

Iran Hostages

Student Materials

- Decided by the International Court of Justice in May 1980
- Key topics: breaking international law (determining responsibility); upholding international law (domestic legal enforcement)

Learning Objectives

- Understand and apply:
 - the concepts of attribution and wrongfulness
 - competing perspectives on why states break international law
 - basic protections under diplomatic and consular relations law, including rules on immunity
- Analyze and evaluate:
 - what acts could (and could not) be attributed to Iran
 - whether circumstances precluded the wrongfulness of legal violations
 - limits on how and when domestic legal institutions have authority over diplomats and consular officials

Background Information

In 1979, supporters of the Iranian Revolution attempted multiple times to seize control of the US embassy in Tehran and consulates in other major Iranian cities. The US was initially protected by the Iranian government. However, militants seized control of the US embassy in Tehran in November and took over 50 US diplomats and citizens as hostages, beginning a standoff—called the Iranian Hostage Crisis—that lasted over 14 months. The US government pursued many tactics while trying to secure the release of its citizens, including filing a lawsuit against Iran at the International Court of Justice.

The US argued that the Iranian government was responsible for numerous violations of the Vienna Convention on Diplomatic Relations of 1961 (VCDR) and the Vienna Convention on Consular Relations

of 1963 (VCCR). Both of these treaties codified basic rights and responsibilities under existing customary law. These violations are listed in Table 1.

Because the embassy was seized and held by protestors—rather than the Iranian police or military—the ICJ had to address the issue of state responsibility. Namely, the Court had to determine which (if any) of the alleged violations were attributable to the Iranian state, as opposed to being acts of individual Iranians. Additionally, the Court had to ask whether Iran’s actions were excused or justified by any circumstances precluding wrongfulness.

Table 1: Alleged Legal Violations in the *Iran Hostages Case*

Alleged Violation	VCDR	VCCR
Inviolability of the mission	Article 22	Article 31
Inviolability of the archives	Article 24	Article 33
Provision of facilities for the duties of the mission	Article 25	Article 28
Immunity of consular officers from arrest	Article 29	.
Immunity of consular officers from prosecution	Article 31	.
Privileges/immunities of the family of consular officers	Article 37	.
Freedom of diplomatic communication	Article 27	.
Freedom of communication with nationals of sending state	.	Article 36
Freedom of movement	.	Article 34
Prevention of crimes against consular officials	.	Article 40
Discriminatory violation of diplomatic guarantees	Article 47	.

The issue of state responsibility has become increasingly important with the rise of transnational actors, such as terrorist groups, advocacy organizations, and multinational corporations. The *Iran Hostages case*

illustrates some of the difficulties in determining state responsibility. It also provides an overview of the basic protections that international law provides to diplomats and consular officers.

Majority Judgment

The majority began by providing background information on the attack on the US embassy:

At approximately 10:30 a.m. 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 a strong armed group of several hundred people. The Iranian security personnel are reported to have simply disappeared from the scene; at all events it is established that they made no apparent effort to deter or prevent the demonstrators from seizing the embassy's premises. The [militants] gained access by force ... In the course of the attack, all the diplomatic and consular personnel and other persons present in the premises were seized as hostages, and detained in the embassy compound ...

During the three hours or more of the assault, 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 ... Despite these repeated requests, no Iranian security forces were sent in time to provide relief and protection to the embassy. In fact, when Revolutionary Guards ultimately arrived on the scene, dispatched by the government "to prevent clashes", they considered that their task was merely to "protect the safety of both the hostages and the students", according to statements subsequently made by the Iranian government's spokesman, and by the operations commander of the Guards. No attempt was made by the Iranian government to clear the embassy premises, to rescue the persons held hostage, or to persuade the militants to terminate their action against the embassy ...

[The Court] must determine how far, legally, the acts in question may be regarded as imputable to the Iranian state. Secondly, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable ...

The majority divided up the incident into two separate phases. First, the majority examined events during the actual attack on the US embassy:

The first of these phases covers the armed attack on the United States embassy by militants on 4 November 1979, 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 those occurrences. The attack and the subsequent overrunning, bit by bit, of the whole embassy premises, was an operation which continued over a period of some three hours without any body of police, any military unit or any Iranian official intervening to try to stop or impede it from being carried through to its completion. The result of the attack was considerable damage to the embassy premises and property, the forcible opening and seizure of its archives, the confiscation of the archives and other documents found in the embassy and, most grave of all, the seizure by force of its diplomatic and consular personnel as hostages ...

The majority noted that the individuals who committed the attacks were not known to be organs or employees of Iran. These private individuals were acting independently of the state:

No suggestion has been made that the militants, when they executed their attack on the embassy, had any form of official status as recognized “agents” or organs of the Iranian state. Their conduct in mounting the attack, overrunning the embassy and seizing its inmates as hostages cannot, therefore, be regarded as imputable to that state on that basis ...

Previously, it is true, the religious leader of the country, the Ayatollah Khomeini, had made several public declarations inveighing against the United States as responsible for all his country's problems ... In the view of the Court, however, it would be going too far to interpret such general declarations of the Ayatollah Khomeini ... as amounting to an authorization from the state to undertake the specific operation of invading and seizing the United States embassy ...

Yet the majority noted that Iran was nonetheless responsible for failing to adequately protect the US embassy from attack:

[However, this] does not mean that Iran is, in consequence, free of any responsibility in regard to those attacks; for its own conduct was in conflict with its international obligations. By a number of provisions of the Vienna Conventions of 1961 and 1963, Iran was placed under the most categorical obligations, as a receiving state, to take appropriate steps to ensure the protection of the United States embassy and consulates, their staffs, their archives, their means of

communication and the freedom of movement of the members of their staffs ... In the view of the Court, the obligations of the Iranian government here in question are not merely contractual obligations established by the Vienna Conventions of 1961 and 1963, but also obligations under general international law¹ ...

On 4 November 1979 the Iranian government failed altogether to take any “appropriate steps” to protect the premises, staff and archives of the United States' mission against attack by the militants, and to take any steps either to prevent this attack or to stop it before it reached its completion ... The failure of the Iranian government to take such steps was due to more than ... lack of appropriate means ...

Despite assurances previously given by them to the United States government and despite repeated and urgent calls for help, they took no apparent steps either to prevent the militants from invading the embassy or to persuade or to compel them to withdraw. Furthermore, after the militants had forced an entry into the premises of the embassy, the Iranian authorities made no effort to compel or even to persuade them to withdraw from the embassy and to free the diplomatic and consular staff whom they had made prisoner.

This inaction of the Iranian government by itself constituted clear and serious violation of Iran's obligations to the United States under the ... 1961 Vienna Convention on Diplomatic Relations, and ... the 1963 Vienna Convention on Consular Relations.

The majority then summarized its finding regarding the first stage of the attack:

The Court is therefore led inevitably to conclude ... that on 4 November 1979 the Iranian authorities:

- (a) were fully aware of their obligations under the conventions in force to take appropriate steps to protect the premises of the United States embassy and its diplomatic and consular staff from any attack and from any infringement of their inviolability, and to ensure the security of such other persons as might be present on the said premises;

¹ Editor's note: The phrase “general international law” here is a reference to customary international law.

(b) were fully aware, as a result of the appeals for help made by the United States embassy, of the urgent need for action on their part;

(c) had the means at their disposal to perform their obligations;

(d) completely failed to comply with these obligations ...

Second, the majority examined events after the actual attack on the US embassy, including the ongoing occupation of the embassy and the holding of hostages:

The second phase of the events which are the subject of the United States' claims comprises the whole series of facts which occurred following the completion of the occupation of the United States embassy by the militants ... The occupation having taken place and the diplomatic and consular personnel of the United States' mission having been taken hostage, the action required of the Iranian government by the Vienna Conventions and by general international law was manifest. Its plain duty was at once to make every effort, and to take every appropriate step, to bring these flagrant infringements of the inviolability of the premises, archives and diplomatic and consular staff of the United States embassy to a speedy end, ... and in general to re-establish the status quo and to offer reparation for the damage.

Rather than condemning or attempting to end the crisis, Iranian authorities vocally supported the attack. The majority argued that by vocally supporting the crisis, Iran's leader (the Ayatollah Khomeini) transformed the acts of private individuals into acts that were attributable to the Iranian state:

No such step was, however, taken by the Iranian authorities ... Expressions of approval of the take-over of the embassy ... by militants came immediately from numerous Iranian authorities, including religious, judicial, executive, police and broadcasting authorities. Above all, the Ayatollah Khomeini himself made crystal clear the endorsement by the state both of the take-over of the embassy ... and of the detention of the embassy staff as hostages ...

The seal of official government approval was finally set on this situation by a decree issued on 17 November 1979 by the Ayatollah Khomeini ... The policy thus announced by the Ayatollah Khomeini, of maintaining the occupation of the embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States government was complied with

by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. The result of that policy was fundamentally to transform the legal nature of the situation created by the occupation of the embassy and the detention of its diplomatic and consular staff as hostages. The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian state, and the decision to perpetuate them, translated continuing occupation of the embassy and detention of the hostages into acts of that state. The militants, authors of the invasion and jailers of the hostages, had now become agents of the Iranian state for whose acts the state itself was internationally responsible ...

The Iranian authorities' decision to continue the subjection of the premises of the United States embassy to occupation by militants and of the embassy staff to detention as hostages, clearly gave rise to repeated and multiple breaches of the applicable provisions of the Vienna Conventions even more serious than those which arose from their failure to take any steps to prevent the attacks on the inviolability of these premises and staff ...

After examining these two separate phases, the majority concluded that numerous legal violations could be attributed to the Iranian state:

The facts of the present case, viewed in the light of the applicable rules of law, thus speak loudly and clearly of successive and still continuing breaches by Iran of its obligations to the United States ...

The majority then asked whether any circumstances precluded wrongfulness of Iran's conduct. Namely, they asked whether prior US interference in Iran could have excused or justified Iran's conduct:

The Court cannot overlook the fact that on the Iranian side, in often imprecise terms, the idea has been put forward that the conduct of the Iranian government, at the time of the events of 4 November 1979 and subsequently, might be justified by the existence of special circumstances.

In his letters of 9 December 1979 and 16 March 1980, as previously recalled, Iran's Minister for Foreign Affairs referred to the present case as only "a marginal and secondary aspect of an overall problem". This problem, he maintained, "involves ... more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and

numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms” ...

Even if the alleged criminal activities of the United States in Iran could be considered as having been established, the question would remain whether they could be regarded by the Court as constituting a justification of Iran's conduct and thus a defence to the United States' claims in the present case. The Court, however, is unable to accept that they can be so regarded. This is because diplomatic law itself provides the necessary means of defence against, and sanction for, illicit activities by members of diplomatic or consular missions.

The majority argued that even if the US had illegally intervened in Iran’s domestic affairs, this did not excuse or justify Iran’s conduct. The majority argued that diplomatic and consular law provided Iran with specific remedies that Iran had not used. Therefore, they reasoned, Iran could not respond to US interference by violating international law itself:

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 or interference in the internal affairs of the receiving state ... Article 9 of the 1961 Convention on Diplomatic Relations stipulates:

1. The receiving state may at any time ... notify the sending state that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* ... In any such case, the sending state shall ... either recall the person concerned or terminate his functions with the mission ...
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.

Beyond that remedy for dealing with abuses of the diplomatic function by individual members of a mission, a receiving state has in its hands a more radical remedy if abuses of their functions by members of a mission reach serious proportions. This is the power which every receiving state has, at its own discretion, to break off diplomatic relations with a sending state and to call for the immediate closure of the offending mission.

The rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving state to counter any such abuse ... The principle of the inviolability of the persons of diplomatic agents and the premises of diplomatic missions is one of the very foundations of this long-established regime ...

In the present case, the Iranian government did not break off diplomatic relations with the United States; and ... at no time before the events of 4 November 1979 had the Iranian government declared, or indicated any intention to declare, any member of the United States diplomatic or consular staff in Tehran *persona non grata*. The Iranian government did not, therefore, employ the remedies placed at its disposal by diplomatic law specifically for dealing with activities of the kind of which it now complains. Instead, it allowed a group of militants to attack and occupy the United States embassy by force, and to seize the diplomatic and consular staff as hostages; instead, it has endorsed that action of those militants and has deliberately maintained their occupation of the embassy and detention of its staff as a means of coercing the sending state ...

Accordingly, the Court finds that no circumstances exist in the present case which are capable of negating the fundamentally unlawful character of the conduct pursued by the Iranian state on 4 November 1979 and thereafter.

The majority concluded that Iran was responsible for breaking international law because legal breaches could be attributed to the Iranian state, and because no circumstances precluded wrongfulness of these breaches:

On the basis of the foregoing detailed examination of the merits of the case, the Court finds that Iran, by committing successive and continuing breaches of [legal] obligations ... has incurred responsibility towards the United States.

The majority then proceeded to assess the consequences of responsibility. The majority noted that Iran was required to make reparation to the US, although the Court could not yet determine what that reparation should be:

As to the consequences of this finding, it clearly entails an obligation on the part of the Iranian State to make reparation for the injury thereby caused to the United States. Since however Iran's breaches of its obligations are still continuing, the form and amount of such reparation cannot be determined at the present date.

The majority then laid out specific criteria for Iran to end the ongoing legal violations:

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