finding mission to Iran, hear Iran's grievances and facilitate the solution of the crisis between the two countries.

Jurisdiction (paras. 45–55)

Four instruments having been cited by the United States as bases for the Court's jurisdiction to deal with its claims, the Court finds that three, namely the Optional Protocols to the two Vienna Conventions of 1961 and 1963 on, respectively, Diplomatic and Consular Relations, and the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, do in fact provide such foundations.

The Court, however, does not find it necessary in the present Judgment to enter into the question whether Article 13 of the fourth instrument so cited, namely the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic

Agents, provides a basis for the exercise of its jurisdiction with respect to the United States' claims thereunder.

MERITS: Attributability to the Iranian State of the acts complained of, and violation by Iran of certain obligations (paras. 56–94)

The Court has also, under Article 53 of its Statute, to satisfy itself that the claims of the Applicant are well founded in law. To this end, it considers the acts complained of in order to determine how far, legally, they may be attributed to the Iranian State (as distinct from the occupiers of the Embassy) and whether they are compatible or incompatible with Iran's obligations under treaties in force or other applicable rules of international law.

(a) *The events of 4 November 1979* (paras. 56–68)

The first phase of the events underlying the Applicant's claims covers the armed attack on the United States Embassy carried out on 4 November 1979 by Muslim Student Followers of the Imam's Policy (further referred to as "the militants" in the Judgment), the overrunning of its premises, the seizure of its inmates as hostages, the appropriation of its property and archives, and the conduct of the Iranian authorities in the face of these occurrences.

The Court points out that the conduct of the militants on that occasion could be directly attributed to the Iranian State only if it were established that they were in fact acting on its behalf. The information before the Court did not suffice to establish this with due certainty. However, the Iranian State—which, as the State to which the mission was accredited, was under obligation to take appropriate steps to protect the United States Embassy—did nothing to prevent the attack, stop it before it reached its completion or oblige the militants to withdraw from the premises and release the hostages. This inaction was in contrast with the conduct of the Iranian authorities on several similar occasions at the same period, when they had taken appropriate steps. It constituted, the Court finds, a clear and serious violation of Iran's obligations to the United States under Articles 22 (2), 24, 25, 26, 27 and 29 of the 1961 Vienna Convention on Diplomatic Relations, of Articles 5 and 36 of the 1963 Vienna Convention on Consular Relations, and of Article II (4) of the 1955 Treaty. Further breaches of the 1963 Convention had been involved in failure to protect the Consulates at Tabriz and Shiraz.

The Court is therefore led to conclude that on 4 November 1979 the Iranian authorities were fully aware of their obligations under the conventions in force, and also of the urgent need for action on their part, that they had the means at their disposal to perform their obligations, but that they completely failed to do so.

(b) *Events since 4 November 1979* (paras. 69–79)

The second phase of the events underlying the United States' claims comprises the whole series of facts which occurred following the occupation of the Embassy by the militants. Though it was the duty of the Iranian Government to take every appropriate step to end the infringement of the inviolability of the Embassy premises and staff, and to offer reparation for the damage, it did nothing of the kind. Instead, expressions of approval were immediately heard from numerous Iranian authorities. Ayatollah Khomeini himself proclaimed the Iranian State's endorsement of both the seizure of the premises and the detention of the hostages. He described the Embassy as a "centre of espionage", declared that the hostages would (with some exceptions) remain

"under arrest" until the United States had returned the former Shah and his property to Iran, and forbade all negotiation with the United States on the subject. Once organs of the Iranian State had thus given approval to the acts complained of and decided to perpetuate them as a means of pressure on the United States, those acts were transformed into acts of the Iranian State: the militants became agents of that State, which itself became internationally responsible for their acts. During the six months which ensued, the situation underwent no material change: the Court's Order of 15 December 1979 was publicly rejected by Iran, while the Ayatollah declared that the detention of the hostages would continue until the new Iranian parliament had taken a decision as to their fate.

The Iranian authorities' decision to continue the subjection of the Embassy to occupation, and of its staff to detention as hostages, gave rise to repeated and multiple breaches of Iran's treaty obligations, additional to those already committed at the time of the seizure of the Embassy (1961 Convention: Arts. 22, 24, 25, 26, 27 and 29; 1963 Convention: *inter alia*, Art. 33; 1955 Treaty, Art. II (4)).

With regard to the Chargé d'affaires and the two other members of the United States mission who have been in the Iranian Ministry of Foreign Affairs since 4 November 1979, the Court finds that the Iranian authorities have withheld from them the protection and facilities necessary to allow them to leave the Ministry in safety. Accordingly, it appears to the Court that in their respect there have been breaches of Articles 26 and 29 of the 1961 Vienna Convention.

Taking note, furthermore, that various Iranian authorities have threatened to have some of the hostages submitted to trial before a court, or to compel them to bear witness, the Court considers that, if put into effect, that intention would constitute a breach of Article 31 of the same Convention.

(c) *Possible existence of special circumstances*
(paras. 80–89)

The Court considers that it should examine the question whether the conduct of the Iranian Government might be justified by the existence of special circumstances, for the Iranian Minister for Foreign Affairs had alleged in his two letters to the Court that the United States had carried out criminal activities in Iran. The Court considers that, even if these alleged activities could be considered as proven, they would not constitute a defence to the United States' claims, since diplomatic law provides the possibility of breaking off diplomatic relations, or of declaring *persona non grata* members of diplomatic or consular missions who may be carrying on illicit activities. The Court concludes that the Government of Iran had recourse to coercion against the United States Embassy and its staff instead of making use of the normal means at its disposal.

(d) *International responsibility*
(paras. 90–92)

The Court finds that Iran, by committing successive and continuing breaches of the obligations laid upon it by the Vienna Conventions of 1961 and 1963, the 1955 Treaty, and the applicable rules of general international law, has incurred responsibility towards the United States. As a consequence, there is an obligation on the part of the Iranian State to make reparation for the injury caused to the United States. Since, however, the breaches are still continuing, the form and amount of such reparation cannot yet be determined.

At the same time the Court considers it essential to reiterate the observations it made in its Order of 15 December 1979 on the importance of the principles of international law governing diplomatic and consular relations. After stressing the particular gravity of the case, arising out of the fact that it

is not any private individuals or groups that have set at naught the inviolability of an embassy, but the very government of the State to which the mission is accredited, the Court draws the attention of the entire international community to the irreparable harm that may be caused by events of the kind before the Court. Such events cannot fail to undermine a carefully constructed edifice of law, the maintenance of which is vital for the security and well-being of the international community.

(e) *United States operation in Iran on 24–25 April 1980*
(paras. 93 and 94)

With regard to the operation undertaken in Iran by United States military units on 24–25 April 1980, the Court says that it cannot fail to express its concern. It feels bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations. Nevertheless, the question of the legality of that operation can have no bearing on the evaluation of Iran's conduct on 4 November 1979. The findings reached by the Court are therefore not affected by that operation.

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For these reasons, the Court gives the decision reproduced in full below:

OPERATIVE PART OF JUDGMENT

THE COURT.*

1. By thirteen votes¹ to two,²

Decides that the Islamic Republic of Iran, by the conduct which the Court has set out in this Judgment, has violated in several respects, and is still violating, obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law;

2. By thirteen votes¹ to two,²

Decides that the violations of these obligations engage the responsibility of the Islamic Republic of Iran towards the United States of America under international law;

3. Unanimously,

Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end:

(a) must immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (Article 45 of the 1961 Vienna Convention on Diplomatic Relations);

(b) must ensure that all the said persons have the necessary means of leaving Iranian territory, including means of transport;

*Composed as follows: President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Tarazi, Oda, Ago, El-Erian, Sette-Camara and Baxter.

¹President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.

²Judges Morozov and Tarazi.

(c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran;

4. Unanimously,

Decides that no member of the United States diplomatic or consular staff may be kept in Iran to be subjected to any form of judicial proceedings or to participate in them as a witness;

5. By twelve votes³ to three.⁴

Decides that the Government of the Islamic Republic of Iran is under an obligation to make reparation to the Government of the United States of America for the injury caused to the latter by the events of 4 November 1979 and what followed from these events;

6. By fourteen votes⁵ to one.⁶

Decides that the form and amount of such reparation, failing agreement between the Parties, shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

SUMMARY OF OPINIONS APPENDED TO THE JUDGMENT

Judge Lachs indicated that he voted against the first part of operative paragraph 5, as he found it redundant. The responsibility having been established, the whole question of reparations should have been left to the subsequent procedure, including the question of form and amount as provided by the Judgment.

The opinion stresses the importance of the Judgment for diplomatic law, and the major part of it is devoted to the question of the practical solution by diplomatic means of the dispute between the Parties. Once the legal issues have been clarified by the Judgment, the parties should take speedy action and make maximum efforts to dispel tension and mistrust, and in this a third-party initiative may be important. Judge Lachs visualizes a particular role for the Secretary-General of the United Nations in this respect and the work of a special commission or mediating body. In view of the gravity of the situation, the need for a resolution is urgent.

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In his dissenting opinion, *Judge Morozov* indicates that operative paragraph 1 of the Judgment is drafted in such a way that it is not limited to the question of the violation of the Vienna Conventions of 1961 and 1963, but also covers, if read with some paragraphs of the reasoning, the question of alleged violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States; this treaty, he believes, does not provide the parties with an unconditional right to invoke the compulsory jurisdiction of the Court, and in the circumstances the Court has in fact no competence to consider the alleged violations.

Furthermore, Judge Morozov observes, the United States committed during the period of the judicial deliberations many unlawful actions, culminating in the military invasion.

³President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.

⁴Judges Lachs, Morozov and Tarazi.

⁵President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Tarazi, Oda, Ago, El-Erian, Sette-Camara and Baxter.

⁶Judge Morozov.

of the territory of the Islamic Republic of Iran, and has therefore lost the legal right to refer to the Treaty in its relations with Iran.

Judge Morozov voted against operative paragraphs 2, 5 and 6 because he had noted that a series of actions was undertaken by the United States of America against Iran in the course of the judicial deliberations, in particular the freezing by the United States of very considerable Iranian assets, combined with the intention, clearly expressed in a statement made by the President of the United States on 7 April 1980, to make use of these assets, if need be, in accordance with decisions that would be taken in the domestic framework of the United States; that meant that the United States was acting as a "judge" in its own cause. In Judge Morozov's view, the situation, created by actions of the United States, in which the Court carried on its judicial deliberations in the case had no precedent in the whole history of the administration of international justice either before the Court or before any other international judicial institution. The United States, having caused severe damage to Iran, had lost the legal as well as the moral right to reparations from Iran, as mentioned in operative paragraphs 2, 5 and 6.

Judge Morozov also finds that some paragraphs of the reasoning part of the Judgment describe the circumstances of the case in an incorrect or one-sided way.

He considers that, without any prejudice to the exclusive competence of the Security Council, the Court, from a purely legal point of view, could have drawn attention to the undeniable fact that Article 51 of the United Nations Charter, establishing the right of self-defence to which the United States of America referred in connection with the events of 24–25 April, may be invoked only "if an armed attack occurs against a member of the United Nations", and that there is no evidence of any armed attack having occurred against the United States.

Judge Morozov also stresses that some indication should have been included in the Judgment to the effect that the Court considered that settlement of the dispute between the United States and the Islamic Republic of Iran should be reached exclusively by peaceful means.

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Judge Tarazi voted in favour of operative paragraphs 3 and 4 of the Judgment, because he considered that the seizure of the embassy, and the detention as hostages of those present in it, constituted an act in breach of the provisions of the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations.

On the other hand, Judge Tarazi felt impelled to vote against operative paragraph 1, because he considered that only the 1961 and 1963 Vienna Conventions conferred jurisdiction on the Court in the present case.

He also voted against paragraphs 2 and 5, because, in his view, the Court, at the present stage of the proceedings and considering the concomitant circumstances, could not make any ruling as to the responsibility of the Government of the Islamic Republic of Iran.

On the other hand, Judge Tarazi voted in favour of paragraph 6, because he considered that, in the event of any reparations being owed, they should be determined and assessed by the International Court of Justice; it was not admissible for them to be the subject of proceedings in courts of domestic jurisdiction.