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The positive duty to protect
diplomatic missions and
personnel

- An evaluation of what is appropriate

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Summary

As I write this, there are numerous horrible wars and acts of terror taking place all over the world. However, it is my belief that the situation would be even worse without diplomats working as mediators, and for them to be able to fulfil their duties they need to be inviolable. Through the Vienna Convention on Diplomatic Relations of 1961, which is believed to reflect customary international law, diplomats are ensured this inviolability. In my thesis I have focused on the customary international law which has been codified in Articles 22, 29 and 30 of the Vienna Convention, which gives inviolability to the mission premises, the diplomatic agent and his or her private residence and property. All three articles impose upon receiving states a duty to protect the diplomatic missions and this duty is both positive and negative in its character. The positive duty means that the receiving state actively has to protect the diplomatic missions, agents and property and the negative duty is a passive obligation not to violate the inviolability by for example having the receiving state's police force entering the diplomatic premises without being asked to do so by the diplomatic agent. To fulfil its positive duty, the receiving state needs to take "all appropriate steps" to protect. When I started thinking about this thesis I wondered, what is "appropriate" and what do you need to consider when determining that? I decided to devote the thesis to try to see if there is a clear answer to that question.

In almost every situation, receiving states accept and acknowledge their duty to prevent intrusion. However, in 1979 the world witnessed a unique abandonment by a receiving state of its responsibilities under the Vienna Convention and customary international law. In that year, in November, the United States Embassy in Tehran was seized. People were held hostage for incredible 444 days without getting any help from the republic of Iran. In the *Case concerning United States Diplomatic and Consular staff in Tehran* the International Court of Justice found that: '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.'¹ During the second phase, when the occupation of the mission premises continued, the lack of action by the Iranian Government: 'clearly gave rise to repeated and multiple breaches of the applicable provisions of the Vienna Conventions and 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.'² The Court considered this situation to be unique because of the fact that it was not only private individuals or groups of individuals that had disregarded the inviolability of the embassy, but the Iranian Government itself. The Court also emphasized the fact that 'it is more essential than ever that the rules developed to ensure the ordered

¹ ICJ Reports 1980, p. 557, paragraph 63.

² Ibid. p. 561, paragraph 76

progress of relations between its members should be constantly and scrupulously respected'.³ It was also concluded that this was due to negligence and not lack of appropriate means. This was concluded since less than a year prior to the attack on 4 November 1979, a similar but not as grave situation had taken place only that time the Iranian authorities had done everything practically "by the book". From this conclusion it is my opinion that you can also tell that there is an economic factor when you determine what is appropriate. Not all states have the financial possibilities to provide sophisticated protection. And due to that fact, what is appropriate in one state may not be even close to enough and appropriate in another.

The receiving state has to protect the mission against intrusion and damage, prevent disturbance of peace and impairment of its dignity. It is obvious that international responsibility for protecting diplomatic missions and personnel is the duty of the receiving state and when an attack occurs against this target the state's culpability, not innocence, is presumed. Therefore, in order to avoid responsibility, the state has to prevent any violations against the diplomatic missions and personnel. There are certain situations, such as demonstrations, that have happened so many times in the past that the state should know what to do to provide appropriate protection. Other situations that are less common, such as hostage-takings and physical attacks can probably be avoided in many cases if the receiving state actively looks for possible threats against the diplomatic corps.

The United Nations Sixth Committee has devoted a lot of efforts to the area diplomatic protection. Every other year the General Assembly considers the item "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives". From different resolutions adopted by the GA, states are encouraged to send in reports of violations and reports of what measures that are taken in each respective state in the field of diplomatic protection. I have looked at a few of them in hope of understanding better what states consider to be "appropriate steps". The reported violations included, among other things; forced entry and assault to the diplomatic premises; physical and psychological violence; demonstrators storming the embassies; and burned documents and vehicles. Kuwait also reported a failure of the Libyan security forces to respond to an appeal for assistance when the embassy was attacked. All of these incidents violate Articles 22, 29 and 30 of the Vienna Convention on Diplomatic Relations and it is the hosting state's duty to avert the situation. The states that provided information on measures taken reported that they punished known offenders and focused a lot on evaluating possible threats to the diplomatic corps in order to prevent attacks.

As you will see in my thesis I have come to the conclusion it should not only have to be preventive actions that are part of the concept of taking "all appropriate steps" to ensure the protection of diplomatic agents and missions. I believe that punishing the offenders might also be part of what is

³ Ibid. p. 568 paragraph 92

“appropriate”. According to *the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, it is clear that persons alleged to have committed any one of the specified (See Article 2) offences of violence against a diplomatic agent, or other person entitled to similar protection, should either be extradited or have their case submitted to the competent authorities for the purpose of prosecution. I am of the opinion that in the obligation states have to protect diplomatic agents and missions rests an obligation to punish those whose actions have breached the inviolability, which the state had to protect. The two activities, protecting and punishing, are so naturally related that it could fall under the same concept of taking “all appropriate steps”.

When I first started writing this thesis, I thought that by the end, I could provide an exhaustive list of what the “appropriate steps” are but this is not the case. What is appropriate is very much determined by the circumstances in each situation but as you will see, there are some guiding principles states should follow.

Abbreviations

CIA
GA
ICJ
ILC
UN
U.S

Central Intelligence Agency
General Assembly
International Court of Justice
International Law Commission
United Nations
United States

1 Introduction

I have chosen to write a thesis in the field of diplomatic law. In the Longman Dictionary of Contemporary English, the word diplomacy is explained as “the work of managing the relationships between countries”. In order to fulfil these few words in a satisfying manner a large number of rules and regulations, used all over the world, must be considered. Some of these consider the importance of immunity and protection for the ones performing the work of improving relationships between countries. The protection should be provided by the state in which the diplomat lives and works. Even though it is the law to provide this there has been and still appears situations when states fail to fulfil its obligations. A very good example of this is the Tehran Hostages Crisis in 1979 when Iran failed to provide any of the protection that diplomatic agents and missions should be granted in accordance with customary international law as well as the Vienna Convention on Diplomatic Relations, which is believed to reflect customary law. In the *Case Concerning United States Diplomatic and Consular staff in Tehran*⁴ the question of diplomatic protection is brought to a head. However, even though a substantial amount of the difficulties that appear when a state fails to provide protection is dealt with in the ICJ judgment, there are still situations that are not covered which you will need to find an answer to elsewhere. I am of the opinion that the diplomatic protection that states are obliged to provide is a very interesting field to study as it is always a pressing issue and is not too well defined.

1.1 The purpose

The purpose of this thesis is to evaluate to what extent states have a duty to protect diplomatic missions on its territory and what is meant by this protection. The duty of protection, which the receiving state owes towards mission premises and diplomatic personnel on its territory, is not a controversial fact.⁵ But still situations constantly appear when states fail to provide the necessary protection that is granted by customary international law, reflected in the Vienna Convention on Diplomatic Relations. That is why I believe it is an interesting field to study. Since Articles 22, 29 and 30 of the Vienna Convention are considered to be part of customary international law they play an important role when you wish to evaluate what is meant by the duty to protect diplomatic missions and personnel.

When you speak of the obligation states have to protect there are two different kinds of obligations, the negative and the positive duty. I will evaluate what is meant by the positive duty to protect diplomatic missions and personnel. I want to clarify, in a simple manner, the difference between the positive and the negative duty of protection. The positive duty means

⁴ ICJ Reports 1980, p. 530

⁵ A Diplomat's Handbook of International Law and Practise 2nd ed, B. Sen, p. 97

that the receiving state actively has to protect the diplomatic mission and agent. The negative duty is a passive obligation not to violate the inviolability of the diplomatic mission and agent.

The reason for why I have chosen to focus on the positive duty is that this duty is much more vaguely defined. It is mentioned that states should take all “appropriate steps”⁶ to protect but what is really meant by appropriate and what factors are important for determining what is appropriate?

1.2 Method and material

The method I have used for evaluating what is meant by the positive duty to protect diplomatic missions and personnel is both descriptive and analytical. The thesis begins with a description of relevant law, state practice (which is an important and recognized source to look at when determining customary law), cases and the work of the UN in the field of diplomatic law and the duty of protection. One way to evaluate to what extent states are obliged to provide diplomatic protection is to look at the situations where states have reported violations as well as reports on what measures individual countries have taken to arrange for protection. I have used reports of that kind, which have been sent in to the UN, in Chapter 4. The analytical part of the thesis is found in the end where I analyze the results of what I have described as well as in the end of Chapter 4.

The subject of diplomatic protection appears to be fairly undisputed. This I conclude since I have had quite some difficulties in finding thorough literature on the subject. However, I have found some and the material I have relied upon to the greatest extent is the Vienna Convention of 1961 and a commentary to the Convention written by Eileen Denza. Other specialist literature dealing with diplomatic protection has been consulted as well. I have also described and analyzed the *Case Concerning United States Diplomatic and Consular staff in Tehran* which has been treated by the ICJ. Furthermore I have through the Internet traced UN Documents which I have used wherever relevant. Additional sources are articles, mostly legal, that I have also found on the Internet. Finally, I have consulted the online encyclopedia wikipedia for information on the hostage crisis in Iran.

1.3 Disposition and limitations

I will begin this evaluation in Chapter 2 by completely focusing on the *Case Concerning United States Diplomatic and Consular staff in Tehran*. To give you as a reader the full picture I will explain the background to the incident. The next sub-chapter concerns the actual seizure of the United States Embassy in Tehran. Since the focal point of this thesis is the protection of

⁶ The Vienna Convention on Diplomatic Relations, Article 22 paragraph 2 and Article 29

diplomatic missions and personnel, I will not go further than just mentioning the attacks on the Consulates. In the last sub-chapter of Chapter 2, I will examine the opinion of the International Court of Justice in this matter by looking at the judgment.

I will continue the evaluation in Chapter 3 by describing the three articles from The Vienna Convention on Diplomatic Relations that I believe are the most important for the thesis. For Articles 22, 29 and 30, I will explain the background. I will also break the articles into pieces to better clarify what the provisions are for each of them. Where appropriate and possible I will use state practice and court rulings since evaluating those two parts is a recognized manner to see what is part of customary international law. In my opinion the positive duty to protect has the same meaning in each of the three articles.

In Chapter 4 the work, in the matter of diplomatic protection, of the Sixth Committee of the United Nations will be described. Here too you will read about the background of the Committee's work followed by a sub-chapter entitled "Recent work". In the next sub-chapter you will find examples of state reports and views where states give an account of situations where there has been a lack of diplomatic protection or simply describes what measures are taken in their respective country to provide protection. There are quite many state reports in the records of the UN. Unfortunately it is only possible to, through the Internet, find the ones that have been sent in for the sessions of 2000 to 2004. I have chosen not to include all of these reports. For obvious reasons I have not included reports that does not deal with the positive duty to protect. Moreover I have not included every single report that concerns the positive duty to protect since not all of them are relevant for this thesis and there is no point in including reports that are very similar. Chapter four ends with a conclusion from the state reports.

Chapter 5 gives you an understanding of what is meant by The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Again the background will be explained followed by a sub-chapter entitled "Definition, obligations and enforcement". By including Chapter 5 I wish to shed light on the importance of punishing those who have committed a crime against diplomatic agents. As I will show later, I believe that some of the provisions from the Convention may very well be part of customary international law when you speak of taking all appropriate steps to protect diplomatic missions and personnel. State practice shows a strong will among most states to punish those who violate the inviolability of diplomatic missions and agents and I have used the abovementioned Convention to further illustrate this practice.

In Chapter 6 you will find my analysis where I bring up the most essential results of my research and the chapter ends with my conclusion.

2 Case concerning United States diplomatic and consular staff in Tehran

This case shook the ground of the entire diplomatic world and came up before the International Court of Justice in 1979. I will begin by explaining the background to the events.

2.1 Background

For several decades, the United States had been the primary supporter of the Shah of Iran, Mohammad Reza Pahlavi. In 1953, the reformist Mohammed Mossadegh was elected Prime Minister and under Operation Ajax, the United States CIA helped the Shah to remove the Prime Minister. This Operation was widely seen as a coup d'état. The following years the Shah was provided financial and military aid from the United States in exchange for a continuous oil supply and a strategic presence in the Middle East. Many people were opposed to the Shah since he did not grant them the freedoms and reforms he had promised in the 1960's and in turn they greatly resented this conduct by the United States. The conservative religious population of Iran was especially disturbed by the western lifestyle the Shah and his entourage led. The social and religious opposition in Iran reacted and this resulted in the Iranian revolution, in January 1979 the Shah fled the country. Due to a severe illness, the Shah was admitted to the United States in October 1979 for medical treatment. The refusal to return the Shah to Iran for trial enraged the revolutionary movement.⁷

On 4 November 1979, at approximately 10.30 a.m., about 3000 persons were demonstrating in opposition to the United States in the city of Tehran. A strong, armed group of several hundreds of people seized the United States Embassy compound and at the same time the Iranian security personnel simply disappeared from the Embassy. The invaders called themselves "Muslim Student Followers of the Imam's Policy" and from now on I will refer to them as "the militants".⁸

On 5 November the United States Consulates in Tabriz and Shiraz were also seized and, as the day before, the Iranian protection was non-existing. Not only the United States were affected by the revolutionary spirit in Iran during this period. The British Embassy in Tehran was also invaded on 5 November and the following day an Iraqi Consulate was briefly occupied.⁹

⁷ Information about the hostage crisis in Iran 1979.
http://en.wikipedia.org/wiki/Iran_hostage_crisis, last visited 2006-02-01

⁸ ICJ Reports 1980, p. 538, paragraph 17

⁹ ICJ Reports 1980, p. 539, paragraph 19, 20

However, since none of these events were even close to being as serious as the seizure of the United States Embassy, I will focus only on that incidence.

Before going further into the events of 4 November there are some other incidents that deserve to be mentioned. On 14 February an armed group attacked and seized the United States Embassy in Tehran, 70 persons were taken prisoners and two were killed. The Iranian authorities had not been able to prevent the attack but they acted quickly in response to the urgent appeal for assistance made by the Embassy. The Deputy Prime Minister, Mr. Yazdi, came to the Embassy and returned control of the compound to the American diplomatic staff. About a month later, the United States Ambassador received a letter by the Prime Minister, Dr. Bazargan, in which he expressed regrets for the attack and indicated readiness to make reparation for the damage. He also stated that arrangements had been made to prevent any repetition of similar incidents. As I mentioned earlier, the Shah of Iran was admitted to the United States in October 1979. Before the officials of the United States Government took that decision, they thought of the possible effects of it and they concluded that it might increase the tensions between Iran and the United States and this could result in renewed violence against the Embassy in Tehran. Because of this conclusion it was decided to request assurances from the Government of Iran that adequate protection would be provided. Assurances were given by the Foreign Minister of Iran, to the United States Chargé d'affaires, that the Government of Iran would fulfil its international obligation to protect the Embassy. On 31 October, the Security Officer of the United States Embassy was notified by the Commander of the Iranian National Police that the police had been instructed to give full protection for the Embassy. The following day demonstrators marched in front of the Embassy. There were up to 5000 people but the Iranian security forces maintained the protection and everything went well.¹⁰

2.2 The seizure

On 4 November 1979 around 10.30 a.m., the militants forcibly entered the diplomatic mission and the ground floor of the Chancery building. Two hours later they had attempted to set the building on fire and cut through the upstairs steel doors with a torch, Eventually they gained control of the main vault. Not only was the Chancery building, but also surrounding mission premises, seized. All the diplomatic staff and other persons present in the premises were taken as hostage. United States nationals from other places in Tehran were brought to the Embassy and added to the number of hostages.¹¹ The militants justified the taking of hostages as retaliation against the United States' years of supporting the Shah of Iran and his totalitarian rule and for giving him entrance to the United States. They demanded that the

¹⁰ ICJ Reports 1980, p. 536-538, paragraphs 14-16

¹¹ ICJ Reports 1980, p. 538, paragraph 17

Shah would be returned to Iran for trial. While the militants were working their way up to the archives the diplomatic staff hurried to destroy as many sensitive documents as possible. However, the militants later displayed secret documents taken from the Embassy, even the documents that had been shredded by the diplomatic staff had been re-constructed.¹²

Repeated calls for help were made from the Embassy to the Iranian Foreign Ministry during the approximately three hours of the assault. The United States Chargé d'affaires, who was at the Foreign Ministry at the time, also tried to secure help from the Iranian authorities. Even the Iranian Chargé d'affaires in Washington was requested to assist in the ending of the seizure. Despite several attempts to obtain assistance, no Iranian security forces were sent in time to provide help and protection to the Embassy. Consequently, no attempt was made by the Government of Iran to clear the mission premises, to rescue the hostages, or to persuade the militants to put an end to the seizure.¹³

During the actual attack on the Embassy, six Americans managed to escape and take refuge in the Canadian Embassy and the Swedish Embassy. The United States Embassy continued to be under the rule of the militants but on 18-20 November, 13 persons from the hostages were released. The release was a result of a decree written by Ayatollah Khomeini in which he called upon the militants to release the women and the African-American if it was proven that they did not spy. Of the remaining hostage, at least 28 persons had the status as "members of the diplomatic staff", at least 20 persons had the status "members of the administrative and technical staff" and two persons were civilian American citizens. It should be added that the Government of Iran has recognized the statutes mentioned as being in accordance with the Vienna Convention on Diplomatic Relations of 1961.¹⁴ Iran has been a party to the Convention since it was ratified on 3 February 1965.¹⁵ Naturally the United States Government tried hard to negotiate to have the hostages released but in the beginning it was a very demanding task. For example, Ayatollah Khomeini forbid the Revolutionary Council and all other responsible officials to meet the United States Representatives which had been sent by President Carter to meet and discuss the matter with Khomeini in the beginning of November, only days after the attack. When this attempt failed the Permanent Representative of the United States to the United Nations addressed a letter to the President of the Security Council and requested urgent consideration of what could be done to release the hostages. The request of 9 November resulted in resolution 457 (1979), which, among other things, called on Iran to release the personnel of the Embassy immediately, to provide them with protection and to allow them to

¹² Information about the hostage crisis in Iran 1979.

http://en.wikipedia.org/wiki/Iran_hostage_crisis, last visited 2006-02-01

¹³ ICJ Reports 1980, p. 538, paragraph 18

¹⁴ ICJ Reports 1980, p. 539, paragraph 21, 22

¹⁵ Participants to the Vienna Convention on Diplomatic Relations.

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIII/treaty28.asp>, last visited 2006-02-01

leave the country. The United States tried several methods to resolve the problem, for example, there was a diplomatic action taken in that it was decided that the number of personnel assigned to the Iranian Embassy and consular posts in the United States was to be restricted. There were also heavy economic restrictions as the very large official Iranian assets in the United States, or under its control, were blocked in order to put pressure on the Iranian Government. Eventually, on 7 April 1980, the United States broke off diplomatic relations with the Government of Iran. From that date, it was also prohibited to export from the United States to Iran.¹⁶ Earlier on, in February, Iran issued several demands that, if they were met, would lead to freeing the hostages. The demands included returning the Shah to Iran and giving an apology for prior actions by the United States in Iran. President Carter knew that he could not meet the demands and instead he sought negotiation by using neutral Governments, such as the one of Switzerland. At the same time he approved a badly created secret rescue mission with the code-name Operation Eagle Claw. During the night of 24-25 April 1980, the operation was set in motion but soon terminated due to technical reasons. The operation had been planned for a long time and was designed to rescue the hostages. Unfortunately, the operation ended with grave tragedies. Two United States aircraft collided in a desert in Iran, eight U.S. servicemen were killed in the collision and mission material was left behind for the Iranians to discover and display.¹⁷

Mohammad Reza Pahlavi, the Shah, eventually left the United States, he lived a short period in Panama and then he went to Egypt. On 27 July 1980, he died in Cairo.¹⁸ On 22 September 1980 Iraq invaded Iran creating what would later be called the First Persian Gulf War.¹⁹ These two events made Iran more and more receptive to resolve the hostage crisis. In November 1980, there was a presidential election in the United States and President Carter was replaced by Ronald Reagan. However, the Carter administration continued to negotiate with Iran to resolve the crisis and in exchange for the unfreezing of 8 billion dollars worth of Iranian assets and a promise of immunity from lawsuits, the hostages would be released. So they were, minutes after President Reagan's inauguration the hostages were formally released to U.S. custody after spending 444 days in captivity.²⁰

¹⁶ ICJ Reports 1980, p. 541-543, paragraphs 26, 28, 30

¹⁷ Information about the hostage crisis in Iran 1979. (17-20)

http://en.wikipedia.org/wiki/Iran_hostage_crisis, last visited 2006-02-01

¹⁸ http://en.wikipedia.org/wiki/Mohammed_Reza_Pahlavi, last visited 2006-02-01

¹⁹ http://en.wikipedia.org/wiki/Iran-Iraq_War, last visited 2006-02-01

²⁰ http://en.wikipedia.org/wiki/Iran_hostage_crisis#Negotiations_and_failed_rescue_attempts, last visited 2006-02-01

2.3 The International Court of Justice - Judgment

On 29 November 1979, the Legal Adviser of the Department of State of the United States of America handed an Application to the International Court of Justice, instituting proceedings against the Islamic Republic of Iran.²¹ I will describe how the International Court of Justice (from now on I will refer to it as “the Court”) reasoned and what their conclusion was. The facts that the Court had to consider needed to be looked at from two points of view. First, the Court had to determine to what extent the acts in question could be regarded as imputable to the Iranian State and secondly it had to consider the acts’ compatibility or incompatibility with the obligations of Iran under treaties and rules of international law that might be applicable.²² Since this thesis will examine the positive duty states have to protect diplomatic missions and personnel I will focus only on that aspect of the Court’s judgement.

The first thing to examine was the actual attack by the militants on 4 November 1979. The Court looked at the overrunning of the mission premises, the taking of hostages, the appropriation of the property and archives and finally, the conduct of the Iranian authorities after these incidents. As I mentioned before, the attack and seizure of the Embassy was an operation that continued for more than three hours without any kind of interference by the Iranian authorities. The attack resulted in grave damage to the mission premises and its property, there was also great harm done to the diplomatic archives, which were opened by force and later confiscated. However, the most serious result of the attack was naturally the seizure by force of the people inside the Embassy as hostages. There had been no indication whatsoever that the militants had any form of official status as recognized agents or other types of organs of the Iranian State. This leads to the conclusion that the attack on 4 November was in no way imputable to Iran in that sense. The Court does not believe that the congratulations or statements of official approval by Ayatollah Khomeini alters the initially independent and unofficial character of the attack.²³ The word *initially* is important here since it indicates that the seizure eventually changes its character and becomes an act imputable to the state of Iran. The Court believed the final change came on 17 November when Ayatollah Khomeini issued a decree. It was the same decree that ordered the release of the African-Americans and the women but the decree also declared that the premises of the Embassy and the hostages would remain in their present state until the United States met the Iranian demands and returned the Shah to Iran. This statement of policy made by Khomeini resulted in changing the legal nature of the situation making it an act of the state of Iran. The militants’ status was now agents of the Iranian State and Iran was

²¹ ICJ Reports 1980, p.530, paragraph 1

²² ICJ Reports 1980, p.554-555, paragraph 56

²³ ICJ Reports 1980, p.555-556, paragraphs 57-59

consequently internationally responsible for their acts.²⁴ Anyway, as already mentioned, I will not focus on this aspect and therefore I will go back to explaining how the Court dealt with the failure of the positive duty of protection by Iran.

First of all, I just want to clarify that the fact that the seizure, from the beginning, was not imputable to the Iranian State, does not mean that Iran is free of any responsibility. As you will see later, in Chapter 3, a number of categorical obligations are imposed on a receiving state according to both the Vienna Convention of 1961 and customary international law.²⁵ For Iran this would mean that the authorities had to take all appropriate steps to ensure the protection of the United States Embassy, the personnel, the archives, the means of communication and the freedom of movement of the members of the staff. These views I share with the Court who also pointed out that the obligations established in the Vienna Convention of 1961 correspond to the obligations set out by customary international law.²⁶

The Court was of the opinion that on 4 November 1979 the Iranian Government failed in every aspect to take any of the “appropriate steps” that are mentioned in, for example, Article 22 and Article 29 of the Vienna Convention of 1961. It was also the Court’s opinion that the failure of Iran to take the steps one might expect was due more to negligence than lack of appropriate means. The Court justified this opinion by looking at earlier incidents of the same kind. At the attack against the United States Embassy on 14 February 1979, only eight months earlier, Iran fulfilled its obligations perfectly. The same remark goes for the behaviour of the Iranian authorities on 1 November 1979 when there was a large demonstration outside the United States Embassy. The inaction of the authorities of Iran on 4 November was very serious and in itself constituted a clear violation of several provisions of the Vienna Convention on Diplomatic Relations of 1961. The relevant parts, which were violated in the Convention, were Article 22 paragraph 2, Articles 24, 25, 26, 27 and 29.

The Court’s conclusion was 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 ;
- (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 ;

²⁴ ICJ Reports 1980, p.561, paragraph 74

²⁵ See for example; State and Diplomatic Immunity, 3rd ed., Charles J. Lewis, p. 127; International Law, 4th ed., Malcolm N. Shaw, p. 524

²⁶ ICJ Reports 1980, p.556, paragraph 62

(c) had the means at their disposal to perform their obligations ;
(d) completely failed to comply with these obligations.”²⁷

On 24 May 1980, the verdict came and the Court decided that the Islamic Republic of Iran was responsible for having violated, and still violated at the time, obligations owed towards the United States under several international conventions in force as well as under customary international law. The Court decided unanimously that Iran immediately had to take all steps to redress the situation that was created on 4 November. This was to be done by releasing the hostages and ensure that they had all necessary means for leaving the territory. The premises, property, archives and documents of the United States Embassy also had to be returned immediately. It was stressed that no one, protected under diplomatic law, could be kept in Iran for judicial proceedings of any kind. Finally, it was agreed that Iran had to make reparation to the United States and that the form and amount of it should be settled by the Court if Iran and the United States could not agree.²⁸

On 12 May 1981, the case was removed from ICJ’s list. This was due to the fact that on 6 May 1981 the Deputy Agent of the United States informed the ICJ:

“Effective 19 January 1981 the United States and Iran entered into certain mutual commitments in order to resolve the crisis arising out of the detention of the fifty-two United States nationals, and for the settlement of claims between the United States and Iran, as reflected in two declarations issued on that date by the Government of the Democratic and Popular Republic of Algeria. Those declarations provide that upon the certification by the Government of Algeria that the fifty-two U.S. nationals had safely departed from Iran, ‘the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice...’”²⁹

²⁷ ICJ Reports 1980, p.558-559, paragraphs 67,68

²⁸ ICJ Reports 1980, p.570, paragraph 95

²⁹ Removal of the case from ICJ’s list.

http://www.icj-cij.org/icjwww/icasases/iusir/iusir_iorders/iusir_iorder_19810512.pdf, last visited 2006-02-01

3 The Vienna Convention on Diplomatic Relations

Even though the focus of this thesis will be on the positive duty of protection, in Article 22 this duty is expressed in paragraph 2, I will still comment on most of the contents in Articles 22, 29 and 30. This I will do to create a greater understanding for the overall picture.

To stress even further how important the provisions of the Vienna Convention are for the maintenance of good relations between states I would like to show what the International Court of Justice said in December 1979:

“There is no more fundamental prerequisite for the conduct of relations between states than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose.” The Court continued by saying that the institution of diplomacy has proved to be “an instrument essential for effective co-operation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means.”³⁰

3.1 Article 22 – a commentary

Article 22 of the Vienna Convention on Diplomatic Relations deals with inviolability of mission premises.

Article 22

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.

³⁰ Order of 15 December 1979, ICJ Reports 1979, p. 19; ICJ Reports 1980, p. 568, paragraph 91.

3.1.1 Background

This type of inviolability has existed for a very long time. It was mentioned in diplomatic literature even before Grotius. By that time, it meant that the receiving state was required to abstain from enforcing his laws on the mission premises.³¹ By the middle of the 18th century, diplomatic missions were regarded in law as a part of the territory of the sending state under the doctrine of extritoriality. This way of thinking has its origin in a remark by Grotius that ambassadors were, by a legal fiction, considered to be outside the territory of the sending state. In some capitals, the sending states claimed “franchise du quartier” which meant that entire blocks around the embassy buildings were exempt from law enforcement. Because of that, the areas became very popular for criminals. Naturally the situation was not tenable and the reaction against this embroidered concept of extritoriality was heavy. During the 19th century reliance on extritoriality declined. It was emphasized that extritoriality was a convenient way of expressing the fact that the receiving state had no powers of law enforcement within mission premises. This however, did not mean that crimes or legal transactions occurring within inviolable premises must be deemed to have occurred in the territory of the sending state. At the same time, the duty of the hosting state to protect diplomatic missions came to be of greater importance. The duty to protect all foreign property became more firmly established in international law and the special duty to protect diplomatic missions increased correspondingly. The term inviolability was used in *The 1895 Resolution of the Institute of International Law* to denote the duty “to protect, by unusually severe penalties, from all offence, injury, or violence on the part of the inhabitants of the country...” The term extritoriality was used in the same draft to cover the duty to abstain from measures of law enforcement. Several states went even further and prohibited purely political or symbolic injury. Examples of that would be insult to the flag or protest demonstrations. Some prescribed particularly severe penalties for trespass or acts of violence towards mission premises.³²

In certain states, for example the Commonwealth States including Australia, Canada, Ceylon and New Zealand, some national legislation was limited simply to provision of “inviolability” as regards the duties of law enforcement. This left the consequences to be defined by international law. On the contrary the Communist states made very specific provisions regarding the powers of law enforcement agencies. The British legislation was rather slow in giving effect to the inviolability of mission premises. Even though it was well established in international practise, it was not mentioned in the *Diplomatic Privileges Act 1708*. It was not until 1896 that you could see proof of British recognition of inviolability of diplomatic

³¹ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p.113

³² Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 114

missions. In that year, Sun Yat-Sen, a political refugee from the Chinese Government, was found to be held hostage in the Chinese Legation in London with the intention of returning him to China. He was released after a formal request to the Chinese Minister. The possibility of forcible entry to release Sun Yat-Sen was not mentioned and that was considered proof of recognition.

The issue that created greatest controversy when formulating article 22, concerned the event of an emergency endangering human life or public safety occurring on mission premises. However, during the Vienna Conference amendments that would have permitted the receiving state to take “such measures as are essential for the protection of life and property in exceptional circumstances of public emergency and danger” or specifies that “the head of mission shall co-operate with the local authorities in case of fire, epidemic or other extreme emergency” were withdrawn. It was agreed by most states that it would be dangerous to give the receiving state the possibility to judge when “exceptional circumstances” existed and also that it was in those situations that it was most necessary to protect the principle of inviolability of mission premises.³³ Today it is clear that without the express consent of the head of the mission, the premises may not be entered by the police, by process servers, by building safety inspectors or even by fire fighters if the premises are on fire. The receiving state has absolutely no right of entry, not even when the authorities believes that the inviolability is being abused and the premises are being used in a manner which is incompatible with the functions of the mission. The receiving state has no right to expropriate any part of the mission, not even when it is for a bona fide public purpose, such as constructing an underground railway road for example.³⁴ It was emphasized during the Conference that the inviolability under article 22 should be unqualified. The way states have acted since then confirms that in case of fire or riot for example, the missions tend to struggle hard to protect or destroy archives before calling on emergency services.³⁵ Hence, you can see a tendency that missions safeguard its inviolability to a greater extent than protection in case of an emergency.

3.1.2 Special duty of protection

In modern international law inviolability is a status accorded to premises, persons or property physically present in the territory of a state but not subject to its jurisdiction in the ordinary way. It should be noted here that the International Law Commission regards the inviolability of the mission premises to be an attribute to the sending state and not deriving from the inviolability of the head of the mission. This due to the fact that the

³³ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 121

³⁴ Satow's Guide to Diplomatic Practise 5th ed., edited by Lord Gore-Booth, p.110

³⁵ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 121

premises are used as the headquarters of the mission.³⁶ Since the time before Grotius, when there was a duty of abstention, a positive duty has been added. That is the duty to protect the premises of the mission shown in paragraph 2 of Article 22.³⁷ The receiving state has to protect the mission against intrusion and damage, prevent disturbance of the peace of the mission and prevent impairment of its dignity. The duty is to take ‘all appropriate steps’.³⁸ By “appropriate steps” it is implied that the extent of the protection provided must be proportionate to the risk or threat to the mission premises. This is what is meant by due diligence. Due diligence is the level of judgement, care, prudence, determination, and activity that the state would reasonably be expected to perform under particular circumstances.

3.1.2.1 Intrusion and damage

An appropriate step is not to, at all times, at all embassies, have a police stationed outside the premises. However, if the state authorities becomes aware of a hostile demonstration taking place outside an embassy, or if the diplomatic personnel informs them of an ongoing intrusion or attack, then the authorities have to act and provide protection in a manner that is proportionate to the threat. Actions such as attacking or trespassing an embassy does not at all have to be a crime of which the consequence has to be an especially severe penalty. It is not obligatory or even universal practise for internal law to provide such penalties. Insults to the flag of an embassy does not have to be a crime either but practise shows that provisions of this kind has been quite common. An example of such legislation would be the United States’ Joint Resolution from 1938 which you can read about in Chapter 3.1.2.2 concerning disturbance of peace and impairment of dignity.³⁹

There are many examples of expulsion from mission premises in history but the worst year in respect of embassy sieges was in 1980. It was established that revolutionaries or protesters had occupied no less than 26 embassies or consulates in that year.⁴⁰ One example is the Spanish Embassy in Guatemala, which was taken over by protesters seeking the establishment of a Committee of Enquiry. There was no act of violence, that is until the Guatemalan Government initiated a rescue operation. The operation was set in motion against the express wishes of the Ambassador and resulted in a fire that caused 39 casualties. Spain broke diplomatic relations immediately and there were protests from the entire diplomatic corps who demanded guarantees that such an operation would never be launched again without

³⁶ A Diplomat’s Handbook of International Law and Practise 2nd ed, B. Sen, p.93

³⁷ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p.112

³⁸ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 139-140

³⁹ Satow’s Guide to Diplomatic Practise 5th ed., edited by Lord Gore-Booth, p.111

⁴⁰ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 136

the acceptance of the head of the mission.⁴¹ 24 years later, on 10 December 2004, Spain took the first steps to prosecute the one responsible for the fatal rescue operation. Spain issued an international arrest warrant for Guatemala's former interior minister, Donaldo Álvarez Ruiz. He was charged with responsibility for the assault in 1980 but unfortunately he was nowhere to be found.⁴²

There seem to be somewhat different opinions in literature concerning compensation for damage. Eileen Denza believes that when intrusion or damage occurs, due to failure of the receiving state to protect the mission, compensation must be given the sending state.⁴³ On the other hand, in Satow's guide to Diplomatic Practice you read that the duty of protection does not make it a matter of legal obligation to make reparation in respect of damages that could affect the Embassy because of absence or failure of the receiving state to provide appropriate protection.⁴⁴ Either way, I have not found anything that contradicts the fact that both before and after the Vienna Convention of 1961 it has been the practise of many states to pay on an *ex gratia* basis all claims for damage to diplomatic mission premises. Generally speaking, there have hardly been any difficulties in agreeing on settlements that are satisfactory to both parties. Actually, state practise shows that there does not even have to be an established or admitted failure or breach of the duty to protect against intrusion or damage. There is a strong tendency to pay compensation either way.⁴⁵

3.1.2.2 Disturbance of peace and impairment of dignity

It is quite often the case that demonstrations by the public take place in front of embassy premises. Naturally, this cannot be completely banned in a democratic state but certain restrictions may be imposed. In the duty of the receiving state to protect mission premises against disturbance of peace and impairment of dignity, lies a duty to ensure that demonstrations do not overstep the limits of propriety or infringe on the immunities of the envoy in any manner. A certain area around the mission premises should be prescribed and in this area, demonstrations will not be permitted. It is absolutely forbidden for the demonstrators to enter the premises or harm the buildings and it is the duty of the receiving state to prevent this from happening. In the event of a demonstration, the police force should be present outside and in the vicinity of the mission premises.

⁴¹ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 137

⁴² Inforpress; Central America Report, 14 January 2005, Guatemala: *Spain's first steps to prosecute Álvarez*

<http://www.inforpressca.com/CAR/homes/h3202.htm>, last visited 2006-02-01

⁴³ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, page 139

⁴⁴ Satow's Guide to Diplomatic Practise 5th ed., edited by Lord Gore-Booth, p.111

⁴⁵ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, page 139; Satow's Guide to Diplomatic Practise 5th ed., edited by Lord Gore-Booth, p.111

In the United States, a Joint Resolution of both Houses of Congress was approved in 1938, making it unlawful to:

“display any banner, or placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party or organisation, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party or organisation, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within 500 feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by and in accordance with, a permit issued by the superintendent of police of the said District; or to congregate within 500 feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District.”⁴⁶

In the case *Frend et al. v. United States* in 1939, the US Court of Appeals concluded that the Resolution imposed ‘reasonable and proper restrictions. In them there is no abridgement of the right of speech or of assembly or of any other constitutional right of the citizen...’ In 1981, the provisions of the Resolution were tested again as they were incorporated in a statute of the District of Columbia. The US Court of Appeals was in *Finzer v. Barry* forced to evaluate whether the conclusion from the *Frend* case was consistent with the constitutional standards which had evolved since 1939. It was said that ‘The unique restrictions imposed are justified by the unique interests that are at stake...’ It is important to note here that to decide if there has been “disturbance of the peace of the mission” you must determine if normal embassy activities have been or are about to be disrupted.⁴⁷

In 1984, the British Foreign Affairs Committee of the House of Commons discussed how far the duty to protect mission premises from, for example, demonstrations extends. It was concluded that diplomatic missions could not be completely protected from expressions of public opinion within the receiving state. What needed to be safeguarded was that the work at the mission could function normally, that access would never be hindered and that the staff of the mission would never be in fear of damage to the

⁴⁶ A Diplomat’s Handbook of International Law and Practise 2nd ed, B. Sen, p. 98, referring to: 52 Statutes 30; 22 U.S.C.A., paragraph 255A

⁴⁷ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza, p. 141f

premises or to themselves. If this could be granted then the requirements, concerning demonstrations, of Article 22 would be met.⁴⁸

In 1991, the Indonesian Embassy in Australia was subjected to demonstrations. On 18 November, two persons placed a number of white crosses, about 50 cm in height, on the grass next to the sidewalk outside the embassy. The demonstration was a protest against the Indonesian killing of East Timorese people. The Embassy demanded the removal of the wooden crosses, claiming that its dignity had been impaired. On 26 January 1992, officers of the Australian Federal Police removed the crosses from outside the Embassy.⁴⁹ The decision to remove the crosses was taken by Minister Gareth Evans. One of the persons responsible for placing the crosses outside the Embassy was Magno and he decided to go to Court with the matter, as he believed Evans had made an incorrect decision. The Federal Court of Australia had to decide, in *Magno and another v. Minister for Foreign Affairs and Trade and Others*, whether the Special Regulation no. 7 1992, made under s. 15 of the Diplomatic Privileges and Immunities Act 1967, was valid or not. The Special Regulation was what gave Evans power to order the removal of the crosses. Anyway, the Court agreed with Magno and you can conclude that the white wooden crosses in front of the Embassy did not impair its dignity or prevent the diplomatic staff from performing its functions.⁵⁰

3.2 Article 29 – a commentary

Just as article 22, this article concerns inviolability only in this case the personal inviolability is up for discussion.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

⁴⁸ State and Diplomatic Immunity 3rd ed., Charles J. Lewis, p. 147

⁴⁹ Federal Court of Australia

Magno and another v. Minister for Foreign Affairs and Trade and Others

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/unrep5857.html?query=title+%28+%22magno%22+%29#disp2> paragraphs 3, 6. Last visited 2006-02-01

⁵⁰ Law Society Journal, Australia: *Falun Gong and the Dignity of the Chinese Mission*. Brings up the case *Magno and another v. Minister for Foreign Affairs and Trade and Others*. <http://www.pureawakening.net/pa/article/2002/7/20/9230p.html>, last visited 2006-02-01

3.2.1 Background

The oldest established rule of diplomatic law is that of inviolability of the person of a diplomatic agent. By the end of the 16th century, the inviolability of the ambassador was established as a rule of customary international law. Not even if the diplomat was conspiring against a monarch or head of state could he be tried and punished.⁵¹ The rule was considered essential if diplomatic relations were to develop at all. During the 20th century abuse of diplomatic immunity was a serious problem but not even then did the receiving state use self-defense to take stronger measures than expulsion against the diplomat abusing his/her immunity.⁵² However, there has been a tendency by writers to claim that there is a right to self-defense when there is an immediate threat of violence from a diplomatic agent but this is contradicted by the fact that there doesn't seem to be any instance where a court has relied on that right.⁵³ When the Vienna Convention was drafted by the International Law Commission the discussion was hardly intense. This was due to the fact that the principle of personal inviolability was so well established in customary international law. However, during the Vienna Conference, Belgium made a proposal which would require the receiving state to take "all steps" to prevent an attack on the person, freedom or dignity of the diplomatic agent, instead of "all reasonable steps" which was the wording in the International Law Commission's draft. This was at first accepted but later the representative from the United Kingdom explained that the removal of the word "reasonable" would give the article unlimited scope which would impose an impossible burden on the receiving state. Finally, after a new Belgian proposal, the wording "all appropriate steps" was adopted by the Vienna Conference.⁵⁴

3.2.2 Protection against attack

Just as in Article 22 there are two aspects of inviolability. The first is the duty of the receiving state to abstain from exercising sovereign rights and the second one is the positive duty to respect and protect the diplomatic agent from physical interference by others on his/her person, freedom or dignity. According to customary international law this requires the state not only to take necessary measures to prevent offences, the receiving state must also punish the offenders.⁵⁵ This provision, which is lacking in Article 29, can also be found in the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*. (See chapter 5 below) I would like to explain how I have gotten to the conclusion that punishing offenders is part of customary international

⁵¹ State and Diplomatic Immunity 3rd ed., Charles J. Lewis, p. 135

⁵² Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 210 ff.

⁵³ State and Diplomatic Immunity 3rd ed., Charles J. Lewis, p. 135

⁵⁴ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 210 ff.

⁵⁵ "Diplomatic Envoys", Oppenheim's International Law 9th ed., 1992, p. 1073

law when it comes to taking “appropriate steps”. If a state omits to punish those who have violated the inviolability of a diplomatic agent they have not lived up to the levels of due diligence. And if so, I would consider the neglect to be an indication that the state has not taken the appropriate steps as are necessary to fulfill its international obligations.

After 1961 the world witnessed a dramatic change in the respect for diplomatic immunity. Kidnapping, murder and violent assaults against diplomatic agents and mission premises became frequent.⁵⁶ This development raised several important questions. To what extent do states have a duty to protect the diplomatic agents on its territory? From the International Law Commission’s Commentary it was clear that the receiving state might be obliged to provide an armed guard to protect the diplomatic agent in case of threat to him/her.⁵⁷ Another question was whether the duty to ‘take all appropriate steps’ required the receiving state to pay the ransom demanded in case of a kidnapped agent or whether the state could be forced to violate its own domestic laws by bargaining with terrorists for the release of prisoners. In 1970, there were seventeen separate kidnappings of diplomatic agents. The most targeted agents were those from the Western world. As a result of all these incidents, taking place in only one year, the Western governments realized that a policy of capitulating to unlawful demands was not an inherent requirement of article 29 of the Vienna Convention. After 1971, when governments started to refuse to give in to the demands of kidnappers, there was a remarkable decline in kidnappings.⁵⁸

3.2.3 Exceptions to the duty of protection

There are certain exceptions to the receiving state’s duty to protect the diplomatic agent. If the agent is injured due to his own unjustifiable behavior he cannot complain. Unjustifiable behavior can be attacking an individual who in self-defence avenges himself. It can also be unreasonably or willfully placing yourself in dangerous or awkward positions, such as disorderly crowds.⁵⁹ Hence, a state can not be accused of not taking “appropriate steps” to protect if any of the above-mentioned scenarios result in damage to the diplomatic agent.

⁵⁶ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 212

⁵⁷ ILC Yearbook 1958 Vol. II p.97

⁵⁸ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 214

⁵⁹ “Diplomatic Envoys”, Oppenheim’s International Law 9th ed., 1992, p. 1075

3.3 Article 30 – a commentary

The third article from the Vienna Convention of importance for this thesis is Article 30 dealing with the inviolability of the private residence and property.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

3.3.1 Background

Just as Articles 22 and 29, most of Article 30 was considered customary international law before the Vienna Convention. However, the second part, concerning papers and correspondence, was not. This provision goes beyond the previous customary law and gives inviolability to papers and correspondence of a diplomatic agent which may be private in character and which may be sent through the public postal service without identifying marks.⁶⁰

3.3.2 Private residences

The inviolability of the residence is regarded as a personal immunity of the envoy.⁶¹ From the beginning there was no distinction between the premises of the mission and the residence of the ambassador, the term “l’hôtel de l’ambassadeur” was applied for both buildings and they enjoyed the same type of inviolability in customary law.

The definition of “premises of the mission” in Article 1(i) of the Vienna Convention includes the residence of the head of the mission. Nothing indicates that this residence has to be owned by the head of the mission. In its Commentary, the International Law Commission said that, “Because this inviolability arises from that attaching to the person of the diplomatic agent, the expression ‘the private residence of a diplomatic agent’ necessarily includes even a temporary residence of the diplomatic agent.”⁶² This means that inviolability can be accorded a second residence, for example a holiday cottage or a hotel room, if the diplomat is living there. A question, which evidently must be asked here, is whether the inviolability of the principal

⁶⁰ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 224

⁶¹ A Diplomat’s Handbook of International Law and Practise 2nd ed, B. Sen, p.93

⁶² Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 222

residence will be lost or remain intact when the diplomat is temporarily absent. There seems to be no clear answer but it seems reasonable that the inviolability would remain during a temporary absence, especially if the diplomat's property is still in the premises.

Another important question is whether the private residence should be granted inviolability for "a reasonable period" after the diplomat has ceased to live there. This is the case when the mission premises are no longer used for the purpose of the mission. The receiving state is then given a period of time to without disturbance move out of the premises. However, this is neither necessary nor appropriate under Article 30. There is no reason for inviolability to last when the diplomat has moved out permanently and there is no property left.⁶³

The same considerations as apply to Article 22, as to what are the "appropriate steps" that needs to be taken by the receiving state to protect premises from intrusion or damage, apply *mutatis mutandis* to Article 30.

3.3.3 Papers and Correspondence

As mentioned above in chapter 3.3.1, papers and correspondence was not accorded inviolability under customary international law. A diplomat's official papers could receive protection as "archives and documents of the mission" and the personal papers would be "property of a diplomatic agent". However, this does not lead to complete protection. Article 30 goes beyond that and gives inviolability to papers and correspondence of a diplomatic agent which may be private in character and may be sent through the public postal service without identifying marks. The receiving state is under a duty to abstain from any interference with the diplomatic correspondence and the rule that identifying marks are not needed naturally causes problems of identification. The rule is justified by the fact that it removes from the receiving state the temptation to search papers and correspondence, which may be partly official and partly private, by claiming that the search is for private papers.

The correspondence of a diplomatic agent may not be intercepted, searched or subjected to X-ray screening. There are situations when this causes problems, for example when you suspect that the correspondence contains a harmful device. It has happened that letter bombs, sent to diplomats, have killed people. When there is a threat to a diplomat or the embassy as a whole, the head of the mission will probably request surveillance by the receiving state. Even if this request has not been made the duty to protect the mission and members of the mission will most likely allow the receiving state to take the necessary steps in order to fulfil its obligations towards the sending state.⁶⁴

⁶³ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 223

⁶⁴ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 224-225

3.3.4 Property

The inviolability of property has not always been an obvious fact. Before the Vienna Convention the inviolability was regarded as limited but writers did not agree on how limited it was. When the International Law Commission were to debate the issue the approach of Hurst was chosen. He said that the only one who can decide what is needed for a diplomat to perform his functions is the diplomat himself, therefore all property of the diplomat should be accorded inviolability. The International Law Commission basically followed the Hurst approach but wrote in its Commentary that “inviolability primarily refers to goods in the diplomatic agent’s private residence; but it also covers other property such as his motor car, his bank account and goods which are intended for his personal use or essential to his livelihood”.

The inviolability was limited, in 1958 by the Commission, in the sense that execution is permitted if a judgment against the diplomat is given under one of the exceptions to immunity from jurisdiction under Article 31. In case of appliance of the exception, there is no requirement that the property has to be connected with the action brought against the diplomat. There is one more exception to the inviolability of the diplomat’s property. That is the personal baggage of the diplomatic agent. According to Article 36.2 this baggage can in exceptional circumstances and under specified procedures be inspected.⁶⁵

⁶⁵ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 226

4 The United Nations

4.1 Background

25 years ago, the Nordic countries introduced the subject of diplomatic and consular protection to the General Assembly. Since then the Sixth Committee has had the subject on its agenda. In September 2002, the Sixth Committee began discussions of measures to enhance the protection, security and safety of diplomatic and consular missions and their personnel. A report from the Secretary-General on the topic responds to a request from the General Assembly for information on the status of ratifications and accessions to the various relevant legal instruments. Several countries reported details of violations. Some states provided information on additional measures taken in their countries to protect missions and their representatives.⁶⁶ On 19 November 2002, the General Assembly adopted resolution 57/15 with the title “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives”. One of the main reasons for adopting the resolution was to emphasize the importance of an effective diplomatic protection due to recent events where this protection had failed.⁶⁷

4.2 Recent work

The work of the United Nations Sixth Committee to secure the inviolability of protected persons is constant. Every other year the General Assembly considers the item “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives“. The latest action was taken on 29 October 2004 when the Sixth Committee adopted draft resolution A/C.6/59/L.14. The resolution was introduced by the representative of Finland and is entitled, as the previous resolutions, “Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives”.⁶⁸ In a press release from the Sixth Committee it was explained that by the terms of the draft the General Assembly would advise States to observe, implement and enforce the principles and rules of international law dealing with protection of diplomatic and consular premises and staff. States would also be urged to take every measure, at both national and international level, to prevent violence against those premises and staff and to prevent abuse of diplomatic or consular privileges

⁶⁶ Sixth Committee: Press Release GA/L/3204, 57th General Assembly, 2nd meeting, 2002-09-26.

<http://www.un.org/News/Press/docs/2002/gal3204.doc.htm>, last visited 2006-02-01

⁶⁷ A/RES/57/15

⁶⁸ Sixth Committee Agenda: 59th session (2004), Agenda item 141, Summary of work. <http://www.un.org/law/cod/sixth/59/sixth59.htm>, last visited 2006-02-01

and immunities. The General Assembly would make specific recommendations and the Secretary-General would be requested to take steps to facilitate the implementation of the recommendations.⁶⁹ In the draft resolution the Sixth Committee also stressed the importance of bringing offenders to justice and emphasized that acts of violence against diplomatic missions and personnel could never be justified. The importance of international co-operation to prevent such crimes was also accentuated. The Sixth Committee was further convinced that the role of the UN, including the reporting procedure which was established in GA resolution 35/168 of 1980, is very important for endorsing the efforts to enhance the protection of diplomatic missions and personnel.⁷⁰ In paragraph 7 of GA resolution 35/168 of 15 December 1980, states are invited to report to the Secretary-General if the protection and security of their diplomatic missions or representatives has failed. The states in which the violations have occurred are also invited to report on how the offenders are brought to justice and what action is taken to prevent violations to re-occur.⁷¹

Several state reports with information on violations as well as measures that has been taken to arrange for protection has been submitted to the General Assembly. States have also given the opportunity to express their general views on the matter.

4.3 Examples of state reports and views

Here is some information received from the reports sent in to the UN pursuant to paragraph 10 of the General Assembly resolution 57/15.

Burkina Faso

- referred to violations involving the premises of its diplomatic and consular missions and violence directed at their personnel and property in Côte d'Ivoire. The diplomatic and consular premises in Bouaké, Abidjan and Soubré were repeatedly subject to forced entry and assault. Their personnel were victims of physical and psychological violence. The consular premises in Abidjan and Soubré were ransacked and set on fire by nationals of Côte d'Ivoire. Vehicles and documents were burned and money was taken. Burkina Faso is of the opinion that the Government of Côte d'Ivoire has

⁶⁹Sixth Committee: Press Release GA/L/3260, 59th General Assembly, 14th meeting, 2004-10-26

<http://www.un.org/News/Press/docs/2004/gal3260.doc.htm>, last visited 2006-02-01

⁷⁰ Report of the Sixth Committee: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. A/59/507, p.3, Recommendation of the Sixth Committee. 2004-10-29

<http://www.un.org/ga/59/documentation/list5.html>, last visited 2006-02-01

⁷¹ GA resolution 35/168, Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. General Assembly – Thirty-fifth Session, p. 266

<http://www.un.org/documents/ga/res/35/a35r168e.pdf>, last visited 2006-02-01

failed its duty to protect pursuant to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.

Kuwait

- submitted a report regarding incidents involving its embassies in Tripoli on 23 March 2003 and Beirut on 21 March 2003. In Tripoli, demonstrators stormed the Embassy and their acts resulted in severe material and financial losses. Doors, windows, computers and filing cabinets were broken. Approximately US\$ 9000, a passport and personal papers were stolen. Even though the Chargé d'Affaires of the Kuwaiti Embassy repeatedly urged the Libyan security forces stationed at the entrance to interfere, they made no effort or attempt to do so. In Beirut, demonstrators threw stones at the residence of the ambassador causing breakage of glass facades and some personal injuries.

Mali

- Mali's report regarded incidents that occurred on 14 and 15 October 2002 involving the residency of its diplomatic representatives in Abidjan, Côte d'Ivoire. Heavily armed individuals violated the residencies. The Government of Mali believes that necessary measures should be taken to enhance the protection and security of diplomatic and consular representatives to prevent such violations from recurring. In its report, dated 25 July 2003, Mali also pointed out that in the context of the enhancement of diplomatic protection, all receiving states should, at the request of diplomatic missions, make available free of charge, security guards to be posted at the offices and residences.

Finland

- submitted a report which provided information on incidents in Helsinki involving the diplomatic mission premises of Iraq, the Czech Republic, the Russian Federation, the United States of America and the Republic of Hungary. In its report, Finland assured that the known offenders were punished and that investigations were pursued in the cases of unknown offenders.⁷²

Following resolution 53/97 of 8 December 1998, you can find examples of other state reports.

Georgia

- The report was dated 29 September 2000 and it referred to the measures that Georgia had taken to improve the protection and security of diplomatic missions and personnel. In the report, Georgia stated that if necessary, the protection of missions and personnel would be reinforced and that some diplomatic agents were provided with personal security guards. It was reassured that a special group would react immediately if there would be problems with the protection of the agents. Georgia also has an escorting

⁷²Sixth Committee, Documents, Agenda item 141, Report of the Secretary-General, A/59/125. 59th session, 2004-07-02
<http://www.un.org/law/cod/sixth/59/docs.htm>, last visited 2006-02-01

plan for high-ranking diplomatic agents, which is firmly established with the Ministry of Internal Affairs and the Ministry of State Security. Furthermore, the State Protection Service of Georgia has systematic operational links with every embassy's security officer, which contributes to the protection of the embassies as it reviews the activities involved in guarding the premises. An assault on a person or agency enjoying international protection that has political motives or is aimed at complicating international relations will be punishable by imprisonment ranging from seven to twenty years or in certain cases imprisonment for life.⁷³

Lebanon

- Lebanon's report concerned a terrorist act, which was committed against the Russian Embassy in Beirut. The Palestinian group Osbat al-Ansar was behind the attack. The Lebanese authorities were immediately contacted and a request for increased protection was made. The violation took place on 3 January 2000 and when the report was submitted to the UN the Lebanese authorities still provided enhanced protection to ensure the security of the Russian mission as there were, from time to time, indications of the possibility of new terrorist attacks.⁷⁴

Pursuant to paragraph 11 of GA resolution 42/154, the General Assembly received a view concerning the efforts taken in the country in the matter of diplomatic protection.

Saudi Arabia

- In the report dated 19 May 2000, Saudi Arabia explained how the state worked to provide protection. It was mentioned that in Riyadh, the capital of Saudi Arabia, an entire section of the city is set aside for diplomatic premises and security agents constantly patrol this area. Furthermore, the security services intensely follow events around the world and if a situation appears that might increase the threat against a certain mission, the precaution will be elevated and the security measures will be intensified. If a request for enhanced protection arrives from an embassy, the security services always respond positively. The report ends with "As a result of the activities of the competent Saudi authorities in this regard, no instance of murder or assault on foreign diplomats or assault on diplomatic missions has ever taken place."⁷⁵

Several reports were received pursuant to paragraph 11 of the General Assembly resolution 55/149.

⁷³ Reports received from States pursuant to paragraph 11 of General Assembly resolution 53/97, A/55/164/Add.3, 55th session, 2000-11-03

<http://www.un.org/documents/ga/docs/55/a55164a3.pdf>, last visited 2006-02-01

⁷⁴ Sixth Committee, Agenda item 156, Documentation, Report of the Secretary-General, Addendum 2, A/55/164/Add.2, 55th session, 2000-09-22

<http://www.un.org/law/cod/sixth/55/sixth55.htm>, last visited 2006-02-01

⁷⁵ Part of GA resolution 53/97, Reports from the Secretary-General and States, Agenda item 158, A/55/164, 55th session, 2000-07-18

<http://www.un.org/documents/ga/docs/55/a55164.pdf>, last visited 2006-02-01

Belarus

- A report which was dated 10 April 2002 explained what measures that were taken in the country, in regard to diplomatic protection, as well as which incidents that had occurred. Belarus reported that 25 embassies in the country were given special protection and it was emphasized that life- or health-threatening attacks against persons enjoying diplomatic immunity and entering into the premises under protection by unauthorized persons was strictly forbidden. Nonetheless, some incidents occurred. An explosive device was thrown towards the premises of the Russian Federation Embassy. No one had been arrested but a criminal investigation was undertaken at the time of the report.⁷⁶ In 2001, two citizens tried to penetrate the Embassy of Poland as well as the Consulate of Germany. They were detained and administrative measures were applied.⁷⁷ Belarus reported that to avoid situations like those in the future supplementary measures had been taken to enhance the protection of the diplomatic missions in the country. These measures included a more frequent police patrol in the vicinity of the embassies, a new defence-plan for the premises, a training-programme for the police personnel, installation of telephone links and emergency buttons from the embassies to the police and video surveillance in the area around embassies.

Tunisia

- The report from Tunisia was dated 10 May 2002 and provided the Secretary-General with information on what measures that were taken in the country in regard to enhancing diplomatic protection. From the report you understand that Tunisia works with observing the political state in the world and from that adjusts the level of protection for each embassy. If one country is facing internal difficulties or turbulence, or if a threat has been posed against it, the security will consequently be enhanced. As a result of that some embassies may receive protection around the clock whereas some are only protected during the night or during working-hours. It is all determined after a risk assessment. Special precautions are also taken in respect of certain occasions such as an embassy's national day when Tunisia fears an increased risk for attacks. In the report, Tunisia also presented information concerning violations that had occurred in other countries towards the Tunisian missions. The incidents involved car theft and mugging of diplomatic personnel. On one occasion the diplomatic personnel informed the receiving state that a stolen car had burned and been left outside the premises after an attempted burglary. Even though the diplomatic staff had repeatedly urged local authorities to remove the wreckage nothing happened for 54 days.

⁷⁶Agenda item 153, Report of the Secretary-General.
<http://www.un.org/law/cod/sixth/57/sixth57.htm>, last visited 2006-02-01

⁷⁷Agenda item 153, Corrigendum.
<http://www.un.org/law/cod/sixth/57/sixth57.htm>, last visited 2006-02-01

Sweden

- A report was submitted to the UN, dated 15 May 2002, concerning incidents that had occurred in Sweden. The Embassy of the Republic of Honduras had been subject to a burglary. Several items such as a cell phone, a computer and a scanner had been stolen. A diplomat of the Islamic Republic of Iran had been attacked while refuelling his car. Unknown persons had thrown eggs at him. The Embassy of the Syrian Arab Republic had received a threatening letter urging the state to leave Lebanon. The Embassy of Vietnam also received a threatening letter. It stated: "Get out within 48 hours; otherwise face the consequences of a bombing". The Swedish police took necessary measures to ensure the safety of the Embassy. The Embassy of the Republic of Zimbabwe had received phone calls in which the Embassy was informed that for every killing of a white farmer in Zimbabwe, an African in Sweden would be killed as well.

El Salvador

- The report from El Salvador did not give information on violations but rather on what measures that were taken in the country in respect of diplomatic protection. El Salvador expressed its wishes to become a party to the international instruments in this field. A special police force dealing with nothing but the protection and security of diplomatic personnel and missions and other internationally protected persons had been established. A security plan for these interests was being implemented. During the year of 2002, when the report was written, several other actions would be taken. These actions included the establishment of an anti-terrorist group, improvement of the security plans for high-risk embassies and installation of alarm systems and communication radios at the embassies.⁷⁸

Germany

- In its report, dated 27 August 2002, Germany referred to a situation that had occurred at the Embassy of Iraq in Berlin. On 20 August 2002, five Iraqi men occupied the Embassy and took several people as hostages. Some of them were attacked with tear gas. After five hours a special police force ended the occupation and liberated the hostages. The aggressors were arrested. The German authorities proclaimed that they would examine and, if necessary, improve the security for diplomatic premises and personnel.⁷⁹

4.3.1 Conclusions from state reports

Since I find it hard to believe a state would report on something with no significance I conclude that the things and situations mentioned are not tolerated by the reporting states. It is also stated in the resolution, which has laid the ground for the reports, that states should report on "...serious violations of the protection, security and safety of diplomatic and consular

⁷⁸ Agenda item 153, Report of the Secretary-General.
<http://www.un.org/law/cod/sixth/57/sixth57.htm>, last visited 2006-02-01

⁷⁹ Agenda item 153, Addendum 1.
<http://www.un.org/law/cod/sixth/57/sixth57.htm>, last visited 2006-02-01

missions and representatives...”.⁸⁰ I interpret that to mean that states should report if there has been a breach of a state’s obligation to take all appropriate steps to protect. In the cases where states have reported on what measures that are taken in the country to provide protection, I believe those measures are considered “appropriate steps”.

⁸⁰ General Assembly resolution 42/154. A/RES/42/154, 94th plenary meeting, 1987-12-07. GA resolutions 55/149 and 53/97 refers to the wording of paragraph 9 (a) in GA resolution 42/154. Paragraph 10 (a) in GA resolution 57/15 is identical to paragraph 9 (a) in GA resolution 42/154.
<http://www.un.org/documents/ga/res/42/a42r154.htm>, last visited 2006-02-01.

5 The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

5.1 Background

In May 1970, the Permanent Representative of the Netherlands addressed a letter to the President of the United Nations Security Council expressing concerns about the increasing number of attacks on diplomatic agents throughout the world. The letter was transmitted to the President of the International Court of Justice and the Chairman of the International Law Commission.⁸¹ In December 1971 the United Nations General Assembly requested the International Law Commission to prepare draft articles on the protection of the inviolability of diplomatic agents and other persons entitled to special protection under international law. *The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, was drawn up by the Sixth Committee in December 1973.⁸² It was adopted, according to resolution 3166 (XXVIII) of 14 December 1973, by the General Assembly and opened for signature.⁸³ In resolution 3166 (XXVIII) the General Assembly, as many times before, emphasized the importance of international rules which protect and provide inviolability for diplomatic agents and the obligations states owes to such persons. They were also convinced that it was important to secure international agreements which provide “appropriate and effective measures for the prevention and punishment of crimes against diplomatic agents... in view of the serious threat to the maintenance and promotion of friendly relations and co-operation among states created by the commission

⁸¹ Center for Nonproliferation studies;

Inventory of International Nonproliferation Organizations and Regimes. Article on *The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, last updated 2005-11-22. <http://cns.miis.edu/pubs/inven/pdfs/intlprot.pdf>, last visited 2006-02-01

⁸² Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 214

⁸³ Final outcome of GA activities concerning the question of protection and inviolability of diplomatic agents.

http://www.un.org/law/ilc/guide/9_4.htm, last visited 2006-02-01

of such crimes". The Convention was believed to make it easier for states to fulfill its obligations more effectively.⁸⁴

In May 2005 there were 154 Contracting Parties to the Convention. It entered into force February 20, 1977.⁸⁵

5.2 Definitions, obligations and enforcement

The Convention defines an internationally protected person as a Head of State, a Head of Government or a minister of Foreign Affairs, and accompanying family members, whenever in a foreign state. Representatives or officials of state or international organization of inter-governmental character, who are entitled to special protection under international law, are also included.⁸⁶

From the Convention it is clear that persons alleged to have committed any one of the specified offences of violence against a diplomatic agent, or other person entitled to similar protection, should either be extradited or have their case submitted to the competent authorities for the purpose of prosecution. Article 2 specifies what constitutes a crime.

1. The intentional commission of:
 - a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
 - b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
 - c) a threat to commit any such attack;
 - d) an attempt to commit any such attack; and

⁸⁴GA resolution 3166 (XXVIII), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. General Assembly – Twenty-eighth Session, p. 146
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/282/38/IMG/NR028238.pdf?OpenElement>, last visited 2006-02-01

⁸⁵Participants to The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty7.asp>
last visited 2006-02-01

⁸⁶Center for Nonproliferation studies;
Inventory of International Nonproliferation Organizations and Regimes.
Article on *The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, last updated 2005-11-22. (86-87, 89)
<http://cns.miis.edu/pubs/inven/pdfs/intlprot.pdf>, last visited 2006-02-01

e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

States have to make these crimes punishable by appropriate penalties in light of their grave nature.⁸⁷ It does not require that the penalty should be greater on account of the fact that the victim was an internationally protected person. The Convention here follows the provisions of Article 29 of the Vienna Convention of 1961.⁸⁸ A State Party has jurisdiction when the crime is committed on its territory or onboard a ship or aircraft registered in that state. It also has jurisdiction when the alleged offender is a national of the state, when the crime is committed against an internationally protected person representing the state or when the alleged offender is present in the territory of the state and is not extradited. Each State Party is also under an obligation to assist one another in case of criminal proceedings and to cooperate to prevent such punishable offences from occurring.⁸⁹

⁸⁷ <http://cns.miis.edu/pubs/inven/pdfs/intlprot.pdf>, last visited 2006-02-01

⁸⁸ Diplomatic law, A Commentary on the Vienna Convention on Diplomatic Relations 2nd ed., Eileen Denza p. 215

⁸⁹ <http://cns.miis.edu/pubs/inven/pdfs/intlprot.pdf>, last visited 2006-02-01

6 Analysis and Conclusion

The International Court of Justice in the *Case concerning United States diplomatic and consular staff in Tehran* concluded that the state of Iran had failed altogether to take any appropriate steps to prevent the actions of the militants on 4 November 1979. There is no doubt that Iran was fully aware of what was expected of the state to perform in terms of protection. This can be concluded since Iran had on earlier occasions, under similar circumstances, provided exactly the protection as was necessary. Even though the Iranian authorities had not been able to prevent the attack on 14 February 1971, they still did what was considered appropriate as they quickly responded to the appeal for assistance from the United States Embassy. They re-gained control of the mission premises and later gave assurances that measures had been taken to prevent future incidents of the same kind. On November 1, there was a large demonstration outside the Embassy but everything went well. The Iranian police force maintained protection of the mission after being instructed to do so by the Foreign Minister of Iran. The International Court of Justice did not mention exactly what had to be done to take “all appropriate steps to protect the premises of the mission” and how Iran could have fulfilled its international obligations to the United States on November 4. However, if you look at the earlier incidents that I just mentioned you can see examples of what was considered appropriate in those cases. Either way, Iran could never justify its inaction with a lack of knowledge on how to provide diplomatic protection. An interesting fact is that from the judgment, I believe you can see proof of an acceptance of the great economical differences in the world and that “appropriate steps” has an economic factor. This I conclude after the Court’s opinion that the failure of Iran to take the appropriate steps was due to negligence and not lack of appropriate means. In my opinion this shows that, even though diplomatic law and protection is regulated by customary international law and all rules apply equally to all parties to the Vienna Convention on Diplomatic Relations, what is appropriate in one country may not be appropriate in another due to the fact that some states do not have the capabilities, facilities or equipment to provide even the most basic protection to the diplomatic missions and personnel on its territory.

Several authors have commented on the provisions from Articles 22, 29 and 30 of The Vienna Convention on Diplomatic Relations. From these comments you understand that it is appropriate to do as the Iranian authorities did on 14 February and 1 November 1979, in the matter of demonstrations and seizures. There does not seem to exist a “manual” of exactly what to do in those situations, the important thing is that the receiving state provides protection, which is proportionate to the threat. However, even if the host state does not believe the demonstration will cause disturbance of the peace or impairment of the dignity of the diplomatic mission, it is my opinion that some kind of preventive protection should be granted, such as having representatives of the police force present

outside the premises. If not, all it takes for the receiving state to violate the inviolability is that one single person oversteps the limits of what is allowed. Without any protection during the demonstration, the sending state will most likely consider an incident much more severe than if there actually were police officers trying to protect the premises.

As I mentioned in Chapter 4, one way to find out what is an "appropriate step" is to look at the state reports sent in to the UN. The reports I have included in my thesis do not come from the biggest or richest countries in the world but I still believe their views are important to look at since they in many cases respond to what I have read in literature in the field of diplomatic protection. Some of the reports simply describe situations that have, in the respective states' opinions, led to a failure of the receiving state to provide appropriate protection. The alleged violations included; forced entry and assault to the diplomatic premises; physical and psychological violence; demonstrators storming the embassies; hostage-takings; burglary; and terrorist attacks. Kuwait also reported a failure of the Libyan security forces to respond to an appeal for assistance when the embassy was attacked. In my opinion, these incidents may have been avoided if the receiving state would have fulfilled its international obligation to provide appropriate protection. Other states reported what measures that were taken in their respective countries to provide protection, i.e. what they considered to be "appropriate steps". It was not mentioned in the report that it was what they considered to be appropriate steps, that is my own conclusion. Anyway, Finland reported on violations that had occurred against diplomatic missions and personnel on its territory and assured that the offenders were punished. In the next passage I will explain why I believe that can be considered an appropriate step. The reports from Tunisia, El Salvador, Georgia and Saudi Arabia referred more detailed to the measures taken in their countries. From these reports you can tell that they focus a great deal on analyzing and being alert to what is going on in the world. This means that they can evaluate possible threats to the diplomatic corps and they can prevent violations of inviolability from occurring to a much higher degree.

There is a reason for why I have chosen to include Chapter 5, concerning the Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents. Neither in the Vienna Convention Article 22 nor in Article 29 is it stated that those who violate the provisions must be punished. However, I believe that in the obligation to take all appropriate steps to protect and prevent attacks on diplomatic missions or personnel, it might also be considered an appropriate step to punish the offenders. The United Nations Sixth Committee has stressed the importance of bringing offenders to justice and I believe that the fact that there by May 2005, were 154 contracting parties to the Convention is proof of a great will among states to do so. My intention is to show that having a penalty for certain crimes committed against a diplomatic agent or mission, within the scope of Article 22 and 29, is not simply customary international law but also regulated in law. Either way it must not be

forgotten that I want to describe what is meant by the duty of protection and what is considered an “appropriate step”. My aim is not to analyse the aforementioned articles from the Vienna Convention, they are part of this thesis since they are believed to reflect customary international law. What is “appropriate” according to customary international law is what I am trying to describe and therefore I can conclude that punishing offenders may very well be part of the “appropriate steps” states need to take to fulfil its duty of protection. At least I am of the opinion, even though some might disagree, that it *should* be that way. To me it seems natural that in the obligation states have to protect diplomatic agents and missions, rests an obligation to punish those whose actions have breached the inviolability, which the state had to protect. The two activities, protecting and punishing, are so naturally related that it should fall under the same concept of taking “all appropriate steps”. For example, if a diplomatic agent is murdered, the protection has failed. If the perpetrator is known, he must be punished. That is what I mean when I say that protecting and punishing are related.

I cannot stress hard enough that this is *my* opinion and I am aware that some might disagree. Regardless of how “valid” my opinion is, I find it hard to ignore the fact that it should be considered an appropriate step to punish offenders.

The most important thing that permeates this thesis is the respect for international co-operation. I have not explained it in clear writing but it is a fact that without international co-operation, it becomes much more difficult to provide diplomatic protection. To decide what appropriate protection in a certain situation is, co-operation and discussions between states is essential and this brings me to the principle of reciprocity. To me it seems natural to look at this principle. States normally want their diplomatic personnel stationed abroad to be safe and protected and the best way to have them protected is to supply the same treatment for diplomats in their respective country as they wish for their own representatives. Even so, sometimes it is not as simple as giving and receiving protection on an equal basis. For example, what if your country is in a turbulent and unsettled time and for some reason a rebel group has become a possible threat to the diplomatic corps present in the country. Should you not do everything in your power to prevent violations of the diplomatic inviolability even though your representatives in the sending states do not get the same treatment? Is it reasonable to demand the sending state to provide extensive protection when there is absolutely no need for it in that particular state, just so that they can be assured that their representatives get protection in yours? Actually, there is no need for that. What is relevant when you speak of reciprocity is that both states have provided protection to the extent it was needed. Reciprocity in this case does not mean that both countries provide the exact same amount and type of protection. The economic factor that I mentioned earlier is also important, there can exist a reciprocal relationship even though there are great economical differences between the countries. What matters is that the states have reached the standard of due diligence. Another thing to consider is that according to the ILC Draft articles on Responsibility of States for internationally wrongful acts (Article 50

paragraph 2 (b)), a state taking countermeasures is not relieved from fulfilling its obligations to respect the inviolability of diplomatic or consular agents, premises, archives and documents. Anyway, it is my opinion that the probable result in a situation like the one I described above would be that the turbulent state would take the appropriate steps to protect the diplomatic mission and its personnel. I believe they would do that, not only to follow customary international law, the provisions of the Vienna Convention and the ILC Draft. They would provide protection to avoid confrontations and in belief and hope that their action will reflect the other state's behaviour in the future.

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The reason for why the articles in the Vienna Convention that I have discussed are not more specified is most likely because of the fact that no incident is the other one alike. The sending and the receiving state needs in most situations determine what an appropriate step is together and you always have to weigh in and assess all of the potential risks of attack against the mission or diplomat. By looking at my analysis, you get an idea of the principle guidelines that, according to customary international law, might be considered appropriate for a state to follow. However, what is an appropriate step in terms of the positive duty to protect varies from case to case and it is not possible to make an *exact* list of the things that lie imbedded in the concept of taking "all appropriate steps to protect".

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