



# Department of Justice

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ORAL ARGUMENT

OF

THE HONORABLE BENJAMIN R. CIVILETTI  
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

INTERNATIONAL COURT OF JUSTICE

THE HAGUE

IN THE MATTER OF

U.S. v. ISLAMIC REPUBLIC OF IRAN

MONDAY, DECEMBER 10, 1979

Mr. President, and distinguished members of the court.

My name is Benjamin R. Civiletti. I appear today as Attorney General of the United States of America and advocate in support of its request for provisional measures of protection from illegal acts of the government of Iran.

I feel privileged to appear on behalf of my government. I should also say that the United States is grateful to the court for providing a hearing at this time.

If I may be permitted a personal introduction, I have spent my working life as a trial lawyer in the United States. I have been an advocate both for the government and for those who oppose the government, in both civil and criminal suits.

Anyone who has been a trial advocate in any country would approach this court with respect and awe. In a real sense this court represents the highest legal aspiration of civilized man.

Yet I find myself addressing this court with awe, but with restrained anger. More than fifty of my countrymen are held prisoners, in peril of their lives and suffering even as I speak. This imprisonment, and this suffering are illegal and inhuman. It takes no advocate to bring this cause to you. The

facts are known worldwide, and every citizen of the world -- trained in the law or not -- knows the conduct to be criminal.

I come to this court, my government comes to this court, not so that yet another body will reiterate the obvious fact that what we are witnessing in Iran is illegal. The United States comes here so that this tribunal may demonstrate that international law may not be tossed aside, that the international fabric of civility may not be rent with impunity.

My government asks this court to take the most vigorous and the speediest action it can not to settle a minor boundary dispute, not to give to one national treasury from another, but to save lives and set human beings free. This is what people everywhere -- not just monarchs and presidents, not just lawyers and jurists -- expect of what a judge in my nation called the "omnipresence" that we know to be the law.

If I come to you with anger, I also come to you with urgency. We who speak the sober language of jurisprudence say the United States government is seeking the "indication of provisional measures." What we are asking this court for is the quickest possible action to end a barbaric captivity and to save human lives.

For the first time in modern diplomatic history, a state has not only acquiesced in, but participated in and is seeking political advantage from the illegal seizure and imprisonment of

the diplomatic personnel of another state. It even threatens to put these diplomatic personnel on trial. If our international institutions, including this court, should even appear to condone or tolerate the flagrant violations of customary international law, state practice, and explicit treaty commitments that are involved here, the result will be a serious blow not only to the safety of the American diplomatic persons now in captivity in Teheran , but to the rule of law within the international community. To allow the illegal detention and trial of United States diplomatic personnel and other citizens to go forward during the pendency of this case would be to encourage other governments and individuals to believe that they may, with impunity, seize any embassy and any diplomatic agent, or indeed any other hostage, anywhere in the world. Such conduct cannot be tolerated; every civilized government recognizes that. We therefore submit that this court has a clear obligation to take every action to bring this conduct to an immediate end.

We shall discuss the simple, clear issues presented in the following order. I shall review the applicable basic principles of international law which bind both Iran and the United States, not only under customary international law but also under four treaties to which both states are parties. These treaties are directly in point. Mr. Owen will then briefly summarize the facts to demonstrate to the court that the government

of Iran has committed, is committing -- and is proposing to commit -- clear, flagrant violations of these principles of international law. We will next demonstrate that the court **has** jurisdiction over this dispute and the authority to indicate the provisional measures requested by the United States. Finally, we shall explain why, on the basis of Article 41 of the Court's Statute, an indication of interim measures is urgently **needed** and amply justified.

The international legal standards involved here are of ancient origin. They have evolved over centuries of state practice, and in recent years have been codified in a series of international agreements. It is on four of those agreements that the government of the United States relies here.

Since the subject of this proceeding is focused largely on the status and immunities of diplomatic agents, I shall refer at the outset to the 1961 Vienna Convention on Diplomatic Relations. The purpose of that convention, to which both the United States and Iran are parties, was to codify a fundamental, firmly established rule of international law -- that the immunity and inviolability of embassies and diplomats must be absolutely respected and that in no circumstances may a state engage in the type of conduct that is involved here.

The first relevant provision of the Vienna Convention on diplomatic relations is Article 22, relating to the physical premises of an embassy or mission. The words of Article 22 are clear:

- "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."

As to the personnel of such a diplomatic mission, Article 29 of the convention goes on to provide that every diplomatic agent "shall be inviolable" and that he shall be free from "any form of arrest and detention." The language is unqualified: it prohibits any form of arrest or detention, regardless of any grievance which the host state may suppose that it has against a particular diplomat. There is a remedy

available against a diplomat who a state believes has engaged in improper conduct -- to require him to leave the country. But the Vienna Convention excludes any form of physical arrest or detention, for the purpose of prosecution or for any other reason.

The Convention re-emphasizes the principle of diplomatic inviolability in several different ways. Article 29 requires the receiving state to prevent any attack upon the person, freedom or dignity of a diplomatic agent. Article 31 requires that each such agent enjoy unqualified "immunity from the criminal jurisdiction of the receiving state." There is no exception; no matter what the cause, the receiving state is precluded from allowing the criminal prosecution of a diplomatic agent. In the last few days, as we will explain later in our argument, this absolute immunity from criminal prosecution has taken on an overwhelming importance. Article 37 of the Convention extends the same absolute inviolability and absolute immunity from assault and from criminal trial to the administrative and technical staff of an embassy. All but two of the more than 50 Americans currently being held hostage in Teheran are either diplomatic agents or embassy administrative and technical staff, some of whom also perform consular functions. Other immunities and privileges pertinent to this case are found in Articles 24, 25, 26, 27, 44, 45, and 47 of the Vienna

Convention on diplomatic relations. Among these are **the** inviolability of the archives and documents of the mission, the right of diplomatic agents and staff to communicate freely for official purposes, and the right to depart from the receiving state at any time they wish.

Over the hundreds of years that these principles have been recognized and honored throughout the international community, there have been occasions when a particular state has felt dissatisfied or aggrieved by the conduct of a diplomatic agent of another state or his government -- and Iran is claiming some such grievances now. For hundreds of years, however, states have uniformly recognized that the only lawful course open to them is to declare the diplomatic agent persona non grata. When a state declares a diplomatic agent persona non grata, his government must withdraw him or suffer the eventual termination of his diplomatic status.

These uniformly recognized principles have been codified in Article 9 of the Vienna Convention. Under that treaty, a receiving state can in effect expel an objectionable diplomat -- but under no circumstances may a state imprison an emissary or put him on trial. In diplomatic history and practice there is no precedent or justification for the seizure of a diplomat -- let alone an entire diplomatic mission. There is also no precedent or justification for the imprisonment and trial of



such persons in an attempt to coerce capitulation to certain demands. It is difficult to think of a more obvious, more flagrant violation of international law.

Both Iran and the United States are also parties to the second international convention on which the United States relies in this proceeding -- the 1936 Vienna Convention on Consular Relations. This Convention reflects many of the same principles I have just described. Under the consular convention every state party, including Iran, has an international legal obligation to protect the consular facilities and members of the consular posts of every other state party. Of course, when personnel of a diplomatic mission are providing consular services, they are entitled to the full protection afforded by the Vienna Convention on Diplomatic Relations. The Convention on Consular Relations also requires the receiving state to permit another state party's consular officers to communicate with and have access to their nationals. This right is manifestly violated when the consular officers are themselves held incommunicado by force.

Apart from these two Vienna Conventions, the United States and Iran also are parties to the New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including diplomatic agents. One of the essential premises of the New York Convention, is stated in

its preamble. It is that crimes against such internationally protected persons, including diplomatic agents, are " a serious threat to the maintenance of normal international relations" and "a matter of grave concern to the international community."

The Convention defines a number of types of conduct as constituting crimes within its scope. Under Article 2 it is a criminal act to participate as an accomplice in an attack on the person or liberty of an internationally protected person or in a violent attack on official premises. Under Article 4 of the Convention, every state party, including Iran, is required to cooperate to prevent such crimes. Under Article 7, every state party must take steps to see that those responsible for such crimes are prosecuted. The government of Iran has violated every one of these provisions in the plainest way.

All three of the treaties I have discussed were drafted by the United Nations International Law Commission: they were adopted by conferences of plenipotentiaries or by the United Nations General Assembly -- and thus by the vast majority of the states of the world. They have been so widely ratified as to demonstrate that they reflect universally recognized rules of international law.

Finally, the United States relies in this case upon a bilateral treaty -- the 1955 Treaty of Amity, Economic Relations, and Consular Rights Between the United States and Iran. This

treaty is in a sense even broader than the three multilateral conventions to which I have previously referred. Under Article 2, paragraph 4, of the Treaty of Amity, each party has a legal obligation to ensure that within its territory the nationals of the other party shall receive "the most constant protection and security." In addition, Article 2 provides that, if any United States national is in custody in Iran, Iran must in every respect accord him "reasonable and humane treatment." Under Articles 2 and 19 any such national is entitled to communicate with his own government and avail himself of the services of his consular officials. Article 13 requires that the consular officers and employees themselves be accorded the privileges and immunities accorded by general international usage and that they be treated in a fashion no less favorable than similar officers and employees of any third country.

Mr. President, that completes my brief summary of the principles of international law that underlie the application of the United States. I could go on to discuss the provisions of Article 2, paragraphs 3 and 4, of the Charter of the United Nations, under which Iran and all other United Nations members are obligated to settle their disputes by peaceful means, and to refrain in their international relations from the threat or use of force, but the United States believes that the three multilateral Conventions and the 1955 bilateral Treaty provide as clear a legal predicate as can be rationally required for its request for an indication of provisional measures.