THE TAKING OF DIPLOMATIC HOSTAGES, TEHRAN 1979: AN ISLAMIC AND INTERNATIONAL LEGAL PERSPECTIVE.

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I. INTRODUCTION

This paper will examine the hostage crisis at the American embassy in light of Islamic Sharia, the 1979 International Court of Justice case concerning United States Diplomatic and Consular Staff in Tehran, the Iranian constitution and international law—both treaty law and principles of customary international law. Each one will shed a different light on the hostage crisis in 1979 and through their individual lenses a collective picture will emerge that will sharpen the condemnation of hostage taking regardless of the situation, rationale or ideology.

The comparison between the Sharia’s view and that of the Iranian constitution will demonstrate the contrasting ideals of a single Islamic view, while the study of the International Court of Justice will provide a secular rule of law basis for the continued fortification on the condemnation of hostage taking. Finally, a search for the international community’s legal response to hostage taking is found in multi-lateral treaties such as the International Convention against the Taking of Hostages and the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.¹

¹ See, http://www.unodc.org/unodc/terrorism_convention_hostages.html. The International Convention against the Taking of Hostages was signed on December 18, 1979 as a direct result of the hostage crisis in Tehran.
Hostage taking is considered a crime according to international law and is denounced almost uniformly by secular and religious communities worldwide. As Russia recently experienced in September 2004, hostage taking for political gain can be a no-win situation for all who are involved. The international community spoke in unanimity in condemning the hostage crisis in North Ossetia. Also, as we hear about on almost a daily basis in Iraq, hostage taking continues to exist in the world and has apparently cemented itself in terrorists’ modus operandi.

On July 20, 2004 at the United Nations, the Bulgarian Foreign Minister Solomon Passy, called on the international community to develop a “code of conduct” for responding to hostage taking crises by victim states. He stressed that “[a] discussion by the international community on a code of conduct, setting the standards governments should follow when they become victims of terrorist threats and attacks, is overdue. Concerted action, with an active role for the United Nations, will send a clear warning and decisively discourage terrorists from using human lives as a weapon of horror and devastation.”

The situation at the American Embassy was however, the result of a wave of popular support for radical change in Iran, and in 1979 for 444 seemingly interminable days in Tehran, lawlessness reigned supreme. The justification for the hostage crisis by the new Islamic Republic’s government was to blame the historical U.S. intervention in Iran, through the Shah as its puppet, as having corrupted and decimated Iran. This rationale was, as we will see in the 1979 International Court of Justice case, was

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summarily swept aside by the court. The Iranian argument that the U.S. came to the
court with unclean hands does not wash away the criminality of the hostage crisis. In
fact, Tehran applauded the hostage takers as heroes of Islam. The U.S. may have won the
battle at the ICJ but has since lost the war with Iran. This paper will not focus on the
political or ideological forces that were in play in Iran in 1979, but to understand the
emotions and groundswell of popular impetus for change, we will briefly look at the facts
which contributed to the taking of the American embassies in Tehran.

Many things have changed in the last twenty-five years yet much more
importantly many things have stayed the same. The form of government of both Iran and
the United States has not changed, the treaties and concepts of customary international
law that took center stage in the hostage crisis have not changed and the animosity
between the two nations has not changed. Understanding the contempt is crucial for an in
depth understanding of how the hostage crisis transpired.

In 1979 a popular student uprising in Tehran, fed by societal unrest with
Mohammed Reza Pahlavi, the Shah of Iran, and speeches by a fiery cleric then exiled and
living in Paris, put into motion the beginning of an Islamic revival in Iran. On January
16, 1979, after almost 40 years on the throne, the Shah fled Iran, never to return. On
February 2, 1979, Ayatollah Khomeini returned to Iran to oversee the establishment of an
Islamic government. A student activist in 1979, Farideh Mashinie, recalled, “[T]he
moment his plane landed and Imam Khomeini came down the steps, that very moment
was the most beautiful moment of my life.”\footnote{See, The Hostage Rescue Attempt In Iran, April 24-25, 1980 HISTORICAL PERSPECTIVE, PAGE 2 By Samuel J. Moon \url{http://rescueattempt.tripod.com/id11.html}. Last visited October 29, 2004.} This revival would spark debate regarding
the future of Islam and Islam’s role in attempts to repel westernization and globalization.
Even though the history of Islam is a long one consisting of peaceful and combative coexistence and, above all else, intellectual and cultural adaptation, the Iranian uprising was called a revolution. Ayatollah Khomeini is considered the person who most united the Iranian people, called for them to rise up, change their form of government, strengthen the role of Islam in Iranian society and assist other Muslim nations in following Iran’s revolutionary prescription.

It is with this historic backdrop that this paper will begin to explore the hostage crisis with an international and Islamic legal focus.

II. WHAT OCCURRED IN TEHRAN IN 1979—AN ISLAMIC VERSUS ISLAMICIST PERSPECTIVE.

It is of fundamental importance to understand the hostage crisis in its proper historical context and therefore we should briefly examine the years prior to the Iranian revolution and the main players. The Shah of Iran, Mohammed Reza Pahlavi, succeeded his father to the throne, upon Reza Khan’s abdication in 1941. The Shah sought the support of the United States in his bid to prevent the nationalization of Iran's most precious natural resource and asset, the oil industry. The United States was more than

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willing to establish friendly relations with Iran, a country in the heart of the Asia, where historically the U.S. has had few allies, and one of the major world producers of petroleum. As a result of the American support, which averted a prolonged and potentially dangerous power struggle with his prime minister, the Shah guaranteed the United States a secure supply of cheap oil. Consequently, the Shah reaped the benefits of American patronage, receiving economic and military aid from eight successive American presidents. The United States’ involvement in Iran was protracted and profound. In the 1960s, the Shah publicized social and economic reforms for Iran aimed at quelling the steadily strengthening political opposition. At the same time, the Shah refused to expand any form of political freedoms, which further marginalized and alienated the Iranian people.

Iranian nationalists condemned the Shah’s "westernizing" of Iran and unconditional complicity with the United States. In 1963, the Shah put down riots which broke out in Iran, brutally suppressing the opposition. Among those arrested and exiled was a popular religious nationalist, Ayatollah Ruhollah Khomeini, whose rhetoric continually demonized the Shah’s involvement with the United States as corrupt and un-Islamic. For almost twenty years, the Shah spent billions of dollars from the Iranian treasury on himself, his family and on U.S. manufactured military weaponry, and at the same time losing the support of his country which had endured both his father’s rule and almost forty years of his own.

On January 16, 1979, the Shah fled Iran, never to return. On February 2, 1979, Ayatollah Khomeini returned to Iran to oversee the establishment of an Islamic government. Nine months later, when the Shah traveled to the United States of America
for cancer treatment in October of 1979, Ayatollah Khomeini pressed Iranian radicals to attack the U.S. in various forms.

On November 4, 1979, as the revolution galvanized complete control of the nation, a group of armed revolutionary students entered the United States embassy compound in Tehran and took 52 Americans as hostages. The hostages were held a total of 444 days. Although none of the American hostages were killed, their treatment was far from humane. They were blindfolded, lined up for mock executions and held incommunicado for long stretches of time.

The international community reacted to the hostage crisis with almost universal condemnation. The Vienna Convention on Consular Affairs was dusted off and read thoroughly by state departments worldwide. This event, in hindsight, was the beginning of militant Islam and is repeating itself on a daily basis in Iraq and other places around the world. U.S. newspapers report that non-military personnel from France, Italy, U.S., Korea, Japan, U.K. and other Muslim nations are held hostage by radical militant Islamicists in Iraq. Some hostages are held for financial ransom, some are held for trade while others are held in an attempt to motivate international governments to cease their participation in Iraq. Unlike the hostage crisis in Tehran where no hostages were killed, many of the hostages in Iraq are brutally murdered.

In the Iranian hostage crisis however, the only American fatalities resulted from a failed attempt by the U.S. military to free the hostages. On April 24, 1980, President Carter attempted a doomed rescue mission. Three of the eight military helicopters crashed in a sandstorm in Iran. Then, in an attempt to rescue the military personnel from
the three downed helicopters, eight U.S. soldiers were killed. In response to the fiasco, Secretary of State Cyrus Vance, who had opposed the action, resigned.

COMPARISON BETWEEN ISLAMIC SHARIA & THE IRANIAN CONSTITUTION

ISLAMIC SHARIA

The sources of Islamic law, Sharia, are first, the Holy Koran, second, the Sunnah, third, the qiyas and fourth, the ijma. Islamic law provides an outline and path for Muslim society. The Holy Koran and Sunnah are considered divine and holy sources, yet due to the scant legal verses which the Holy Koran contains, approximately 80 verses in the Holy Koran, the weight of practical legal persuasion could be the exact opposite with the ijma first. Even the word Sharia has its roots from the word “Shari” which mean “law-giver.” Although the Holy Koran does contain some legal holdings, it is generally viewed as more of the accounting of Mohammed’s divine revelations. The Holy Koran states in Chapter 5 verse 48, “To each among you, we have prescribed a law and a clear way.”

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8 See note 6, above.
9 Terrorism and Islamic Law, Columbia Journal of Transnational Law, at pg. 634.
10 Id. at 635.
The Sunnah is generally the method by which legal theory is extorted. The term Sunnah appropriately means “method” and can be loosely compared to both the common law holdings of courts and its method of analysis.\textsuperscript{11} Some western scholars believe that founding and implementing a nation with pure Islamic Sharia has proven too difficult a task and largely abandoned for easier targets like women and the family.\textsuperscript{12} This distinction may shed some light on the fractionalization between the marginalized Islamicists and true Islamic jurisprudence. The marginalized Islamicists are obsessed with implementing Sharia, but see it more as a mechanism to regulate dress and personal behavior than as a means to implement a just society.\textsuperscript{13} In any case, the same scholars do not refute that Muslims do not question the sovereignty of God or the rule of Sharia.\textsuperscript{14} A direct link can and generally is made between the Iranian revolution and the birth of modern Islamic terrorism. The governments that openly support terror, like that of the Taliban, in the Muslim world are few and marginalized.

Islamic jurisprudence, fiqh, is also a core component in the understanding of Islamic Sharia. The Arabic word fiqh means “knowledge, understanding and comprehension.” It refers to the legal rulings of the Muslim scholars, based on their knowledge of the Sharia, and as such is the third source of rulings. The science of fiqh started in the second century, when the Islamic state expanded and faced several issues which were not explicitly covered in the Holy Koran and Sunnah. Rulings based on the unanimity of Muslim scholars and direct analogy are binding. The four Sunni schools of

\begin{itemize}
\item \textsuperscript{11} \textit{Id.}
\item \textsuperscript{12} See note 9, at page 131.
\item \textsuperscript{13} Ahmed Rashid, \textit{Jihad: The Rise of Militant Islam in Central Asia}, at page 3.
\item \textsuperscript{14} See note 9, at page 146.
\end{itemize}
thought, Hanafi, Maliki, Shafi’i and Hanbali, are identical in approximately three quarters of their legal conclusions.

According to Imam Ahmed Raza Khan, “without obeying the Sharia, one cannot approach Allah. Sharia is the collection of all the commands concerning body and soul, the spirit and heart, all the divine science and the infinite knowledge.”\footnote{See, \url{http://www.sunnah.org/tasawwuf/shariah_tariqah.htm}. Last visited October 30, 2004.}

Islamic Sharia was the first to afford basic and fundamental human and civil rights to all mankind, haq. The right to life, human dignity, justice and Equality (Ch. 5 v.8),\footnote{Citing the chapter and verse from the Holy Koran.} treatment of POWs (Ch. 47 v. 4), freedom of religion (Ch. 2 v. 256), freedom to tell the truth (even if against one’s self), right to privacy—in home, freedom from being spied upon (Ch. 49 v. 12), breaking and entering (Ch. 2 v. 189), entering without owner’s permission (Ch. 24 v.27), right to education, right to migrate from one land to another and the right for men and women to work and keep the earnings from their labor (Ch. 4 v.32), are all rights guaranteed by Islamic Sharia. These rights were guaranteed well before the signing of the American constitution.

THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN

The Iranian constitution was adopted on October 24, 1979 and has been in effect since December 3, 1979. It was between the time the constitution was adopted and when it came into effect that the hostage crises began. The Iranian constitution was last amended on July 28, 1989. The document purports to give many rights to individuals and institutions which in reality generally appear to not be afforded them. I focused on
the articles in the constitution which would have applied to the hostage crisis, had it been in effect at the time. I have reproduced them below. If a similar situation to that which occurred in 1979 were to occur today in Iran, what does the Iranian constitution say about the protection and rights which were deprived of the 52 hostages? This question is principal however, whether or not the rights would be afforded the hostages is up for debate.

Article 22 [Human Dignity and Rights]
The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.

Article 22 recognizes the dignity of life rights and the home. Article 22 conforms to the modern interpretation in Islamic Sharia as the rights of man (vis-à-vis the rights of God). Although Article 22 stands in a bright light as fundamental human rights recognized worldwide, it also stands in contrast to the realities of modern day Iran. The PMOI, the People’s Mujahadeen of Iran,\textsuperscript{17} a resistance movement, has documented the mistreatment of Iranians who were not afforded Article 22 protections. It is interesting to note that most of the constitutional articles end with a certain type of catch-all disclaimer, “except in cases sanctioned by law.” Where the law is corrupt, the constitution exists as a counterbalance. Where people cannot count on the protection of basic fundamental human rights, not even the most ambitious constitution can bear the burden.

The American hostages were not afforded the rights and privileges that Article 22 provides. In the future, due to the repeated and documented cases where Article 22 has

\textsuperscript{17} I attended a PMOI rally in Washington D.C. on Friday November 19, in Liberty Plaza, on Capitol Hill. I purchased a few book that were in English and a documentary film about the current situation in Iran. The documentary did not discuss the Iranian constitution but it did demonstrate that basic fundamental human rights which the Iranian Constitution purports to grant all Iranians are violated on a daily basis with politically motivated incarcerations, public hangings of political dissenters, and the absence of any type of gender justice.
been ignored by the Iranian authorities, I doubt whether hostages would be afforded these basic human rights. As we will discuss below, the Pakistani constitution guarantees certain basic rights, similar to those in Article 22 above, but the Pakistani Supreme Court denied the application of those right to an Islamic sect called the “Ahmadiyya.”

Article 32 [Arrest]
No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this article will be liable to punishment in accordance with the law.

The right to not be arrested or arbitrarily detained without charges being filed is a basic due process right in criminal cases. Due process only functions properly when there is an independent judiciary, who is not taking orders from superiors, or simply towing the current political line. The fact that Iran does not have an independent judiciary calls into question the veracity of the rights afforded in Article 32. From my research I note that the general sentiment is that the administration of impartial justice does not regularly occur in Iran. Therefore, Article 32, even though it is an embodiment of basic due process rights, it is questionably void of any actual legal significance. Neither the 1979 hostages were afforded any rights which are guaranteed in Article 32, not would, I believe, future hostages be afforded those rights. They simply exist on paper.

Article 47 [Private Property]
Private ownership, legitimately acquired, is to be respected. The relevant criteria are determined by law.

Article 49 [Confiscation]
The government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centers of corruption, and other illicit means and sources, and
The relevance of Articles 47 and 49 is that Iranian government deprived the United States of its private property, the U.S. embassy and consulates are property of the U.S., and have not been returned to the United States. There appears no real legal significance to Article 47. The very conception of a fundamental right is that it being a right guaranteed by the constitution cannot be taken away by law and it is not only inartistic but a fraud on the citizens, for maker of the constitution to say that the right is fundamental but it may be taken away by law. “The constitution should receive a liberal interpretation in favor of citizens especially with respect to those provisions which were designed to safeguard freedom of conscience and worship. This is a discussion which occurs on a regular basis in Islamic countries, as it did in Pakistan in 1993 with a Pakistani Supreme Court case.”

Further articles of the Iranian constitution would theoretically apply to a future hostage crisis. The fundamental question is whether or not the Iranian constitution would be held up as a shield, or used as a sword.

The Iranian constitution discusses treaties, and as we will discuss below, international covenants become Islamic Law if they are agreed to by the government of the country and are not repugnant to Islam. Regardless of whether or not Islamic Sharia recognizes the importance and binding nature of an international treaty, the Iranian

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18 The Supreme Court of Pakistan dismissed eight appeals filed by Ahmadies, a persecuted Islamic group in Pakistan. The question of law common to all these appeals was whether The Anti Islamic Activities of the Qadiani Group was ultra vires the constitution of Pakistan.
constitution is silent on the binding nature of treaties. It simply sets out the procedure for signing a treaty. Nowhere in the Iranian constitution does it explicitly legislate a duty to adhere to a treaty. That duty however is in the Holy Koran with respect to fulfilling obligations of a contract that has been assented to.

**Article 77 [Treaties]**
International treaties, protocols, contracts, and agreements must be approved by the Islamic Consultative Assembly.

**Article 125 [Treaties]**
The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly.

**Article 128 [Ambassadors]**
The ambassadors shall be appointed upon the recommendation of the foreign Minister and approval of the President. The President signs the credentials of ambassadors and receives the credentials presented by the ambassadors of the foreign countries.

Regardless of the Iranian constitutional articles discussed above, the clear violation of these principles in the hostage crises continues with absolute impunity. The violation of international law, the sovereign territory of the U.S. Embassy, the prolonged arbitrary detention of 52 hostages, the torture of those hostages with mock executions, all are clear violations of international law and are clearly indictable offenses. The International Criminal Court could have tried those responsible had it existed in 1979. Canada, with its retrospective legislation, if desired and had the suspects in custody, has jurisdiction over crimes against humanity and could (theoretically) successfully prosecute the hostage takers.

**Article 152 [Principles]**
The foreign policy of the Islamic Republic of Iran is based upon the rejection of all forms of domination, both the exertion of it and submission to it, the preservation of the independence of the country in all respects and its territorial integrity, the defense of the rights of all Muslims, nonalignment with respect to the hegemonic superpowers, and the maintenance of mutually peaceful relations with all non-belligerent States.
Article 153 [No Foreign Control]
Any form of agreement resulting in foreign control over the natural resources, economy, army, or culture of the country, as well as other aspects of the national life, is forbidden.

Article 154 [Independence, Support of Just Struggles]
The Islamic Republic of Iran has as its ideal human felicity throughout human society, and considers the attainment of independence, freedom, and rule of justice and truth to be the right of all people of the world. Accordingly, while scrupulously refraining from all forms of interference in the internal affairs of other nations, it supports the just struggles of the freedom fighters against the oppressors in every corner of the globe.

I have included Articles 152, 153 and 154, from Chapter 10 of the Iranian constitution, Foreign Relations, to further emphasize the isolationist mentality that Khomeini instilled in his form of Islamic governance. Except when it comes to interfering in other states struggles, then Iran’s foreign policy flourishes (Article 154).

In conclusion, the Iranian constitution does provide protections for hostages, were they taken in the future however, it is debatable whether the hostages would be afforded those rights in reality. Regardless of the pious picture the Ayatollahs paint, and the clear Koranic fundamentals discussed above which guarantee certain rights, I tend to think that future hostages would not be afforded the rights guaranteed in both the Koran and the Iranian constitution.

III. THE INTERNATIONAL COURT OF JUSTICE—CASE CONCERNING UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN

The U.S. brought an action before the International Court of Justice, ICJ, which was ultimately heard in 1980, in response to the invasion of the American embassy and
the taking of hostages in Tehran. The U.S. requested in the form of provisional measures, that the hostages be immediately freed, indemnification for those taken hostage and that the perpetrators of the crime be handed over to the U.S. for prosecution. Iran argued initially that if the court were to grant the provisional measures requested by the United States, then nothing was left to adjudicate.

For a state to request that the ICJ hear a case between two states there must be a valid treaty at issue. The U.S. relied on the Vienna Convention on Consular Relations, the Vienna Convention on Diplomatic Relations, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, and the Charter of the United Nations.

Through the eyes of the international community, at least according to the ICJ, there were international treaties which bound the conduct of both the United States and Iran. The importance of which become clear. Iran and the United States had entered into binding treaties, both were obligated to uphold them and conduct their actions according to the parameters mutually agreed upon by the nations. Regardless of Iran’s position that the treaties were entered into by the corrupt and powerless government of the Shah, the treaty regime controls.

The new Iranian government did not file any formal pleadings in the case, nor was it represented at the oral argument phase of the proceedings. The new Islamic government of Iran merely sent a telegram in French to the ICJ in which it, *inter alia*, accuses the U.S. of crimes it committed in Iranian affairs. Iran said, *inter alia*, that the

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hostage crisis was an isolated incident and required that the court view it in light of the past decades of U.S. interference in Iranian internal domestic affairs. In part, the telegram reads:

“The Government of the Islamic Republic of Iran considers that the Court cannot and should not take cognizance of the case which the Government of the United States of America has submitted to it, and in the most significant fashion, a case confined to what is called the question of the ‘Hostages of the American Embassy in Tehran.’

For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, 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.

The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last twenty-five years.”

The political diatribe did not set out any legal arguments attempting to justify under international legal principles the hostage taking crime. The law of reprisal, the law of unilateral self-defense, collective self-defense, the law of war, prolonged arbitrary detention, all of which could have been expanded to make cogent legal arguments in defense of the detention of the Americans in Tehran.

The ICJ had to satisfy itself of the facts on which the United States’ claim was based because Iran had decided not to defend the action. The ICJ expressed its regret for
this decision on Iran’s part. The ICJ looked to the official statements of both
governments and the media and proclaimed that the information that the court had at its
disposition was not only sufficient to satisfy the American claim, but also due to Iran’s
absence and continued subsequent silence, in effect evoking no denial of the facts or
charges against it, the court said that the allegations of fact on which the U.S. had based
its claim were well founded.

The Court granted the United States motion for provisional measures and Iran did
not comply. Ultimately, the Court utilized the Optional Protocols to the Vienna
Conventions of 1961 and 1963 to satisfy its jurisdictional hurdles and proceed forward
with the case. The ICJ interestingly decided to not opine on whether or not the 1973
Convention on the Prevention and Punishment of Crimes against Internationally
Protected Persons, Including Diplomatic Agents also provided sufficient foundation for
the Court’s jurisdiction in the case. The Court found sufficient basis in the above treaties
and denied the necessity to further support its search for jurisdiction.

The questions of law before the court were: (1) Whether the action of taking the
American hostages could be imposed upon the Iranian government as an official action,
or whether the action was that of a group not associated with the Iranian government, and
(2) whether those actions were covered and actionable under the treaties which were in
force or other applicable rules of international law.

The Court found with regard to the first count that although the facts which were
available to the court did not establish with due certainty that the actions of the militant
students were directly attributable to the Iranian government. However, the court did
find that Iran’s inaction, in contrast to the Iranian authorities on several other occasions in
the same period of time, its failure to protect the U.S. mission from attack, constituted a “clear and serious violation” by Iran of the Vienna Convention on Consular Relations. The ICJ sternly criticizes Iran saying that by Iran’s failure to protect the U.S. embassy, it undermined the “carefully constructed edifice of law the maintenance of which is vital for the security and well-being of the international community.” The Court ordered the immediate release of the hostages, safe passage of the hostages out of Iran, the return of all U.S. property and reparations paid to the U.S.

Iran lost the case, as was required under the law. Iran was afforded the international standard of legal redress, due process and an independent judiciary; something it apparently does not allow its own citizens within its borders. The statement that the ICJ made that, “…law is what maintains the security and well-being of the international community” must be reconciled with Islamic Sharia. To ignore Islamic law is to ignore the principles of law which govern a great quantity of human beings. The question is whether Islamic Sharia can play an important role in international law, or is it too foreign and inflexible to participate. Or do regional politics not allow an honest dialogue and Islamic law to participate?

IV. THE VIENNA CONVENTION ON CONSULAR AFFAIRS AND OTHER INTERNATIONAL TREATIES REGARDING PROTECTED PERSONS.

Regardless whether or not the ICJ found a valid treaty in which to base its jurisdiction, treaty law has been the preferred method for the international community to
set out the applicable rules for the conduct of states. International treaty law has long included Muslim nations as full partners. Evidence of this is that Sharia does not distinguish between treaties, public or administrative contracts or of civil or commercial contracts. As long as the nature of the contract is not repugnant to Islam, then the agreement must be observed.\textsuperscript{20} Muslim jurists agree that international treaties which have the proper consent by an Islamic state become part of Islamic Sharia.\textsuperscript{21}

Not only did the newly formed Islamic Republic of Iran exhibit their disregard of domestic law, which they considered as remnants of the corruption of the Shah’s regime, but customary international law continues to be violated with impunity.\textsuperscript{22} The Vienna Convention on Consular Affairs, a treaty to which Iran was a ratified signatory, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, the International Convention Against the Taking of Hostages, as well as other treaties were all violated when the government of Iran did not end the hostage crisis. The importance including Iran’s violation of these treaties and of tenets of customary international law is that the international community dictates the levels to which basic human rights and humanitarian law are allowed. Many of the treaties mentioned above have their historical foundations hundreds of years ago and have been beneficial to the expansion of trade, knowledge and culture.

An example of how this concept functions is found right here in the United States towards the end of the eighteenth century. The newly born nation of the United States of America had to guarantee the safety of foreign diplomats and foreign assets in the United

\textsuperscript{20}Terrorism and Islamic Law, Columbia Journal of Transnational Law, at pg. 637, footnote 33.
\textsuperscript{21}Id. at 638 (citing to footnote 35 and Mahmud-Un-Naser).
States in hopes that it would foster a sense of international legitimacy for the new country. Historians recognize the importance of this movement and there appears very little debate in the record by detractors. In addition, the United States broadened its theory of statehood recognition. The United States would recognize almost any country, regime or de facto government at that time (since then, the U.S. has narrowed how it recognizes governments). This was an attempt to legitimize its creation, pact itself with other nations, distance itself as an ex-colony of the United Kingdom and begin to hold itself out in the international community as a nation state. It also had to, as a means to an end, to guarantee the protections to these countries of its diplomats, embassies and business property. Had the United States not codified these protections, the attraction for established nations to invest in the future of the United States would be palpably lessened due to the fear that any investment in the United States would be subject to random expropriation (there was limited jurisprudence and a new constitution), no protection from piracy, corruption or prison. The implied or overt protection of diplomats and embassies by the host country is not new.

International law does not allow for a successor government to disregard a treaty to which its predecessor ratified by simply ignoring or casting it aside *nunc pro tunc* and as if it never had existed. Most treaties contain procedures for their termination and/or suspension. The Vienna Convention on the Law of Treaties, Article 60 deals specifically with this aspect of international treaty law. The newly formed Iranian government however, did not follow any procedures to terminate nor suspend its treaty obligations with the United States. In fact, Iran relied on its FCN treaty, Friendship, Commerce and
Navigation treaty, to take the United States to the International Court of Justice in the Oil Platforms case in 2003 regarding incidents which occurred in 1987 and 1988.

V. CONCLUSION

Islamic Sharia irrefutably grants certain protections and human rights, as does the Iranian constitution, the Vienna Convention on Consular Affairs and dozens of other covenants, treaties and statutes. The fact these ideas are transcribed, agreed to by mankind, published and widely disseminated does not inherently empower men to grant them. As only God knows, as he created us in his own image, we are innately fallible and do err with great regularity. It is this human imperfection that denies equal treatment for all human beings, and is the cause for criminal acts. Justice is simply an ideal, one which sometimes is as fleeting and meaningless as the value we give it.

International law is quite clear, hostage taking is a crime. Criminal acts require punishment either to rehabilitate (teach a lesson) or simply to punish the offender. If a crime goes unpunished then criminal activity would render justice moot and useless. Human beings need hope, and the ideal of justice gives us that hope. Islamic law also gives us that hope. International law can, at times, give us that hope.

While there are criminals who desire to take hostages, using human sentiment, fear and hope, as tools for their criminal enterprises, we need to cry out for justice. We need the rule of law. The ICJ stood up for this principle in the hostages case, and eloquently expressed its desire for a return to the rule of law.
Criminal enterprise can take various forms. It can be cloaked in the façade of legitimacy by calling itself a government. It can use theocratic terminology. It can use political messengers and manifestos. It can come in the least expected form. Justice too can come in many forms. In these days of trials and tribulation around the world, justice, in its many forms can triumph if law is established, human rights and protections are respected and men stop the vile hatred which I believe is at the core of all crime against societies.

To compare and contrast the doctrines discussed in this paper in light of the current situation in the world leads to one simple conclusion. Human beings require self-determination and to live without fear. Hostage taking deprives people of the right to live freely. Living freely means that one can live without the shackles of an imposed ideology. History shows that man has always wanted to dominate his fellow man. Law is an enlightened attempt to quell this historic desire. Law is enlightenment.

I wanted to say a few things before I ended this paper which was at times highly critical of Iran. Iran has for almost twenty years been in virtual isolation from the world. Whether this isolation was created from the inside out, that being Iran’s voluntary withdrawal from the world stage, or whether it was forced upon Iran by the international community, getting reliable data is extremely difficult. I experienced some difficulty gathering data from unbiased sources for this paper. Also, I do not read or speak Farsi or Arabic. This may prove fatal for a scholar in this area. I have no personal contacts within Iran. I was able to speak to family members and friends who are either Iranian or have traveled to Iran. The internet is full of information however, the reliability of that same information can easily be called into question. Lastly, Iran is a country which has polarized all those who have an opinion about it. Generally speaking, those who reside in the U.S. do not think favorably upon the current form of government in Iran. I spoke to members of the P.M.O.I. who provided me with documentation and contacts for my research. I want to thank them. The American historical perspective of the hostage crisis
does not fully analyze the societal and political elements which culminated in the storming of the embassy. I attempted to do some of that here.

Iran (Persia, Babylonia) has one of the richest histories and cultural heritages that has ever existed on the face of the planet. For anyone to simply consider the current manifestation of Iran without understanding the true profundity and value of the culture is doing a great disservice to him/herself. Iran is a great land which had one of the great dynasties, it was readily spoken about by Herodotus, conquered by Alexander the Great, the creator of Algebra, had historically significant personalities such as: Cyrus, Omar Khayyam’s poetry, and many more, including scientists, astronomers, historians, medical doctors, and artists all of whom advanced western culture and to whom we all clearly owe a debt of gratitude.