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Center**

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Iran: Possible Trial of the Hostages

An Intelligence Memorandum

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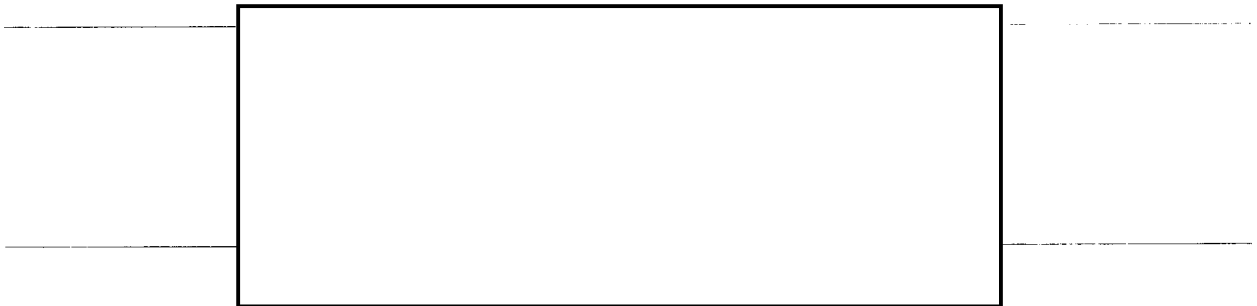
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the Hostages** []

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Summary

Ayatollah Khomeini's inability to separate politics and Islamic law, which is characteristic of traditional Islamic thinking, means that whether the US hostages in Iran are put on trial will be a purely political decision. Khomeini has stated that the hostages will be released if the Shah is returned to Iran, but that they will be tried if the crisis continues. If tried, they will be convicted; Khomeini has already judged them guilty. [] 25X1

Although Khomeini or his appointed special prosecutor could find grounds within Islamic law for execution of the hostages, we believe that the odds are against such a sentence. On a charge of "corruption," the hostages could be sentenced to "exile" from Iran. This would give Khomeini an out—if he elects to adopt it. []

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A trial of one or more of the hostages would serve several purposes for Khomeini. It would, in his view, escalate the pressure on the United States to extradite the Shah. It would publicize Khomeini's justification for seizing the Embassy—that it is not an embassy but rather a "spy nest." It would focus domestic public attention on the "plotting" of the United States as the source of Iran's ills. It would also appear to discredit the United States and the Western values that Khomeini sees as the principal threat to his Islamic Republic. []

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Although the possibility of a drumhead trial of one or more of the hostages cannot be ruled out, those occupying the Embassy probably will follow directives from Khomeini on the timing and conduct of a trial. They would be unlikely to execute anyone without a specific order from him. If Khomeini orders the hostages released or "expelled" following a trial without having the Shah extradited to Iran, there probably would be heated debate among the captors over what course to follow. We believe it unlikely, however, that they would continue to hold the hostages over a prolonged period if Khomeini ordered them released. [] 25X1

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This memorandum was prepared by [] of the Iran Task Force and [] of the Near East South Asia Division, Office of Political Analysis. It has been coordinated with the National Intelligence Officer for the Near East and South Asia.

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**Iran: Possible Trial of
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Ayatollah Khomeini has made clear that he intends to initiate a trial of the hostages held at the US Embassy in Tehran if the Shah is not extradited to Iran. In an interview on 18 November, Khomeini stated that "what our nation has done is to arrest a bunch of spies who, according to the norms, should be investigated, tried, and treated in accordance with our own laws."

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Spokesmen for the forces occupying the Embassy have indicated that they favor a trial of the hostages. Although there are indications that the group holding the hostages is not completely under Khomeini's control, their statement of 25 November quoted in press reports that "only Khomeini can set the date for the hostages' trial" indicates that they are likely to respond to his direction on the timing and conduct of a trial. 25X1

Academic specialists on Iran have pointed out that there is no precedent under Islamic law for the trial of foreign nationals in Iran. Traditionally, in times of stress all foreigners—especially Christians and Jews, who as "People of the Book" are considered protected persons under Islamic practice—might be escorted to the borders but not held prisoner. 25X1

Nevertheless, Khomeini, who may not have ordered the occupation of the Embassy but has clearly chosen to use the hostage situation to advance his goals, is unlikely to be influenced by an argument that holding or trying the hostages is unprecedented. The sources of Islamic law, called the *shariah*, include numerous texts that are open to broad interpretation by qualified Shia Islamic scholars called *mujtaheds*, of whom Khomeini is one of the preeminent leaders. Khomeini has in the past shown no reluctance to make legal pronouncements at variance with strict interpretation of Islamic law in order to serve his goals, even over the objection of other prominent Iranian clerical leaders such as Ayatollah Shariat-Madari. 25X1

Islamic Law

The entire body of Islamic law is called the *shariah*. It is Divine Law that must be followed by all Muslims, "the concrete embodiment of Divine Will according to which man should live in both his private and social life." It covers not only matters of religion, but encompasses economic, social, and political behavior as well.

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The *shariah* for the Shia has five sources: the Koran, the *sunna* (practice of the Prophet), *ijtihad* (the interpretation of scholars of the *shariah*), *aql* (reason), and *ijma* (consensus).

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The Koran is not a law code, and Mohammed was not a lawgiver in any Western sense. The Koran is an appeal to mankind and to the Arabs in particular to obey the law of God that has already been revealed or can be discovered. In the last years of his career the Prophet, as a ruler, was faced with legal problems on which he sought divine guidance, and the answers that he uttered in a trance are a legal element in the Koran. There are said to be 500 such texts, but most of these deal with ritual, and only about 80 deal with legal material. These 80 texts have been subjected to intensive interpretation to extract the maximum amount of meaning from them. Additionally, nonlegal texts in the Koran, moral exhortations, and even divine promises have been construed by analogy to afford legal rules.

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Aside from the Koran, the most obvious source of information concerning the law of God to which inquirers could turn was the practice of the Prophet and of his companions, so far as their practice could be taken as evidence of what he approved. This practice of the Prophet is called the *sunna*. The story of a particular occurrence in which the Prophet was involved is called a *hadith*.

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The Prophet's authority comes next only to the Koran and is not derived from the community's acceptance of him as a person of authority but from Divine Will as expressed in the Koran. For this reason the Muslim community accepts all of Mohammed's verbal commands, his deeds, and his tacit approval of anything as a model that ought to be followed. Thus when Khomeini quotes a *hadith*, as he frequently does in his work *Islamic Government*, he is not relating a parable or narrating a story to make a point. He is quoting something that has the force of law.

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Aql is human reason or intellect. A tradition holds that "the first thing God created was *aql*." *Aql* permits the truth to be discovered when texts differ or contradict each other. Legal rules made by *aql* must be regarded as parts of the *shariah*, and people must obey them. In Shia law, God is the legislator because he created *aql* to make law. *Aql* makes law directly, and God makes law indirectly. Law made by *aql* is as the law of God in that it is a precept of faith and a social duty, and obedience to it is obligatory.

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Ijma, or consensus, is used by both Sunnis and Shia as a source of law, but they define it differently. The Sunni recognize consensus of the community and consensus of the great law teachers. For the Shia, *ijma* means “agreement of those who interpret in their religious judgments the commands of the imams on a particular question,” that is, the *mujtaheds*.

□

Whereas the Koran is the basic source of Islamic law, commentaries on the Koran and the practical treatises—books of case law which describe the way the *shariah* has actually been applied—provide amplification and interpretation. The *mujtaheds* have memorized these works □

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Charges

The charges to be brought against the hostages in a trial before a Revolutionary Court probably will be “spreading corruption on earth” and “warring with God.” These are the standard charges made against nearly all of the prominent leaders of the Shah’s regime tried under revolutionary justice. These charges derive from a verse in the Koran:

The only reward for those who make war upon Allah and his messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet cut off, or will be expelled out of the land. (Koran, Sura V, verse 33)

A common interpretation of this passage is that “one who wages war” is anyone who resorts to armed violence, and “spreading corruption” means highway robbery specifically or disturbing public security by terrorizing people in general □

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Khomeini has charged that “America is causing disturbances in Tehran, causing disturbances in the universities, and bringing students into the streets.” He has referred to the Embassy as a “nest of corruption.” On 10 November, Khomeini stated that there was “substantial evidence” for these charges, “the most important of which is the fact that they (the Americans) shredded all the documents and papers. . . . If these documents only concerned their Embassy, then there was no need to do that.” Khomeini concluded that “this plot against our nation has been proved.” □

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A second cluster of charges derives from Khomeini’s apparent linking of American “plots” with disturbances among Iran’s ethnic minorities, specifically in terms of the activities in the minority areas of the leftist guerrilla group, Cherikha-yeh-Feda’i-yeh-Khalq. On 8 November, Khomeini charged that “those who have created the Kurdistan issue are a group nourished and inspired from abroad, most of them from America.”

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He stated that there was evidence for this charge as well, and that the same "plotting" related to disturbances in the vital oil-producing region of Khuzestan. "Some pamphlets which I have lately received confirm this, and it has become obvious that America has a hand in the events of . . . Khuzestan and the events of Kurdistan."

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A complicating factor in Khomeini's charges of American "plotting" against Iran has been that matters of politics and matters of Islamic law are indistinguishable in Khomeini's mind. Khomeini's statement that the Embassy was legitimately seized because it was a "nest of corruption" was made in the context of a speech touching on the theme that the United States no longer "rules" Iran since the Embassy has been taken. Khomeini's charge that the United States has instigated demonstrations in Tehran by students and others came in the context of an attack on "plotters" in general, those who were not supporting Khomeini's conception of an Islamic Republic. Likewise, the link Khomeini makes between American "plotters" and the activities of the Chirik guerrilla group served as the launching point for an attack on the Iranian left, as well as allowing him to blame various of Iran's ills on forces supported from outside Iran.

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A trial of the hostages would be an act in which political and legal considerations are inseparably mixed. Khomeini has indicated that if the Shah is extradited to Iran, the hostages will be released. Thus, a political deal would be effected, and provisions of Islamic law would make it entirely "legal." The Koranic verse that follows the one dealing with "warring against God," for example, contains a stipulation for amnesty. Should the trial be held, the charges are already "proven" according to Khomeini's own statements, and the trial would serve primarily as a forum to advance Khomeini's goals.

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Sentencing

Should a trial be held, one or more of the hostages is likely to be found guilty of the charge of "spreading corruption on earth" or "warring against God." Although numerous officials of the Shah's regime have been found guilty of these charges and executed, we believe it is far from inevitable that a sentence of execution would be passed on any of the hostages. Khomeini could order an execution in retaliation for what he perceives as an escalation of the crisis by the United States, such as a military move that threatened his primary goal, the creation and preservation of an Islamic Republic in Iran. A provision in the law for a sentence of exile, however, provides Khomeini with a way out of the crisis.

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There is some evidence that Khomeini has been sensitive to international opinion on the issue of executions. Although executions following trials before the Revolutionary Courts continue in Iran—most recently in connection with incidents of sabotage in Khuzestan Province—as of 18 October all sentences of execution had to be cleared through the Office of the Revolutionary Prosecutor General, Ali Ghodusi. Ghodusi's order may have been related to a speech Khomeini made to a seminar of Islamic judges and revolutionary prosecutors on 11 October. In that speech Khomeini urged that the revolution not be used as an excuse for unjust sentences. Doing so, Khomeini warned, would expose the Islamic Republic to charges of repeating the oppression of the monarchy.

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Khomeini has pointedly emphasized that the hostages held at the Embassy have not been mistreated. On 10 November Khomeini told the Papal Nuncio that, "as for proper treatment, even with its enemies, Islam treats them properly . . . Our Muslim young men are treating them in a humane manner." Earlier, on 7 November, Khomeini charged that the United States was seeking "to present our nation as a nation steeped in anarchy and savagery." In the absence of any action for which the execution of the hostages might be justified as retaliation, Khomeini might be constrained by the possibility of appearing to confirm the "charge" of anarchy and savagery.

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Although spokesmen for the forces occupying the Embassy in Tehran are likely to respond to Khomeini's direction on the timing and conduct of a trial—which would almost certainly be managed by Khomeini's appointed Special Prosecutor Ghodusi—it is unclear whether they would abide by the outcome. We believe, however, that it is unlikely they would continue to hold the hostages if Khomeini specifically ordered them released or "exiled," or that they would carry out an execution without a directive from Khomeini.

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Revolutionary Courts

The rudiments of the new "revolutionary" legal system were put together in April 1979 after widespread criticism over the operations of the apparently freewheeling Revolutionary Courts that had moved from executions of the Shah's police and security officials to executions of purely political figures whose "crimes" amounted to little more than association with the Shah's regime. The system presently is headed by Prosecutor General Ali Ghodusi, appointed by the Revolutionary Council with the approval of Ayatollah Khomeini. The Prosecutor General can create provincial branches of his office as required.

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25X1 A Revolutionary Court has five members. The senior member—the Court Administrator—who is appointed by a Revolutionary Committee and approved by Khomeini, must be an Islamic judge, a *Ghazi*, and therefore a *mujtahed*. He has the final word on the admissibility of evidence. This is a permanent appointment.

The appointment process for the remaining members of a Revolutionary Court is unclear. The second member is a “lawyer” elected by the “judges,” but there is no further information on who or what either the lawyer or the judges are. This is also a permanent appointment. The third permanent member is equally obscure. He is described as “someone trusted by the people and aware of the principles of the Islamic Revolution.” The last two members of the court are temporary members described as being “chosen from the honest groups of the community.”

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25X1 We lack information on the rules of evidence for the Revolutionary Courts, the only statement of these rules being that submission of evidence “will be in accordance with the rules on Islamic jurisprudence.” In past cases before Revolutionary Courts, witnesses have been summoned to testify against the accused. There is no habeas corpus, bail, access to counsel, calling of defense witnesses, or appeal.

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