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Brian J. McCoy

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On 24 May 1980, the International Court of Justice delivered its judgment in *United States v. Iran.*[1] The Court unanimously decided that:

> [T]he 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 United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power;
> (b) must ensure that all the said persons have the necessary means of leaving the Iranian territory including means of transport;
> (c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy and of its Consulates in Iran . . . .[2]

The Court also held unanimously "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."[3] Although the decision is important in many respects,[4] the Court's discussion of its jurisdiction to issue interim measures despite the concurrent formation of the United Nations Security Council's Peacekeeping Commission may be most significant in determining the future role of the Court in the resolution of political disputes.[5]

The United States referred the issues raised by the occupation of the Embassy and the detention of its diplomatic staff to the United Nations Security Council on 9 November 1979 and to the Secretary-General on 25 November 1979.[6] Four days later, while the matter was still before the Security Council, the United States submitted its application to the

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1. Case Concerning United States Diplomatic and Consular Staff in Iran, [1980] I.C.J. ___; *reprinted in* U.N. Doc. S/13989 (1980).

2. U.N. Doc. S/13989 ¶ 39.

3. *Id.* at ¶ 95.4. On 15 December 1979, the Court ordered the release of all American nationals detained in Iran and the relinquishment of the Embassy to the United States. It has been suggested that such a decision by the Court clouded the real legal question: whether the order to release the hostage Americans is an appropriate provisional measure since if Iran obeyed the order, it would not be able to press its claim that the diplomatic personnel must stand trial for espionage. *See* 21 HARV. INT'L L.J. 268, 274 (1980).

4. Stephen Schwebel, Deputy Legal Adviser in the State Department, has commented that the decision may help to resuscitate the Court: "We hope this case could contribute to a renaissance . . . . The court is in danger of atrophying." NEWSWEEK, Dec. 24, 1979, at 83.

5. During the 35 years of its existence, the Court has only considered 45 disputes and has issued 14 final judgments, plus 16 advisory opinions. *Id.*

6. U.N. Doc. S/13989 ¶ 39.

Court along with its request for interim measures.[7] On 4 December, the Security Council adopted Resolution 457 whereby it resolved to "remain actively seized of the matter."[8] Although the Secretary-General did not announce the creation of a special Peacekeeping Commission until 7 February 1980, it was apparent in December when the Court issued its indication of provisional measures[9] that the Security Council was endeavoring to resolve the dispute. Regarding the potential of conflict between actions by the Security Council and those of the International Court of Justice, a unanimous Court rejected the notion of judicial abstention:

> [I]t does not seem to have occurred to any member of the Council that there was or could be anything irregular in the simultaneous exercise of their respective functions by the Court and the Security Council. Nor is there in this any cause for surprise. Whereas Article 12 of the Charter expressly forbids the General Assembly to make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in respect to that dispute or situation, no such restriction is placed on the functioning of the Court by any provision of either the Charter or the Statute of the Court. The reasons are clear. It is for the Court, the principal judicial organ of the United Nations, to resolve any legal questions that may be in issue between parties to a dispute; and the resolution of such legal questions by the Court may be an important and sometimes decisive factor in prompting the peaceful settlement of the dispute.[10]

The Court decided by a majority that Iran had violated and continued to violate several bilateral treaties in force between the United States and Iran[11] as well as several principles of diplomacy created by long-established rules of general international law.[12] Iran's conduct, it said, could not be justified even were the alleged criminal activities of the United States in Iran proven,[13] "because diplomatic law itself provides the neces-

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7. *Id.* The Court granted the request by the United States for relief *pendente lite* on 15 December 1979. United States v. Iran, [1979] I.C.J. 7, *reprinted in* 18 INT'L LEGAL MAT. 931, 959-60 (1979).

8. U.N. Doc. S/13989 at ¶ 39.

9. *See* note 3 *supra.*

10. U.N. Doc. S/13989 at ¶ 40. The Court cited Article 36 of the U.N. Charter and the *Aegean Sea Continental Shelf Case,* [1979] I.C.J. 12, for the proposition that neither the mandate given by the Security Council for the formation of a commission by the Secretary-General can be considered an obstacle to the exercise of jurisdiction in this case. U.N. Doc. S/13989 at ¶ 40.

11. *Id.* at ¶ 95. Of primary importance is the Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. No. 3853.

12. Article 29 of the Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, was intended to codify the principle of customary international law of the personal inviolability of diplomatic agents. *See Commentary of 1958 Draft Article 27,* [1958] 11 Y.B. INT'L L. COMM'N 97. This principle is the oldest, most fundamental principle of diplomatic law. E. DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 135 (1976). *See also* SATOW'S GUIDE TO DIPLOMATIC PRACTICE 120 (5th ed. L. Gore-Booth 1979).

13. U.N. Doc. S/13989 at ¶ 37. A perfunctory challenge to jurisdiction was raised by

sary means of defense against, and sanction for illicit activities by members of diplomatic or consular missions."[14] Specifically, the Vienna Conventions of 1961 and 1963 contain express sanctions for situations where members of an embassy engage in espionage under the guise of diplomatic immunity: the receiving state may either declare such "diplomats" to be *persona non grata* or break diplomatic relations with the sending state.[15]

Consequences for the future

The International Court of Justice has suggested a construct for the peaceful settlement of political disputes which is rooted in the belief that the resolution of a legal issue sometimes hastens the resolution of a political dispute. One might ask why, if this is true, the Court's decision had no effect on the Government of Iran. Although the principle of diplomatic and consular immunity is a fundamental precept of international law,[16] the Government of Iran has eschewed every indication that such concepts are valid or applicable to a revolutionary regime. This viewpoint is aptly expressed in two interviews given by the Ayatollahs Behesti and Khomeini a few weeks after the initial hostage-taking. In the first, Behesti—a member of the Iranian Revolutionary Council—attempted to justify the action of 4 November by arguing that traditional, nonrevolutionary principles do not apply to revolutionary regimes.[17] In the second,

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Iran in a letter of 9 December 1979 which argued that the American appeal could not be examined by the Court separately from what it described as the "overall problem" involving "more than twenty-five years of continual interference by the United States in the internal affairs of Iran." The Court answered this charge with an opinion which might indicate a shift toward favoring intensified judicial activity, especially in time of strife:

> [N]ever has the view been put forward before that because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's function be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.

Id.

14. *Id.* at ¶ 83.

15. Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502; Vienna Convention on Consular Relations, *done* Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820.

16. The tradition of Islam has made a substantial contribution to the evolution of this concept. U.N. Doc. S/13989 at ¶ 86.

17. The Ayatollah Behesti was interviewed by the German newsmagazine *Die Stern*:

> [*Stern*] If spies are discovered in a foreign embassy, it is a standard procedure to expel them, but not to take them as hostages.
>
> [Behesti] It is a standard procedure? If we were talking here about diplomatic relations, 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.
>
> . . . .

Khomeini was asked:

> [Question] [Y]ou are holding the hostages of the American Embassy in Tehran. . . . Would you release the hostages?
> [Khomeini] Do international conventions provide for the sending of spies into a country in the name of an ambassador or a chargé d'affaires or not? . . . 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.[18]

Although no suggestion has been made by Iran that the Treaty of Amity, Economic Relations and Consular Rights of 1955[19] between the United States and Iran was not in force on 4 November 1979 when the American Embassy was overrun or on 29 November when the United States submitted its dispute to the Court, Iran reasons that any treaties or conventions that were in force with the Pahlavi regime are not applicable to the new revolutionary government. This doctrine of convenience is clearly at odds with even the basest understanding of the concept of *rebus sic stantibus*.[20] Notwithstanding the celerity and decisiveness with which it acted, and the fact that the Court can at times be effective,[21] this decision is especially troubling because its ineffectiveness in a case involving a clear breach of a fundamental precept of international law might well encourage a proliferation of Iran's doctrine of convenience.

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> [*Stern*] What does the Koran have to say of this primitive way of revenge thinking?
> [Behesti] It allows it but also says forgiving is better . . . .

Memorial for the Petitioner, United States v. Iran, [1980] I.C.J. ___; *reprinted in* U.N. Doc. S/13989 at 128-29.

18. Memorial for Petitioner, at 215, United States v. Iran, [1980] I.C.J. ___; *reprinted in* U.N. Doc. S/13989. In answer to the question posed by Khomeini:

> The Vienna Conventions of 1961 and 1963 contain express provisions to meet the case when members of an embassy staff, under the cover of diplomatic privileges and immunities engage in such abuses of their functions as espionage. . . . [I]t is for the very purpose of providing a remedy for such possible abuses of diplomatic functions that Article 9 of the 1961 Convention on Diplomatic Relations stipulates:
>
> 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 is *persona non grata* or that any other member of the staff is not acceptable. In any such case the sending State shall, as appropriate, either recall the person concerned or terminate his function with the mission . . . .

19. Aug. 15, 1955, United States-Iran, 8 U.S.T. 899, T.I.A.S. No. 3853.

20. The majority of modern writers accept the doctrine of *rebus sic stantibus* which invokes a fundamental change of circumstances as a ground for terminating a treaty. *See* I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 617 (3d. ed. 1979); *see also* Vienna Convention on the Law of Treaties art. 62, *reprinted in* 8 INT'L LEGAL MAT. 679 (1969); *but cf.* J. BRIERLY, THE LAW OF NATIONS 335-39 (6th. ed. H. Waldock 1963).

21. *See* E. MCWHINNEY, THE WORLD COURT AND THE CONTEMPORARY INTERNATIONAL LAW-MAKING PROCESS 17-97 (1979). McWhinney discusses what he terms the "judicial activism" of the Court.