

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/13989
9 June 1980

ORIGINAL: ENGLISH/FRENCH

LETTER DATED 9 JUNE 1980 FROM THE PERMANENT REPRESENTATIVE OF
THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED
TO THE PRESIDENT OF THE SECURITY COUNCIL

On 24 May 1980, the International Court of Justice delivered its Judgment in the Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran). The Court has transmitted its Judgment to the parties, the Secretary-General, Members of the United Nations and other States entitled to appear before the Court, in accordance with rule 95, paragraph 3, of the Rules of the Court.

On behalf of the United States, I request that the Judgment of the International Court of Justice be circulated as a document of the Security Council.

(Signed) Donald F. McHENRY

Annex

1980
24 May
General List
No. 64

INTERNATIONAL COURT OF JUSTICE

YEAR 1980

24 May 1980

CASE CONCERNING UNITED STATES DIPLOMATIC
AND CONSULAR STAFF IN TEHRAN

(UNITED STATES OF AMERICA v. IRAN)

Article 53 of the Statute - Proof of Facts - Admissibility of Proceedings - Existence of wider political dispute no bar to legal proceedings - Security Council proceedings no restriction on functioning of the Court - Fact-finding commission established by Secretary-General.

Jurisdiction of the Court - Optional Protocols to Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations - 1955 Treaty of Amity, Economic Relations and Consular Rights (USA/Iran) - Provision for recourse to Court unless parties agree to "settlement by some other pacific means" - Right to file unilateral Application - Whether counter-measures a bar to invoking Treaty of Amity.

State responsibility for violations of Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations - Action by persons not acting on behalf of State - Non-imputability thereof to State - Breach by State of obligation of protection - Subsequent decision to maintain situation so created on behalf of State - Use of situation as means of coercion.

Question of special circumstances as possible justification of conduct of State - Remedies provided for by diplomatic law for abuses.

Cumulative effect of successive breaches of international obligations - Fundamental character of international diplomatic and consular law.

JUDGMENT...

JUDGMENT

Present: President Sir Humphrey WALDOCK; Vice-President ELIAS;
Judges FORSTER, GROS, LACHS, MORCZOV, NACENDRA SINGH,
RUDA, MOSLER, TARAZI, ODA, AGO, EL-ERIAN, SETTE-CAMARA,
BAXTER; Registrar AQUARONE

In the case concerning United States Diplomatic and Consular Staff
in Tehran,

between

the United States of America,

represented by

The Honorable Roberts B. Owen, Legal Adviser, Department of State,
as Agent;

H.E. Mrs. Geri Joseph, Ambassador of the United States of America
to the Netherlands,

as Deputy Agent;

Mr. Stephen M. Schwebel, Deputy Legal Adviser, Department of State,
as Deputy Agent and Counsel;

Mr. Thomas J. Dunnigan, Counsellor, Embassy of the United States
of America,

as Deputy Agent;

assisted by

Mr. David H. Small, Assistant Legal Adviser, Department of State,

Mr. Ted. L. Stein, Attorney-Adviser, Department of State,

Mr. Hugh V. Simon, Jr., Second Secretary, Embassy of the
United States of America,

as Advisers,

and

the Islamic Republic of Iran,

THE...

THE COURT,

composed as above,

delivers the following Judgment:

1. On 29 November 1979, the Legal Adviser of the Department of State of the United States of America handed to the Registrar an Application instituting proceedings against the Islamic Republic of Iran in respect of a dispute concerning the seizure and holding as hostages of members of the United States diplomatic and consular staff and certain other United States nationals.

2. Pursuant to Article 40, paragraph 2, of the Statute and Article 38, paragraph 4, of the Rules of Court, the Application was at once communicated to the Government of Iran. In accordance with Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, the Secretary-General of the United Nations, the Members of the United Nations, and other States entitled to appear before the Court were notified of the Application.

3. On 29 November 1979, the same day as the Application was filed, the Government of the United States filed in the Registry of the Court a request for the indication of provisional measures under Article 41 of the Statute and Article 73 of the Rules of Court. By an Order dated 15 December 1979, and adopted unanimously, the Court indicated provisional measures in the case.

4. By an Order made by the President of the Court dated 24 December 1979, 15 January 1980 was fixed as the time-limit for the filing of the Memorial of the United States, and 18 February 1980 as the time-limit for the Counter-Memorial of Iran, with liberty for Iran, if it appointed an Agent for the purpose of appearing before the Court and presenting its observations on the case, to apply for reconsideration of such time-limit. The Memorial of the United States was filed on 15 January 1980, within the time-limit prescribed, and was communicated to the Government of Iran; no Counter-Memorial was filed by the Government of Iran, nor was any agent appointed or any application made for reconsideration of the time-limit.

5. The case thus became ready for hearing on 19 February 1980, the day following the expiration of the time-limit fixed for the Counter-Memorial of Iran. In circumstances explained in paragraphs 41-42 below, and after due notice to the Parties, 18 March 1980 was fixed as the date for the opening of the oral proceedings; on 18, 19 and 20 March 1980, public hearings were held, in the course of which the Court heard the oral argument of the Agent and Counsel of the United States; the Government of Iran was not represented at the hearings. Questions were addressed to the Agent of the United States by Members of the Court both during the course of the hearings and subsequently, and replies were given either orally at the hearings or in writing, in accordance with Article 61, paragraph 4, of the Rules of Court.

6. On...

6. On 6 December 1979, the Registrar addressed the notifications provided for in Article 63 of the Statute of the Court to the States which according to information supplied by the Secretary-General of the United Nations as depositary were parties to one or more of the following Conventions and Protocols:

- (a) the Vienna Convention on Diplomatic Relations of 1961;
- (b) the Optional Protocol to that Convention concerning the Compulsory Settlement of Disputes;
- (c) the Vienna Convention on Consular Relations of 1963;
- (d) The Optional Protocol to that Convention concerning the Compulsory Settlement of Disputes;
- (e) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973.

7. The Court, after ascertaining the views of the Government of the United States on the matter, and affording the Government of Iran the opportunity of making its views known, decided pursuant to Article 53, paragraph 2, of the Rules of Court that copies of the pleadings and documents annexed should be made accessible to the public with effect from 25 March 1980.

8. In the course of the written proceedings the following submissions were presented on behalf of the Government of the United States of America:

in the Application:

"The United States requests the Court to adjudge and declare as follows:

- (a) That the Government of Iran, in tolerating, encouraging, and failing to prevent and punish the conduct described in the preceding Statement of Facts, violated its international legal obligations to the United States as provided by
 - Articles 22, 24, 25, 27, 29, 31, 37 and 47 of the Vienna Convention on Diplomatic Relations,
 - Articles 28, 31, 33, 34, 36 and 40 of the Vienna Convention on Consular Relations,
 - Articles 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and
 - Articles II (4), XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran,and

Articles 2 (3)...

- Articles 2 (3), 2 (4) and 33 of the Charter of the United Nations

- (b) That pursuant to the foregoing international legal obligations, the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained within the premises of the United States Embassy in Tehran and to assure that all such persons and all other United States nationals in Tehran are allowed to leave Iran safely;
- (c) That the Government of Iran shall pay to the United States, in its own right and in the exercise of its right of diplomatic protection of its nationals, reparation for the foregoing violations of Iran's international legal obligations to the United States, in a sum to be determined by the Court; and
- (d) That the Government of Iran submit to its competent authorities for the purpose of prosecution those persons responsible for the crimes committed against the premises and staff of the United States Embassy and against the premises of its Consulates";

in the Memorial:

"The Government of the United States respectfully requests that the Court adjudge and declare as follows:

- (a) that the Government of the Islamic Republic of Iran, in permitting, tolerating, encouraging, adopting, and endeavouring to exploit, as well as in failing to prevent and punish, the conduct described in the Statement of the Facts, violated its international legal obligations to the United States as provided by:
 - Articles 22, 24, 25, 26, 27, 29, 31, 37, 44 and 47 of the Vienna Convention on Diplomatic Relations;
 - Articles 5, 27, 28, 31, 33, 34, 35, 36, 40 and 72 of the Vienna Convention on Consular Relations;
 - Article II (4), XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran; and
 - Articles 2, 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- (b) that, pursuant to the foregoing international legal obligations:
 - (i) the Government of the Islamic Republic of Iran shall immediately ensure that the premises at the United States Embassy, Chancery and Consulates are restored to the possession of the United States authorities under their exclusive control, and shall ensure their inviolability and effective protection as provided for by the treaties in force between the two States, and by general international law;

(ii) the...

- (ii) the Government of the Islamic Republic of Iran shall ensure the immediate release, without any exception, of all persons of United States nationality who are or have been held in the Embassy of the United States of America or in the Ministry of Foreign Affairs in Tehran, or who are or have been held as hostages elsewhere, and afford full protection to all such persons, in accordance with the treaties in force between the two States, and with general international law;
 - (iii) the Government of the Islamic Republic of Iran shall, as from that moment, afford to all the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and under general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran;
 - (iv) The Government of the Islamic Republic of Iran shall, in affording the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled, including immunity from any form of criminal jurisdiction, ensure that no such personnel shall be obliged to appear on trial or as a witness, deponent, source of information, or in any other role, at any proceedings, whether formal or informal, initiated by or with the acquiescence of the Iranian Government, whether such proceedings be denominated a 'trial', 'grand jury', 'international commission' or otherwise;
 - (v) the Government of the Islamic Republic of Iran shall submit to its competent authorities for the purpose of prosecution, or extradite to the United States, those persons responsible for the crimes committed against the personnel and premises of the United States Embassy and Consulates in Iran;
- (c) that the United States of America is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals held hostage, of reparation by the Islamic Republic of Iran for the violations of the above international legal obligations which it owes to the United States, in a sum to be determined by the Court at a subsequent stage of the proceedings."

9. At the close of the oral proceedings, written submissions were filed in the Registry of the Court on behalf of the Government of the United States of America in accordance with Article 60, paragraph 2, of the Rules of Court; a copy thereof was transmitted to the Government of Iran. Those submissions were identical with the submissions presented in the Memorial of the United States.

10. No pleadings were filed by the Government of Iran, which also was not represented at the oral proceedings, and no submissions were therefore presented on its behalf. The position of that Government was, however, defined in two communications addressed to the Court by the Minister for Foreign Affairs of Iran; the first of these was a letter dated 9 December 1979 and transmitted by telegram the same day (the text of which was set out in full in the Court's Order of 15 December 1979, I.C.J. Reports 1979, pages 10-11); the second was a letter transmitted by telex dated 16 March 1980 and received on 17 March 1980, the text of which followed closely that of the letter of 9 December 1979 and reads as follows:

/Translation from French/

"I have the honour to acknowledge receipt of the telegram concerning the meeting of the International Court of Justice to be held on 17 March 1980 at the request of the Government of the United States of America, and to set forth for you below, once again, the position of the Government of the Islamic Republic of Iran in that respect:

The Government of the Islamic Republic of Iran wishes to express its respect for the International Court of Justice, and for its distinguished Members, for what they have achieved in the quest for a just and equitable solution to legal conflicts between States, and respectfully draws the attention of the Court to the deep-rootedness and the essential character of the Islamic Revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters, the examination of whose numerous repercussions is essentially and directly a matter within the national sovereignty of Iran.

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

For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.

The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years.

With...

With regard to the request for provisional measures, as formulated by the United States, it in fact implies that the Court should have passed judgment on the actual substance of the case submitted to it, which the Court cannot do without breach of the norms governing its jurisdiction. Furthermore, since provisional measures are by definition intended to protect the interest of the parties, they cannot be unilateral, as they are in the request submitted by the American Government."

The matters raised in those two communications are considered later in this Judgment (paragraphs 33-38 and 81-82).

*

* *

11. The position taken up by the Iranian Government in regard to the present proceedings brings into operation Article 53 of the Statute, under which the Court is required inter alia to satisfy itself that the claims of the Applicant are well founded in fact. As to this article the Court pointed out in the Corfu Channel case that this requirement is to be understood as applying within certain limits:

"While Article 53 thus obliges the Court to consider the submissions of the Party which appears, it does not compel the Court to examine their accuracy in all their details; for this might in certain unopposed cases prove impossible in practice. It is sufficient for the Court to convince itself by such methods as it considers suitable that the submissions are well founded." (I.C.J. Reports 1949, p. 248.)

In the present case, the United States has explained that, owing to the events in Iran of which it complains, it has been unable since then to have access to its diplomatic and consular representatives, premises and archives in Iran; and that in consequence it has been unable to furnish detailed factual evidence on some matters occurring after 4 November 1979. It mentioned in particular the lack of any factual evidence concerning the treatment and conditions of the persons held hostage in Tehran. On this point, however, without giving the names of the persons concerned, it has submitted copies of declarations sworn by six of the 13 hostages who had been released after two weeks of detention and returned to the United States in November 1979.

12. The essential facts of the present case are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other countries. They have been presented to the Court by the United States in its Memorial, in statements of its Agent and Counsel during the oral proceedings, and in written replies to questions put by Members of the Court. Annexed or appended to the Memorial are numerous extracts of

statements...

statements made by Iranian and United States officials, either at press conferences or on radio or television, and submitted to the Court in support of the request for provisional measures and as a means of demonstrating the truth of the account of the facts stated in the Memorial. Included also in the Memorial is a "Statement of Verification" made by a high official of the United States Department of State having "overall responsibility within the Department for matters relating to the crisis in Iran". While emphasizing that in the circumstances of the case the United States has had to rely on newspaper, radio and television reports for a number of the facts stated in the Memorial, the high official concerned certifies that to the best of his knowledge and belief the facts there stated are true. In addition, after the filing of the Memorial, and by leave of the Court, a large quantity of further documents of a similar kind to those already presented were submitted by the United States for the purpose of bringing up to date the Court's information concerning the continuing situation in regard to the occupation of the Embassy and detention of the hostages.

13. The result is that the Court has available to it a massive body of information from various sources concerning the facts and circumstances of the present case, including numerous official statements of both Iranian and United States authorities. So far as newspaper, radio and television reports emanating from Iran are concerned, the Court has necessarily in some cases relied on translations into English supplied by the Applicant. The information available, however, is wholly consistent and concordant as to the main facts and circumstances of the case. This information, as well as the United States Memorial and the records of the oral proceedings, has all been communicated by the Court to the Iranian Government without having evoked from that Government any denial or questioning of the facts alleged before the Court by the United States. Accordingly, the Court is satisfied that, within the meaning of Article 53 of the Statute, the allegations of fact on which the United States bases its claims in the present case are well founded.

*

* *

14. Before examining the events of 4 November 1979, directly complained of by the Government of the United States, it is appropriate to mention certain other incidents which occurred before that date. At about 10.45 a.m. on 14 February 1979, during the unrest in Iran following the fall of the Government of Dr. Bakhtiar, the last Prime Minister appointed by the Shah, an armed group attacked and seized the United States Embassy in Tehran, taking prisoner the 70 persons they found there, including the Ambassador. Two persons associated with the Embassy staff were killed; serious damage was caused to the Embassy and there were some acts of pillaging of the Ambassador's residence. On this occasion, while the Iranian authorities had not been able to prevent the incursion, they acted promptly in response to the urgent appeal for assistance made by the Embassy

during...

during the attack. At about 12 noon, Mr. Yazdi, then a Deputy Prime Minister, arrived at the Embassy accompanied by a member of the national police, at least one official and a contingent of Revolutionary Guards; they quelled the disturbance and returned control of the compound to American diplomatic officials. On 11 March 1979 the United States Ambassador received a letter dated 1 March from the Prime Minister, Dr. Bazargan, expressing regrets for the attack on the Embassy, stating that arrangements had been made to prevent any repetition of such incidents, and indicating readiness to make reparation for the damage. Attacks were also made during the same period on the United States Consulates in Tabriz and Shiraz.

15. In October 1979, the Government of the United States was contemplating permitting the former Shah of Iran, who was then in Mexico, to enter the United States for medical treatment. Officials of the United States Government feared that, in the political climate prevailing in Iran, the admission of the former Shah might increase the tension already existing between the two States, and inter alia result in renewed violence against the United States Embassy in Tehran, and it was decided for this reason to request assurances from the Government of Iran that adequate protection would be provided. On 21 October 1979, at a meeting at which were present the Iranian Prime Minister, Dr. Bazargan, the Iranian Minister for Foreign Affairs, Dr. Yazdi, and the United States Chargé d'affaires in Tehran, the Government of Iran was informed of the decision to admit the former Shah to the United States, and of the concern felt by the United States Government about the possible public reaction in Tehran. When the United States Chargé d'affaires requested assurances that the Embassy and its personnel would be adequately protected, assurances were given by the Foreign Minister that the Government of Iran would fulfil its international obligation to protect the Embassy. The request for such assurances was repeated at a further meeting the following day, 22 October, and the Foreign Minister renewed his assurances that protection would be provided. The former Shah arrived in the United States on 22 October. On 30 October, the Government of Iran, which had repeatedly expressed its serious opposition to the admission of the former Shah to the United States, and had asked the United States to permit two Iranian physicians to verify the reality and the nature of his illness, requested the United States to bring about his return to Iran. Nevertheless, on 31 October, the Security Officer of the United States Embassy was told by the Commander of the Iranian National Police that the police had been instructed to provide full protection for the personnel of the Embassy.

16. On 1 November 1979, while a very large demonstration was being held elsewhere in Tehran, large numbers of demonstrators marched to and fro in front of the United States Embassy. Under the then existing security arrangements the Iranian authorities normally maintained 10 to 15 uniformed policemen outside the Embassy compound and a contingent of Revolutionary Guards nearby; on this occasion the normal complement of police was stationed outside the compound and the Embassy reported to the State Department that it felt confident that it could get more protection if needed. The Chief of Police came to the Embassy personally and

met...

met the Chargé d'affaires, who informed Washington that the Chief was "taking his job of protecting the Embassy very seriously". It was announced on the radio, and by the prayer leader at the main demonstration in another location in the city, that people should not go to the Embassy. During the day, the number of demonstrators at the Embassy was around 5,000, but protection was maintained by Iranian security forces. That evening, as the crowd dispersed, both the Iranian Chief of Protocol and the Chief of Police expressed relief to the Chargé d'affaires that everything had gone well.

17. At approximately 10.30 a.m. on 4 November 1979, during the course of a demonstration of approximately 3,000 persons, the United States Embassy compound in Tehran was overrun by a strong armed group of several hundred people. The Iranian security personnel are reported to have simply disappeared from the scene; at all events it is established that they made no apparent effort to deter or prevent the demonstrators from seizing the Embassy's premises. The invading group (who subsequently described themselves as "Muslim Student Followers of the Imam's Policy", and who will hereafter be referred to as "the militants") gained access by force to the compound and to the ground floor of the Chancery building. Over two hours after the beginning of the attack, and after the militants had attempted to set fire to the Chancery building and to cut through the upstairs steel doors with a torch, they gained entry to the upper floor; one hour later they gained control of the main vault. The militants also seized the other buildings, including the various residences, on the Embassy compound. In the course of the attack, all the diplomatic and consular personnel and other persons present in the premises were seized as hostages, and detained in the Embassy compound; subsequently other United States personnel and one United States private citizen seized elsewhere in Tehran were brought to the compound and added to the number of hostages.

18. During the three hours or more of the assault, repeated calls for help were made from the Embassy to the Iranian Foreign Ministry, and repeated efforts to secure help from the Iranian authorities were also made through direct discussions by the United States Chargé d'affaires, who was at the Foreign Ministry at the time, together with two other members of the mission. From there he made contact with the Prime Minister's Office and with Foreign Ministry officials. A request was also made to the Iranian Chargé d'affaires in Washington for assistance in putting an end to the seizure of the Embassy. Despite these repeated requests, no Iranian security forces were sent in time to provide relief and protection to the Embassy. In fact when Revolutionary Guards ultimately arrived on the scene, despatched by the Government "to prevent clashes", they considered that their task was merely to "protect the safety of both the hostages and the students", according to statements subsequently made by the Iranian Government's spokesman, and by the operations commander of the Guards. No attempt was made by the Iranian Government to clear the Embassy premises, to rescue the persons held hostage, or to persuade the militants to terminate their action against the Embassy.

19. During...

19. During the morning of 5 November, only hours after the seizure of the Embassy, the United States Consulates in Tabriz and Shiraz were also seized; again the Iranian Government took no protective action. The operation of these consulates had been suspended since the attack in February 1979 (paragraph 14 above), and therefore no United States personnel were seized on these premises.

20. The United States' diplomatic mission and consular posts in Iran were not the only ones whose premises were subjected to demonstrations during the revolutionary period in Iran. On 5 November 1979, a group invaded the British Embassy in Tehran but was ejected after a brief occupation. On 6 November 1979 a brief occupation of the Consulate of Iraq at Kermanshah occurred but was brought to an end on instructions of the Ayatollah Khomeini; no damage was done to the Consulate or its contents. On 1 January 1980 an attack was made on the Embassy in Tehran of the USSR by a large mob, but as a result of the protection given by the Iranian authorities to the Embassy, no serious damage was done.

21. The premises of the United States Embassy in Tehran have remained in the hands of militants; and the same appears to be the case with the consulates at Tabriz and Shiraz. Of the total number of United States citizens seized and held as hostages, 13 were released on 18-20 November 1979, but the remainder have continued to be held up to the present time. The release of the 13 hostages was effected pursuant to a decree by the Ayatollah Khomeini addressed to the militants, dated 17 November 1979, in which he called upon the militants to "hand over the blacks and the women, if it is proven they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran".

22. The persons still held hostage in Iran include, according to the information furnished to the Court by the United States, at least 28 persons having the status, duly recognized by the Government of Iran, of "member of the diplomatic staff" within the meaning of the Vienna Convention on Diplomatic Relations of 1961; at least 20 persons having the status, similarly recognized, of "member of the administrative and technical staff" within the meaning of that Convention; and two other persons of United States nationality not possessing either diplomatic or consular status. Of the persons with the status of member of the diplomatic staff, four are members of the Consular Section of the Mission.

23. Allegations have been made by the Government of the United States of inhumane treatment of hostages; the militants and Iranian authorities have asserted that the hostages have been well treated, and have allowed special visits to the hostages by religious personalities and by representatives of the International Committee of the Red Cross. The specific allegations of ill-treatment have not however been refuted.

Examples...

Examples of such allegations, which are mentioned in some of the sworn declarations of hostages released in November 1979, are as follows: at the outset of the occupation of the Embassy some were paraded bound and blindfolded before hostile and chanting crowds; at least during the initial period of their captivity, hostages were kept bound, and frequently blindfolded, denied mail or any communication with their government or with each other, subjected to interrogation, threatened with weapons.

24. Those archives and documents of the United States Embassy which were not destroyed by the staff during the attack on 4 November have been ransacked by the militants. Documents purporting to come from this source have been disseminated by the militants and by the Government-controlled media.

25. The United States Chargé d'affaires in Tehran and the two other members of the diplomatic staff of the Embassy who were in the premises of the Iranian Ministry of Foreign Affairs at the time of the attack have not left the Ministry since; their exact situation there has been the subject of conflicting statements. On 7 November 1979, it was stated in an announcement by the Iranian Foreign Ministry that "as the protection of foreign nationals is the duty of the Iranian Government", the Chargé d'affaires was "staying in" the Ministry. On 1 December 1979, Mr. Sadegh Ghotbzadeh, who had become Foreign Minister, stated that

"... it has been announced that, if the U.S. Embassy's chargé d'affaires and his two companions, who have sought asylum in the Iranian Ministry of Foreign Affairs, should leave this ministry, the ministry would not accept any responsibility for them".

According to a press report of 4 December, the Foreign Minister amplified this statement by saying that as long as they remained in the ministry he was personally responsible for ensuring that nothing happened to them, but that

"... as soon as they leave the ministry precincts they will fall back into the hands of justice, and then I will be the first to demand that they be arrested and tried".

The militants made it clear that they regarded the Chargé and his two colleagues as hostages also. When in March 1980 the Public Prosecutor of the Islamic Revolution of Iran called for one of the three diplomats to be handed over to him, it was announced by the Foreign Minister that

"Regarding the fate of the three Americans in the Ministry of Foreign Affairs, the decision rests first with the imam of the nation /i.e., the Ayatollah Khomeini/; in case there is no clear decision by the imam of the nation, the Revolution Council will make a decision on this matter."

26. From the outset of the attack upon its Embassy in Tehran, the United States protested to the Government of Iran both at the attack and at the seizure and detention of the hostages. On 7 November a former Attorney-General of the United States, Mr. Ramsey Clark, was instructed to go with an assistant to Iran to deliver a message from the President of the United States to the Ayatollah Khomeini. The text of that message has not been made available to the Court by the Applicant, but the United States Government has informed the Court that it thereby protested at the conduct of the Government of Iran and called for release of the hostages, and that Mr. Clark was also authorized to discuss all avenues for resolution of the crisis. While he was en route, Tehran radio broadcast a message from the Ayatollah Khomeini dated 7 November, solemnly forbidding members of the Revolutionary Council and all the responsible officials to meet the United States representatives. In that message it was asserted that "the U.S. Embassy in Iran is our enemies" centre of espionage against our sacred Islamic movement", and the message continued:

"Should the United States hand over to Iran the deposed shah ... and give up espionage against our movement, the way to talks would be opened on the issue of certain relations which are in the interest of the nation".

Subsequently, despite the efforts of the United States Government to open negotiations, it became clear that the Iranian authorities would have no direct contact with representatives of the United States Government concerning the holding of the hostages.

27. During the period which has elapsed since the seizure of the Embassy a number of statements have been made by various governmental authorities in Iran which are relevant to the Court's examination of the responsibility attributed to the Government of Iran in the submissions of the United States. These statements will be examined by the Court in considering these submissions (paragraphs 59 and 70-74 below).

* *

28. On 9 November, 1979, the Permanent Representative of the United States to the United Nations addressed a letter to the President of the Security Council, requesting urgent consideration of what might be done to secure the release of the hostages and to restore the "sanctity of diplomatic personnel and establishments". The same day, the President of the Security Council made a public statement urging the release of the hostages, and the President of the General Assembly announced that he was sending a personal message to the Ayatollah Khomeini appealing for their release. On 25 November 1979, the Secretary-General of the United Nations addressed a letter to the President of the Security Council referring to the seizure of the United States Embassy in Tehran

and...

and the detention of its diplomatic personnel, and requesting an urgent meeting of the Security Council "in an effort to seek a peaceful solution to the problem". The Security Council met on 27 November and 4 December 1979; on the latter occasion, no representative of Iran was present, but the Council took note of a letter of 13 November 1979 from the Supervisor of the Iranian Foreign Ministry to the Secretary-General. The Security Council then adopted resolution 457 (1979), calling on Iran to release the personnel of the Embassy immediately, to provide them with protection and to allow them to leave the country. The resolution also called on the two Governments to take steps to resolve peacefully the remaining issues between them, and requested the Secretary-General to lend his good offices for the immediate implementation of the resolution, and to take all appropriate measures to that end. It further stated that the Council would "remain actively seized of the matter" and requested the Secretary-General to report to it urgently on any developments with regard to his efforts.

29. On 31 December 1979, the Security Council met again and adopted resolution 461 (1979), in which it reiterated both its calls to the Iranian Government and its request to the Secretary-General to lend his good offices for achieving the object of the Council's resolution. The Secretary-General visited Tehran on 1-3 January 1980, and reported to the Security Council on 6 January. On 20 February 1980, the Secretary-General announced the setting up of a commission to undertake a fact-finding mission" to Iran. The Court will revert to the terms of reference of this commission and the progress of its work in connection with a question of admissibility of the proceedings (paragraphs 39-40 below).

* * *

30. Prior to the institution of the present proceedings, in addition to the approach made by the Government of the United States to the United Nations Security Council, that Government also took certain unilateral action in response to the actions for which it holds the Government of Iran responsible. On 10 November 1979, steps were taken to identify all Iranian students in the United States who were not in compliance with the terms of their entry visas, and to commence deportation proceedings against those who were in violation of applicable immigration laws and regulations. On 12 November 1979, the President of the United States ordered the discontinuation of all oil purchases from Iran for delivery to the United States. Believing that the Government of Iran was about to withdraw all Iranian funds from United States banks and to refuse to accept payment in dollars for oil, and to repudiate obligations owed to the United States and to United States nationals, the President on 14 November 1979 acted to block the very large official Iranian assets in the United States or in United States control, including deposits both in banks in the United States and in foreign branches and subsidiaries of United States banks. On 12 December 1979, after the institution of the

present...

present proceedings, the United States informed the Iranian Chargé d'affaires in Washington that the number of personnel assigned to the Iranian Embassy and consular posts in the United States was to be restricted.

31. Subsequently to the indication by the Court of provisional measures, and during the present proceedings, the United States Government took other action. A draft resolution was introduced into the United Nations Security Council calling for economic sanctions against Iran. When it was put to the vote on 13 January 1980, the result was 10 votes in favour, 2 against, and 2 abstentions (one member not having participated in the voting); as a permanent member of the Council cast a negative vote, the draft resolution was not adopted. On 7 April 1980 the United States Government broke off diplomatic relations with the Government of Iran. At the same time, the United States Government prohibited exports from the United States to Iran - one of the sanctions previously proposed by it to the Security Council. Steps were taken to prepare an inventory of the assets of the Government of Iran frozen on 14 November 1979, and to make a census of outstanding claims of American nationals against the Government of Iran, with a view to "designing a program against Iran for the hostages, the hostage families and other U.S. claimants" involving the preparation of legislation "to facilitate processing and paying of these claims" and all visas issued to Iranian citizens for future entry into the United States were cancelled. On 17 April 1980, the United States Government announced further economic measures directed against Iran, prohibited travel there by United States citizens, and made further plans for reparations to be paid to the hostages and their families out of frozen Iranian assets.

32. During the night of 24-25 April 1980 the President of the United States set in motion, and subsequently terminated for technical reasons, an operation within Iranian territory designed to effect the rescue of the hostages by United States military units. In an announcement made on 25 April, President Carter explained that the operation had been planned over a long period as a humanitarian mission to rescue the hostages, and had finally been set in motion by him in the belief that the situation in Iran posed mounting dangers to the safety of the hostages and that their early release was highly unlikely. He stated that the operation had been under way in Iran when equipment failure compelled its termination; and that in the course of the withdrawal of the rescue forces two United States aircraft had collided in a remote desert location in Iran. He further stated that preparations for the rescue operations had been ordered for humanitarian reasons, to protect the national interests of the United States, and to alleviate international tensions. At the same time, he emphasized that the operation had not been motivated by hostility towards Iran or the Iranian people. The texts of President Carter's announcement and of certain other official documents relating to the operation have been transmitted to the Court by the United States Agent in response to a request made by the President of the Court on 25 April. Amongst these documents is the text of a report made by the United States to the Security Council on 25 April,

"pursuant...

"pursuant to Article 51 of the Charter of the United Nations". In that report, the United States maintained that the mission had been carried out by it "in exercise of its inherent right of self-defence with the aim of extricating American nationals who have been and remain the victims of the Iranian armed attack on our Embassy". The Court will refer further to this operation later in the present Judgment (paragraphs 93 and 94 below).

*

* * *

33. It is to be regretted that the Iranian Government has not appeared before the Court in order to put forward its arguments on the questions of law and of fact which arise in the present case; and that, in consequence, the Court has not had the assistance it might have derived from such arguments or from any evidence adduced in support of them. Nevertheless, in accordance with its settled jurisprudence, the Court, in applying Article 53 of its Statute, must first take up, proprio motu, any preliminary question, whether of admissibility or of jurisdiction, that appears from the information before it to arise in the case and the decision of which might constitute a bar to any further examination of the merits of the Applicant's case. The Court will, therefore, first address itself to the considerations put forward by the Iranian Government in its letters of 9 December 1979 and 16 March 1980, on the basis of which it maintains that the Court ought not to take cognizance of the present case.

34. The Iranian Government in its letter of 9 December 1979 drew attention to what it referred to as the "deep rootedness and the essential character of the Islamic Revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters". The examination of the "numerous repercussions" of the revolution, it added, is "a matter essentially and directly within the national sovereignty of Iran". However, as the Court pointed out in its Order of 15 December 1979,

"... a dispute which concerns diplomatic and consular premises and the detention of internationally protected persons, and involves the interpretation or application of multilateral conventions codifying the international law governing diplomatic and consular relations, is one which by its very nature falls within international jurisdiction" (I.C.J. Reports 1979, Page 16, paragraph 25).

In its later letter of 16 March 1980 the Government of Iran confined itself to repeating the observations on this point which it had made in its letter of 9 December 1979, without putting forward any additional arguments or explanations. In these circumstances, the Court finds it sufficient here to recall and confirm its previous statement on the matter in its Order of 15 December 1979.

35. In...

35. In its letter of 9 December 1979 the Government of Iran maintained that the Court could not and should not take cognizance of the present case for another reason, namely that the case submitted to the Court by the United States is "confined to what is called the question of the 'hostages of the American Embassy in Tehran'". It then went on to explain why it considered this to preclude the Court from taking cognizance of the case:

"For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.

The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years. This dossier includes, inter alia, all the crimes perpetrated in Iran by the American Government, in particular the coup d'état of 1953 stirred up and carried out by the CIA, the overthrow of the lawful national government of Dr. Mossadegh, the restoration of the Shah and of his régime which was under the control of American interests, and all the social, economic, cultural and political consequences of the direct interventions in our internal affairs, as well as grave, flagrant and continuous violations of all international norms, committed by the United States in Iran."

36. The Court, however, in its Order of 15 December 1979, made it clear that the seizure of the United States Embassy and Consulates and the detention of internationally protected persons as hostages cannot be considered as something "secondary" or "marginal", having regard to the importance of the legal principles involved. It also referred to a statement of the Secretary-General of the United Nations, and to Security Council resolution 457 (1979), as evidencing the importance attached by the international community as a whole to the observance of those principles in the present case as well as its concern at the dangerous level of tension between Iran and the United States. The Court, at the same time, pointed out that no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important. It further underlined that, if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the United States' Application, it was open to that Government to present its own arguments regarding those activities to the Court either by way of defence in a Counter-Memorial or by way of a counter-claim.

37. The...

37. The Iranian Government, notwithstanding the terms of the Court's Order, did not file any pleadings and did not appear before the Court. By its own choice, therefore, it has forgone the opportunities offered to it under the Statute and Rules of Court to submit evidence and arguments in support of its contention in regard to the "overall problem". Even in its later letter of 16 March 1980, the Government of Iran confined itself to repeating what it had said in its letter of 9 December 1979, without offering any explanations in regard to the points to which the Court had drawn attention in its Order of 15 December 1979. It has provided no explanation of the reasons why it considers that the violations of diplomatic and consular law alleged in the United States' Application cannot be examined by the Court separately from what it describes as the "overall problem" involving "more than 25 years of continual interference by the United States in the internal affairs of Iran". Nor has it made any attempt to explain, still less define, what connection, legal or factual, there may be between the "overall problem" of its general grievances against the United States and the particular events that gave rise to the United States' claims in the present case which, in its view, precludes the separate examination of those claims by the Court. This was the more necessary because legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes.

38. It follows that the considerations and arguments put forward in the Iranian Government's letters of 9 December 1979 and 16 March 1980 do not, in the opinion of the Court, disclose any ground on which it should conclude that it cannot or ought not to take cognizance of the present case.

39. The Court, however, has also thought it right to examine, ex officio, whether its competence to decide the present case, or the admissibility of the present proceedings, might possibly have been affected by the setting up of the Commission announced by the Secretary-General of the United Nations on 20 February 1980. As already indicated, the occupation of the Embassy and detention of its diplomatic and consular staff as hostages was referred to the United Nations Security Council by the United States on 9 November 1979 and by the Secretary-General on 25 November. Four days later, while the matter was still before the Security Council, the United States submitted the present Application to the Court together with a request for the indication of provisional measures. On 4 December, the Security Council adopted resolution 457 (1979)

(the...

(the terms of which have already been indicated in paragraph 28 above), whereby the Council would "remain actively seized of the matter" and the Secretary-General was requested to report to it urgently on developments regarding the efforts he was to make pursuant to the resolution. In announcing the setting up of the Commission on 20 February 1980, the Secretary-General stated its terms of reference to be "to undertake a fact-finding mission to Iran to hear Iran's grievances and to allow for an early solution of the crisis between Iran and the United States"; and he further stated that it was to complete its work as soon as possible and submit its report to him. Subsequently, in a message cabled to the President of the Court on 15 March 1980, the Secretary-General confirmed the mandate of the Commission to be as stated in his announcement of 20 February, adding that the Governments of Iran and the United States had "agreed to the establishment of the Commission on that basis". In this message, the Secretary-General also informed the Court of the decision of the Commission to suspend its activities in Tehran and to return to New York on 11 March 1980 "to confer with the Secretary-General with a view to pursuing its tasks which it regards as indivisible". The message stated that while, in the circumstances, the Commission was not in a position to submit its report, it was prepared to return to Tehran, in accordance with its mandate and the instructions of the Secretary-General, when the situation required. The message further stated that the Secretary-General would continue his efforts, as requested by the Security Council, to search for a peaceful solution of the crisis, and would remain in contact with the parties and the Commission regarding the resumption of its work.

40. Consequently, there can be no doubt at all that the Security Council was "actively seized of the matter" and that the Secretary-General was under an express mandate from the Council to use his good offices in the matter when, on 15 December, the Court decided unanimously that it was competent to entertain the United States' request for an indication of provisional measures, and proceeded to indicate such measures. As already mentioned the Council met again on 31 December 1979 and adopted resolution 461 (1979). In the preamble to this second resolution the Security Council expressly took into account the Court's Order of 15 December 1979 indicating provisional measures; and it does not seem to have occurred to any member of the Council that there was or could be anything irregular in the simultaneous exercise of their respective functions by the Court and the Security Council. Nor is there in this any cause for surprise. Whereas Article 12 of the Charter expressly forbids the General Assembly to make any recommendation with regard to a dispute or situation while the Security Council is exercising its functions in respect of that dispute or situation, no such restriction is placed on the functioning of the Court by any provision of either the Charter or the Statute of the Court. The reasons are clear. It is for the Court, the principal judicial organ of the United Nations, to resolve any legal questions that may be in issue between parties to a dispute; and the resolution of such legal questions by the Court may be an important, and sometimes decisive, factor in promoting the peaceful settlement of the dispute. This is indeed recognized by Article 36 of the Charter, paragraph 3 of which specifically provides that:

"In...

"In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."

41. In the present instance the proceedings before the Court continued in accordance with the Statute and Rules of Court and, on 15 January 1980, the United States filed its Memorial. The time-limit fixed for delivery of Iran's Counter-Memorial then expired on 18 February 1980 without Iran's having filed a Counter-Memorial or having made a request for the extension of the time-limit. Consequently, on the following day the case became ready for hearing and, pursuant to Article 31 of the Rules, the views of the Applicant State were requested regarding the date for the opening of the oral proceedings. On 19 February 1980 the Court was informed by the United States Agent that, owing to the delicate stage of negotiations bearing upon the release of the hostages in the United States Embassy, he would be grateful if the Court for the time being would defer setting a date for the opening of the oral proceedings. On the very next day, 20 February, the Secretary-General announced the establishment of the above-mentioned Commission, which commenced its work in Tehran on 23 February. Asked on 27 February to clarify the position of the United States in regard to the future procedure, the Agent stated that the Commission would not address itself to the claims submitted by the United States to the Court. The United States, he said, continued to be anxious to secure an early judgment on the merits, and he suggested 17 March as a convenient date for the opening of the oral proceedings. At the same time, however, he added that consideration of the well-being of the hostages might lead the United States to suggest a later date. The Iranian Government was then asked, in a telex message of 28 February, for any views it might wish to express as to the date for the opening of the hearings, mention being made of 17 March as one possible date. No reply had been received from the Iranian Government when, on 10 March, the Commission, unable to complete its mission, decided to suspend its activities in Tehran and to return to New York.

42. On 11 March, that is immediately upon the departure of the Commission from Tehran, the United States notified the Court of its readiness to proceed with the hearings, suggesting that they should begin on 17 March. A further telex was accordingly sent to the Iranian Government on 12 March informing it of the United States' request and stating that the Court would meet on 17 March to determine the subsequent procedure. The Iran Government's reply was contained in the letter of 16 March to which the Court has already referred (paragraph 10 above). In that letter, while making no mention of the proposed oral proceedings, the Iranian Government reiterated the reasons advanced in its previous letter of 9 December 1979 for considering that the Court ought not to take cognizance of the case. The letter contained no reference to the Commission, and still less any suggestion that the continuance of the proceedings before the Court might be affected by the existence of the Commission or the mandate given to the Secretary-General by the Security Council. Having regard to the circumstances which the Court has described,

it...

it can find no trace of any understanding on the part of either the United States or Iran that the establishment of the Commission might involve a postponement of all proceedings before the Court until the conclusion of the work of the Commission and of the Security Council's consideration of the matter.

43. The Commission, as previously observed, was established to undertake a "fact-finding mission to Iran to hear Iran's grievances and to allow for an early solution of the crisis between Iran and the United States" (emphasis added). It was not set up by the Secretary-General as a tribunal empowered to decide the matters of fact or of law in dispute between Iran and the United States; nor was its setting up accepted by them on any such basis. On the contrary, he created the Commission rather as an organ or instrument for mediation, conciliation or negotiation to provide a means of easing the situation of crisis existing between the two countries; and this, clearly, was the basis on which Iran and the United States agreed to its being set up. The establishment of the Commission by the Secretary-General with the agreement of the two States cannot, therefore, be considered in itself as in any way incompatible with the continuance of parallel proceedings before the Court. Negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement are enumerated together in Article 33 of the Charter as means for the peaceful settlement of disputes. As was pointed out in the Aegean Sea Continental Shelf case, the jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement by the Court have been pursued pari passu. In that case, in which also the dispute had been referred to the Security Council, the Court held expressly that "the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function" (I.C.J. Reports 1978, page 12).

44. It follows that neither the mandate given by the Security Council to the Secretary-General in resolutions 457 and 461 of 1979, nor the setting up of the Commission by the Secretary-General, can be considered as constituting any obstacle to the exercise of the Court's jurisdiction in the present case. It further follows that the Court must now proceed, in accordance with Article 53, paragraph 2, of the Statute, to determine whether it has jurisdiction to decide the present case and whether the United States' claims are well founded in fact and in law.

*

* *

45. Article 53 of the Statute requires the Court, before deciding in favour of an Applicant's claim, to satisfy itself that it has jurisdiction, in accordance with Articles 36 and 37, empowering it to do so. In the present case the principal claims of the United States relate essentially

to...

to alleged violations by Iran of its obligations to the United States under the Vienna Conventions of 1961 on Diplomatic Relations and of 1963 on Consular Relations. With regard to these claims the United States has invoked as the basis for the Court's jurisdiction Article I of the Optional Protocols concerning the Compulsory Settlement of Disputes which accompany these Conventions. The United Nations publication.

Multilateral Treaties in respect of which the Secretary-General Performs Depository Functions lists both Iran and the United States as parties to the Vienna Conventions of 1961 and 1963, as also to their accompanying Protocols concerning the Compulsory Settlement of Disputes, and in each case without any reservation to the instrument in question. The Vienna Conventions, which codify the law of diplomatic and consular relations, state principles and rules essential for the maintenance of peaceful relations between States and accepted throughout the world by nations of all creeds, cultures and political complexions. Moreover, the Iranian Government has not maintained in its communications to the Court that the two Vienna Conventions and Protocols are not in force as between Iran and the United States. Accordingly, as indicated in the Court's Order of 15 December 1979, the Optional Protocols manifestly provide a possible basis for the Court's jurisdiction, with respect to the United States' claims under the Vienna Conventions of 1961 and 1963. It only remains, therefore, to consider whether the present dispute in fact falls within the scope of their provisions.

46. The terms of Article I, which are the same in the two Protocols, provide:

"Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol."

The United States' claims here in question concern alleged violations by Iran of its obligations under several Articles of the Vienna Conventions of 1961 and 1963 with respect to the privileges and immunities of the personnel, the inviolability of the premises and archives, and the provision of facilities for the performance of the functions of the United States Embassy and Consulates in Iran. In so far as its claims relate to two private individuals held hostage in the Embassy, the situation of these individuals falls under the provisions of the Vienna Convention of 1961 guaranteeing the inviolability of the premises of embassies, and of Article 5 of the 1963 Convention concerning the consular functions of assisting nationals and protecting and safeguarding their interests. By their very nature all these claims concern the interpretation or application of one or other of the two Vienna Conventions.

47. The...

47. The occupation of the United States Embassy by militants on 4 November 1979 and the detention of its personnel as hostages was an event of a kind to provoke an immediate protest from any government, as it did from the United States Government, which despatched a special emissary to Iran to deliver a formal protest. Although the special emissary, denied all contact with Iranian officials, never entered Iran, the Iranian Government was left in no doubt as to the reaction of the United States to the taking over of its Embassy and detention of its diplomatic and consular staff as hostages. Indeed, the Court was informed that the United States was meanwhile making its views known to the Iranian Government through its Chargé d'affaires, who has been kept since 4 November 1979 in the Iranian Foreign Ministry itself, where he happened to be with two other members of his mission during the attack on the Embassy. In any event, by a letter of 9 November 1979, the United States brought the situation in regard to its Embassy before the Security Council. The Iranian Government did not take any part in the debates on the matter in the Council, and it was still refusing to enter into any discussions on the subject when, on 29 November 1979, the United States filed the present Application submitting its claims to the Court. It is clear that on that date there existed a dispute arising out of the interpretation or application of the Vienna Conventions and thus one falling within the scope of Article I of the Protocols.

48. Articles II and III of the Protocols, it is true, provide that within a period of two months after one party has notified its opinion to the other that a dispute exists, the parties may agree either: (a) "to resort not to the International Court of Justice but to an arbitral tribunal", or (b) "to adopt a conciliation procedure before resorting to the International Court of Justice". The terms of Articles II and III however, when read in conjunction with those of Article I and with the Preamble to the Protocols, make it crystal clear that they are not to be understood as laying down a precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputes arising out of the interpretation or application of the Vienna Convention in question. Articles II and III provide only that, as a substitute for recourse to the Court, the parties may agree upon resort either to arbitration or to conciliation. It follows, first, that Articles II and III have no application unless recourse to arbitration or conciliation has been proposed by one of the parties to the dispute and the other has expressed its readiness to consider the proposal. Secondly, it follows that only then may the provisions in those Articles regarding a two months' period come into play, and function as a time-limit upon the conclusion of the agreement as to the organization of the alternative procedure.

49. In the present instance, neither of the parties to the dispute proposed recourse to either of the two alternatives, before the filing of the Application or at any time afterwards. On the contrary, the Iranian authorities refused to enter into any discussion of the matter with the United States, and this could only be understood by the United States as ruling out, in limine, any question of arriving at an agreement to resort to arbitration or conciliation under Article II or Article III of the Protocols, instead of recourse to the Court. Accordingly, when the United States filed its Application on 29 November 1979, it was unquestionably free to have recourse to Article I of the Protocols, and to invoke it as a basis for establishing the Court's jurisdiction with respect to its claims under the Vienna Conventions of 1961 and 1963.

* * *

50 However,...

50. However, the United States also presents claims in respect of alleged violations by Iran of Articles II, paragraph 4, XIII, XVIII and XIX of the Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States and Iran, which entered into force on 16 June 1957. With regard to these claims the United States has invoked paragraph 2 of Article XXI of the Treaty as the basis for the Court's jurisdiction. The claims of the United States under this Treaty overlap in considerable measure with its claims under the two Vienna Conventions and more especially the Convention of 1963. In this respect, therefore, the dispute between the United States and Iran regarding those claims is at the same time a dispute arising out of the interpretation or application of the Vienna Conventions which falls within Article I of their Protocols. It was for this reason that in its Order of 15 December 1979 indicating provisional measures the Court did not find it necessary to enter into the question whether Article XXI, paragraph 2, of the 1955 Treaty might also have provided a basis for the exercise of its jurisdiction in the present case. But taking into account that Article II, paragraph 4, of the 1955 Treaty provides that "Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party...", the Court considers that at the present stage of the proceedings that Treaty has importance in regard to the claims of the United States in respect of the two private individuals said to be held hostage in Iran. Accordingly, the Court will now consider whether a basis for the exercise of its jurisdiction with respect to the alleged violations of the 1955 Treaty may be found in Article XXI, paragraph 2, of the Treaty.

51. Paragraph 2 of that Article reads:

"Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

As previously pointed out, when the United States filed its Application on 29 November 1979, its attempts to negotiate with Iran in regard to the overrunning of its Embassy and detention of its nationals as hostages had reached a deadlock, owing to the refusal of the Iranian Government to enter into any discussion of the matter. In consequence, there existed at that date not only a dispute but, beyond any doubt, a "dispute ... not satisfactorily adjusted by diplomacy" within the meaning of Article XXI, paragraph 2, of the 1955 Treaty; and this dispute comprised, *inter alia*, the matters that are the subject of the United States' claims under that Treaty.

52. The provision made in the 1955 Treaty for disputes as to its interpretation or application to be referred to the Court is similar to the system adopted in the Optional Protocols to the Vienna Conventions which the Court has already explained. Article XXI, paragraph 2, of the Treaty establishes the jurisdiction of the Court as compulsory for such disputes, unless the parties agree to settlement by some other means. In the present instance, as in the case of the Optional Protocols, the immediate and total refusal of the Iranian authorities to enter into any negotiations with the United States excluded in limine any question of an agreement to have recourse to "some other pacific means" for the settlement of the dispute. Consequently, under the terms of Article XXI, paragraph 2, the United States was free on 29 November 1979 to invoke its provisions for the

purpose...

purpose of referring its claims against Iran under the 1955 Treaty to the Court. While that Article does not provide in express terms that either party may bring a case to the Court by unilateral application, it is evident, as the United States contended in its Memorial, that this is what the parties intended. Provisions drawn in similar terms are very common in bilateral treaties of amity or of establishment, and the intention of the parties in accepting such clauses is clearly to provide for such a right of unilateral recourse to the Court, in the absence of agreement to employ some other pacific means of settlement.

53. The point has also been raised whether, having regard to certain counter-measures taken by the United States vis-à-vis Iran, it is open to the United States to rely on the Treaty of Amity, Economic Relations, and Consular Rights in the present proceedings. However, all the measures in question were taken by the United States after the seizure of its Embassy by an armed group and subsequent detention of its diplomatic and consular staff as hostages. They were measures taken in response to what the United States believed to be grave and manifest violations of international law by Iran, including violations of the 1955 Treaty itself. In any event, any alleged violation of the Treaty by either party could not have the effect of precluding that party from invoking the provisions of the Treaty concerning pacific settlement of disputes.

54. No suggestion has been made by Iran that the 1955 Treaty was not in force on 4 November 1979 when the United States Embassy was overrun and its nationals taken hostage, or on 29 November when the United States submitted the dispute to the Court. The very purpose of a treaty of amity, and indeed of a treaty of establishment, is to promote friendly relations between the two countries concerned, and between their two peoples, more especially by mutual undertakings to ensure the protection and security of their nationals in each other's territory. It is precisely when difficulties arise that the treaty assumes its greatest importance, and the whole object of Article XXI, paragraph 2, of the 1955 Treaty was to establish the means for arriving at a friendly settlement of such difficulties by the Court or by other peaceful means. It would, therefore, be incompatible with the whole purpose of the 1955 Treaty if recourse to the Court under Article XXI, paragraph 2, were now to be found not to be open to the parties precisely at the moment when such recourse was most needed. Furthermore, although the machinery for the effective operation of the 1955 Treaty has, no doubt, now been impaired by reason of diplomatic relations between the two countries having been broken off by the United States, its provisions remain part of the corpus of law applicable between the United States and Iran.

* * *

55. The United States has further invoked Article 13 of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, as a basis for the exercise of the Court's jurisdiction with respect to its claims under that Convention. The Court does not, however, find it necessary in the present Judgment to enter into the question whether, in the particular circumstances of the case, Article 13 of that Convention provides a basis for the exercise of the Court's jurisdiction with respect to those claims.

56. The...

56. The principal facts material for the Court's decision on the merits of the present case have been set out earlier in this Judgment. Those facts have to be looked at by the Court from two points of view. First, it must determine how far, legally, the acts in question may be regarded as imputable to the Iranian State. Secondly, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable. The events which are the subject of the United States' claims fall into two phases which it will be convenient to examine separately.

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

58. No suggestion has been made that the militants, when they executed their attack on the Embassy, had any form of official status as recognized "agents" or organs of the Iranian State. Their conduct in mounting the attack, overrunning the Embassy and seizing its inmates as hostages cannot, therefore, be regarded as imputable to that State on that basis. Their conduct might be considered as itself directly imputable to the Iranian State only if it were established that, in fact, on the occasion in question the militants acted on behalf of the State, having been charged by some competent organ of the Iranian State to carry out a specific operation. The information before the Court does not, however, suffice to establish with the requisite certainty the existence at that time of such a link between the militants and any competent organ of the State.

59. Previously, it is true, the religious leader of the country, the Ayatollah Khomeini, had made several public declarations inveighing against the United States as responsible for all his country's problems. In so doing, it would appear, the Ayatollah Khomeini was giving utterance to the general resentment felt by supporters of the revolution at the admission of the former Shah to the United States. The information before the Court also indicates that a spokesman for the militants, in explaining their action afterwards, did expressly refer to a message issued by the Ayatollah Khomeini, on 1 November 1979. In that message the Ayatollah Khomeini had declared that it was "up to the dear pupils, students and theological students to expand with all their might their

attacks...

attacks against the United States and Israel, so they may force the United States to return the deposed and criminal shah, and to condemn this great plot" (that is, a plot to stir up dissension between the main streams of Islamic thought). In the view of the Court, however, it would be going too far to interpret such general declarations of the Ayatollah Khomeini to the people or students of Iran as amounting to an authorization from the State to undertake the specific operation of invading and seizing the United States Embassy. To do so would, indeed, conflict with the assertions of the militants themselves who are reported to have claimed credit for having devised and carried out the plan to occupy the Embassy. Again, congratulations after the event, such as those reportedly telephoned to the militants by the Ayatollah Khomeini on the actual evening of the attack, and other subsequent statements of official approval, though highly significant in another context shortly to be considered, do not alter the initially independent and unofficial character of the militants' attack on the Embassy.

60. The first phase, here under examination, of the events complained of also includes the attacks on the United States Consulates at Tabriz and Shiraz. Like the attack on the Embassy, they appear to have been executed by militants not having an official character, and successful because of lack of sufficient protection.

61. The conclusion just reached by the Court, that the initiation of the attack on the United States Embassy on 4 November 1979, and of the attacks on the Consulates at Tabriz and Shiraz the following day, cannot be considered as in itself imputable to the Iranian State does not mean that Iran is, in consequence, free of any responsibility in regard to those attacks; for its own conduct was in conflict with its international obligations. By a number of provisions of the Vienna Conventions of 1961 and 1963, Iran was placed under the most categorical obligations, as a receiving State, to take appropriate steps to ensure the protection of the United States Embassy and Consulates, their staffs, their archives, their means of communication and the freedom of movement of the members of their staffs.

62. Thus, after solemnly proclaiming the inviolability of the premises of a diplomatic mission, Article 22 of the 1961 Convention continues in paragraph 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." (Emphasis added.)

So, too, after proclaiming that the person of a diplomatic agent shall be inviolable, and that he shall not be liable to any form of arrest or detention, Article 29 provides:

"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." (Emphasis added.)

The...

The obligation of a receiving State to protect the inviolability of the archives and documents of a diplomatic mission is laid down in Article 24, which specifically provides that they are to be "inviolable at any time and wherever they may be". Under Article 25 it is required to "accord full facilities for the performance of the functions of the mission", under Article 26 to "ensure to all members of the mission freedom of movement and travel in its territory", and under Article 27 to "permit and protect free communication on the part of the mission for all official purposes". Analogous provisions are to be found in the 1963 Convention regarding the privileges and immunities of consular missions and their staffs (Article 31, paragraph 3, Articles 40, 33, 28, 34 and 35). In the view of the Court, the obligations of the Iranian Government here in question are not merely contractual obligations established by the Vienna Conventions of 1961 and 1963, but also obligations under general international law.

63. The facts set out in paragraphs 14 to 27 above establish to the satisfaction of the Court that on 4 November 1979 the Iranian Government failed altogether to take any "appropriate steps" to protect the premises, staff and archives of the United States' mission against attack by the militants, and to take any steps either to prevent this attack or to stop it before it reached its completion. They also show that on 5 November 1979 the Iranian Government similarly failed to take appropriate steps for the protection of the United States Consulates at Tabriz and Shiraz. In addition they show, in the opinion of the Court, that the failure of the Iranian Government to take such steps was due to more than mere negligence or lack of appropriate means.

64. The total inaction of the Iranian authorities on that date in face of urgent and repeated requests for help contrasts very sharply with its conduct on several other occasions of a similar kind. Some eight months earlier, on 14 February 1979, the United States Embassy in Tehran had itself been subjected to the armed attack mentioned above (paragraph 14), in the course of which the attackers had taken the Ambassador and his staff prisoner. On that occasion, however, a detachment of Revolutionary Guards, sent by the Government, had arrived promptly, together with a Deputy Prime Minister, and had quickly succeeded in freeing the Ambassador and his staff and restoring the Embassy to him. On 1 March 1979, moreover, the Prime Minister of Iran had sent a letter expressing deep regret at the incident, giving an assurance that appropriate arrangements had been made to prevent any repetition of such incidents, and indicating the willingness of his Government to indemnify the United States for the damage. On 1 November 1979, only three days before the events which gave rise to the present case, the Iranian police intervened quickly and effectively to protect the United States Embassy when a large crowd of demonstrators spent several hours marching up and down outside it. Furthermore, on other occasions in November 1979 and January 1980, invasions or attempted invasions of other foreign embassies in Tehran were frustrated or speedily terminated.

65. A...

65. A similar pattern of facts appears in relation to consulates. In February 1979, at about the same time as the first attack on the United States Embassy, attacks were made by demonstrators on its Consulates in Tabriz and Shiraz; but the Iranian authorities then took the necessary steps to clear them of the demonstrators. On the other hand, the Iranian authorities took no action to prevent the attack of 5 November 1979, or to restore the Consulates to the possession of the United States. In contrast, when on the next day militants invaded the Iraqi Consulate in Kermanshah, prompt steps were taken by the Iranian authorities to secure their withdrawal from the Consulate. Thus in this case, the Iranian authorities and police took the necessary steps to prevent and check the attempted invasion or return the premises to their rightful owners.

66. As to the actual conduct of the Iranian authorities when faced with the events of 4 November 1979, the information before the Court establishes that, despite assurances previously given by them to the United States Government and despite repeated and urgent calls for help, they took no apparent steps either to prevent the militants from invading the Embassy or to persuade or to compel them to withdraw. Furthermore, after the militants had forced an entry into the premises of the Embassy, the Iranian authorities made no effort to compel or even to persuade them to withdraw from the Embassy and to free the diplomatic and consular staff whom they had made prisoner.

67. This inaction of the Iranian Government by itself constituted clear and serious violation of Iran's obligations to the United States under the provisions of Article 22, paragraph 2, and Articles 24, 25, 26, 27 and 29 of the 1961 Vienna Convention on Diplomatic Relations, and Articles 5 and 36 of the 1963 Vienna Convention on Consular Relations. Similarly, with respect to the attacks on the Consulates at Tabriz and Shiraz, the inaction of the Iranian authorities entailed clear and serious breaches of its obligations under the provisions of several further articles of the 1963 Convention on Consular Relations. So far as concerns the two private United States nationals seized as hostages by the invading militants, that inaction entailed, albeit incidentally, a breach of its obligations under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights which, in addition to the obligations of Iran existing under general international law, requires the parties to ensure "the most constant protection and security" to each other's nationals in their respective territories.

68. The Court is therefore led inevitably to conclude, in regard to the first phase of the events which has so far been considered, 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 ;

(c) had...

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

(d) completely failed to comply with these obligations.

Similarly, the Court is led to conclude that the Iranian authorities were equally aware of their obligations to protect the United States Consulates at Tabriz and Shiraz, and of the need for action on their part, and similarly failed to use the means which were at their disposal to comply with their obligations.

* *

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

70. No such step was, however, taken by the Iranian authorities. At a press conference on 5 November the Foreign Minister, Mr. Yazdi, conceded that "according to international regulations the Iranian Government is dutybound to safeguard the life and property of foreign nationals". But he made no mention of Iran's obligation to safeguard the inviolability of foreign embassies and diplomats; and he ended by announcing that the action of the students "enjoys the endorsement and support of the government, because America herself is responsible for this incident". As to the Prime Minister, Mr. Bazargan, he does not appear to have made any statement on the matter before resigning his office on 5 November.

71. In any event expressions of approval of the take-over of the Embassy, and indeed also of the Consulates at Tabriz and Shiraz, by militants came immediately from numerous Iranian authorities, including religious, judicial, executive, police and broadcasting authorities. Above all, the Ayatollah Khomeini himself made crystal clear the endorsement by the State both of the take-over of the Embassy and Consulates and of the detention of the Embassy staff as hostages. At a reception in Qom on 5 November, the Ayatollah Khomeini left his audience in no doubt as to his approval of the action of the militants in occupying the Embassy, to which he said they had resorted "because they saw that the shah was allowed in America". Saying that he had been informed that the "centre occupied by our young men ... has been a lair of espionage and plotting", he

asked...

asked how the young people could be expected "simply to remain idle and witness all these things". Furthermore he expressly stigmatized as "rotten roots" those in Iran who were "hoping we would mediate and tell the young people to leave this place". The Ayatollah's refusal to order "the young people" to put an end to their occupation of the Embassy, or the militants in Tabriz and Shiraz to evacuate the United States Consulates there, must have appeared the more significant when, on 6 November, he instructed "the young people" who had occupied the Iraqi Consulate in Kermanshah that they should leave it as soon as possible. The true significance of this was only reinforced when, next day, he expressly forbade members of the Revolutionary Council and all responsible officials to meet the special representatives sent by President Carter to try and obtain the release of the hostages and evacuation of the Embassy.

72. At any rate, thus fortified in their action, the militants at the Embassy at once went one step farther. On 6 November they proclaimed that the Embassy, which they too referred to as "the U.S. centre of plots and espionage", would remain under their occupation, and that they were watching "most closely" the members of the diplomatic staff taken hostage whom they called "U.S. mercenaries and spies".

73. The seal of official governmental approval was finally set on this situation by a decree issued on 17 November 1979 by the Ayatollah Khomeini. His decree began with the assertion that the American Embassy was "a centre of espionage and conspiracy" and that "those people who hatched plots against our Islamic movement in that place do not enjoy international diplomatic respect". He went on expressly to declare that the premises of the Embassy and the hostages would remain as they were until the United States had handed over the former Shah for trial and returned his property to Iran. This statement of policy the Ayatollah qualified only to the extent of requesting the militants holding the hostages to "hand over the blacks and the women, if it is proven that they did not spy, to the Ministry of Foreign Affairs so that they may be immediately expelled from Iran". As to the rest of the hostages, he made the Iranian Government's intentions all too clear:

"The noble Iranian nation will not give permission for the release of the rest of them. Therefore, the rest of them will be under arrest until the American Government acts according to the wish of the nation."

74. The policy thus announced by the Ayatollah Khomeini, of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States Government was complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. The result of that policy was fundamentally to transform the legal nature of the situation created by the occupation of the Embassy and the detention of its diplomatic and consular staff as hostages. The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated ~~in~~ continuing -R

occupation...

occupation of the Embassy and detention of the hostages into acts of that State. The militants, authors of the invasion and jailers of the hostages, had now become agents of the Iranian State for whose acts the State itself was internationally responsible. On 6 May 1980, the Minister for Foreign Affairs, Mr. Ghotbzadeh, is reported to have said in a television interview that the occupation of the United States Embassy had been "done by our nation". Moreover, in the prevailing circumstances the situation of the hostages was aggravated by the fact that their detention by the militants did not even offer the normal guarantees which might have been afforded by police and security forces subject to the discipline and the control of official superiors.

75. During the six months which have elapsed since the situation just described was created by the decree of the Ayatollah Khomeini, it has undergone no material change. The Court's Order of 15 December 1979 indicating provisional measures, which called for the immediate restoration of the Embassy to the United States and the release of the hostages, was publicly rejected by the Minister for Foreign Affairs on the following day and has been ignored by all Iranian authorities. On two occasions, namely on 23 February and on 7 April 1980, the Ayatollah Khomeini laid it down that the hostages should remain at the United States Embassy under the control of the militants until the new Iranian parliament should have assembled and taken a decision as to their fate. His adherence to that policy also made it impossible to obtain his consent to the transfer of the hostages from the control of the militants to that of the Government or of the Council of the Revolution. In any event, while highly desirable from the humanitarian and safety points of view, such a transfer would not have resulted in any material change in the legal situation, for its sponsors themselves emphasized that it must not be understood as signifying the release of the hostages.

* * *

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

77. In the first place, these facts constituted breaches additional to those already committed of paragraph 2 of Article 22 of the 1961 Vienna Convention on Diplomatic Relations which requires Iran to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of its peace or impairment of its dignity. Paragraphs 1 and 3 of that Article have also been infringed, and continue to be infringed, since they forbid agents of a receiving State to enter the premises of a mission without consent or to undertake any search, requisition, attachment or like measure on the premises. Secondly, they constitute continuing breaches of Article 29 of the same Convention

which...

which forbids any arrest or detention of a diplomatic agent and any attack on his person, freedom or dignity. Thirdly, the Iranian authorities are without doubt in continuing breach of the provisions of Articles 25, 26 and 27 of the 1961 Vienna Convention and of pertinent provisions of the 1963 Vienna Convention concerning facilities for the performance of functions, freedom of movement and communications for diplomatic and consular staff, as well as of Article 24 of the former Convention and Article 33 of the latter, which provide for the absolute inviolability of the archives and documents of diplomatic missions and consulates. This particular violation has been made manifest to the world by repeated statements by the militants occupying the Embassy, who claim to be in possession of documents from the archives, and by various government authorities, purporting to specify the contents thereof. Finally, the continued detention as hostages of the two private individuals of United States nationality entails a renewed breach of the obligations of Iran under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights.

78. Inevitably, in considering the compatibility or otherwise of the conduct of the Iranian authorities with the requirements of the Vienna Conventions, the Court has focussed its attention primarily on the occupation of the Embassy and the treatment of the United States diplomatic and consular personnel within the Embassy. It is however evident that the question of the compatibility of their conduct with the Vienna Conventions also arises in connection with the treatment of the United States Chargé d'affaires and two members of his staff in the Ministry of Foreign Affairs on 4 November 1979 and since that date. The facts of this case establish to the satisfaction of the Court that on 4 November 1979 and thereafter the Iranian authorities have withheld from the Chargé d'affaires and the two members of his staff the necessary protection and facilities to permit them to leave the Ministry in safety. Accordingly it appears to the Court that with respect to these three members of the United States' mission the Iranian authorities have committed a continuing breach of their obligations under Articles 26 and 29 of the 1961 Vienna Convention on Diplomatic Relations. It further appears to the Court that the continuation of that situation over a long period has, in the circumstances, amounted to detention in the Ministry.

79. The Court moreover cannot conclude its observations on the series of acts which it has found to be imputable to the Iranian State and to be patently inconsistent with its international obligations under the Vienna Conventions of 1961 and 1963 without mention also of another fact. This is that judicial authorities of the Islamic Republic of Iran and the Minister for Foreign Affairs have frequently voiced or associated themselves with, a threat first announced by the militants, of having some of the hostages submitted to trial before a court or some other body. These threats may at present merely be acts in contemplation. But the Court considers it necessary here and now to stress that, if the intention to submit the hostages to any form of criminal trial or investigation were to be put into effect, that would constitute a grave breach by Iran of its obligations under Article 31, paragraph 1, of the 1961 Vienna Convention. This paragraph states in the most express terms:

"A...

"A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State." Again, if there were an attempt to compel the hostages to bear witness, a suggestion renewed at the time of the visit to Iran of the Secretary-General's Commission, Iran would without question be violating paragraph 2 of that same Article of the 1961 Vienna Convention which provides that "A diplomatic agent is not obliged to give evidence as a witness".

x x

80. The facts of the present case, viewed in the light of the applicable rules of law, thus speak loudly and clearly of successive and still continuing breaches by Iran of its obligations to the United States under the Vienna Conventions of 1961 and 1963, as well as under the Treaty of 1955. Before drawing from this finding the conclusions which flow from it, in terms of the international responsibility of the Iranian State vis-à-vis the United States of America, the Court considers that it should examine one further point. The Court cannot overlook the fact that on the Iranian side, in often imprecise terms, the idea has been put forward that the conduct of the Iranian Government, at the time of the events of 4 November 1979 and subsequently, might be justified by the existence of special circumstances.

81. In his letters of 9 December 1979 and 16 March 1980, as previously recalled, Iran's Minister for Foreign Affairs referred to the present case as only "a marginal and secondary aspect of an overall problem". This problem, he maintained, "involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms". In the first of the two letters he indeed singled out amongst the "crimes" which he attributed to the United States an alleged complicity on the part of the Central Intelligence Agency in the coup d'état of 1953 and in the restoration of the Shah to the throne of Iran. Invoking these alleged crimes of the United States, the Iranian Foreign Minister took the position that the United States' Application could not be examined by the Court divorced from its proper context, which he insisted was "the whole political dossier of the relations between Iran and the United States over the last 25 years".

82. The Court must however observe, first of all, that the matters alleged in the Iranian Foreign Minister's letters of 9 December 1979 and 16 March 1980 are of a kind which, if invoked in legal proceedings, must clearly be established to the satisfaction of the tribunal with all the requisite proof. The Court, in its Order of 15 December 1979, pointed out that if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the Application it was open to Iran to present its own case regarding those activities to the Court by way of defence to the United States' claims. The

Iranian...

Iranian Government, however, did not appear before the Court. Moreover, even in his letter of 16 March 1980, transmitted to the Court some three months after the issue of that Order, the Iranian Foreign Minister did not furnish the Court with any further information regarding the alleged criminal activities of the United States in Iran, or explain on what legal basis he considered these allegations to constitute a relevant answer to the United States' claims. The large body of information submitted by the United States itself to the Court includes, it is true, some statements emanating from Iranian authorities or from the militants in which reference is made to alleged espionage and interference in Iran by the United States centred upon its Embassy in Tehran. These statements are, however, of the same general character as the assertions of alleged criminal activities of the United States contained in the Foreign Minister's letters, and are unsupported by evidence furnished by Iran before the Court. Hence they do not provide a basis on which the Court could form a judicial opinion on the truth or otherwise of the matters there alleged.

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

84. The Vienna Conventions of 1961 and 1963 contain express provisions to meet the case when members of an embassy staff, under the cover of diplomatic privileges and immunities, engage in such abuses of their functions as espionage or interference in the internal affairs of the receiving State. It is precisely with the possibility of such abuses in contemplation that Article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations, and Article 55, paragraph 1, of the Vienna Convention on Consular Relations, provide

"Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State."

Paragraph 3 of Article 41 of the 1961 Convention further states "The premises of the mission must not be used in any manner incompatible with the functions of the mission..."; an analogous provision, with respect to consular premises is to be found in Article 55, paragraph 2 of the 1963 Convention.

85. Thus, it is for the very purpose of providing a remedy for such possible abuses of diplomatic functions that Article 9 of the 1961 Convention on Diplomatic Relations stipulates:

"1. The...

"1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission."

The 1963 Convention contains, in Article 23, paragraphs 1 and 4, analogous provisions in respect of consular officers and consular staff. Paragraph 1 of Article 9 of the 1961 Convention, and paragraph 4 of Article 23 of the 1963 Convention, take account of the difficulty that may be experienced in practice of proving such abuses in every case or, indeed, of determining exactly when exercise of the diplomatic function, expressly recognized in Article 3 (1) (d) of the 1961 Convention, of "ascertaining by all lawful means conditions and developments in the receiving State" may be considered as involving such acts as "espionage" or "interference in internal affairs". The way in which Article 9, paragraph 1, takes account of any such difficulty is by providing expressly in its opening sentence that the receiving State may "at any time and without having to explain its decision" notify the sending State that any particular member of its diplomatic mission is "persona non grata" or "not acceptable" (and similarly Article 23, paragraph 4, of the 1963 Convention provides that "the receiving State is not obliged to give to the sending State reasons for its decision"). Beyond that remedy for dealing with abuses of the diplomatic function by individual members of a mission, a receiving State has in its hands a more radical remedy if abuses of their functions by members of a mission reach serious proportions. This is the power which every receiving State has, at its own discretion, to break off diplomatic relations with a sending State and to call for the immediate closure of the offending mission.

86. The rules of diplomatic law, in short, constitute a self-contained régime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse. These means are, by their nature, entirely efficacious, for unless the sending State recalls the member of the mission objected to forthwith, the prospect of the almost immediate loss of his privileges and immunities, because of the withdrawal by the receiving State of his recognition as a member of the mission, will in practice compel that person, in his own interest, to depart at once. But the principle of the inviolability of the persons of diplomatic agents and the premises of diplomatic missions is one of the very foundations of this long-established régime, to the evolution of which the traditions of Islam

made...

made a substantial contribution. The fundamental character of the principle of inviolability is, moreover, strongly underlined by the provisions of Articles 44 and 45 of the Convention of 1961 (cf. also Articles 26 and 27 of the Convention of 1963). Even in the case of armed conflict or in the case of a breach in diplomatic relations those provisions require that both the inviolability of the members of a diplomatic mission and of the premises, property and archives of the mission must be respected by the receiving State. Naturally, the observance of this principle does not mean - and this the Applicant Government expressly acknowledges - that a diplomatic agent caught in the act of committing an assault or other offence may not, on occasion, be briefly arrested by the police of the receiving State in order to prevent the commission of the particular crime. But such eventualities bear no relation at all to what occurred in the present case.

87. In the present case, the Iranian Government did not break off diplomatic relations with the United States; and in response to a question put to him by a Member of the Court, the United States Agent informed the Court that at no time before the events of 4 November 1979 had the Iranian Government declared, or indicated any intention to declare, any member of the United States diplomatic or consular staff in Tehran persona non grata. The Iranian Government did not, therefore, employ the remedies placed at its disposal by diplomatic law specifically for dealing with activities of the kind of which it now complains. Instead, it allowed a group of militants to attack and occupy the United States Embassy by force, and to seize the diplomatic and consular staff as hostages; instead, it has endorsed that action of those militants and has deliberately maintained their occupation of the Embassy and detention of its staff as a means of coercing the sending State. It has, at the same time, refused altogether to discuss this situation with representatives of the United States. The Court, therefore, can only conclude that Iran did not have recourse to the normal and efficacious means at its disposal, but resorted to coercive action against the United States Embassy and its staff.

88. In an address given on 5 November 1979, the Ayatollah Khomeini traced the origin of the operation carried out by the Islamic militants on the previous day to the news of the arrival of the former Shah of Iran in the United States. That fact may no doubt have been the ultimate catalyst of the resentment felt in certain circles in Iran and among the Iranian population against the former Shah for his alleged misdeeds, and also against the United States Government which was being publicly accused of having restored him to the throne, of having supported him for many years and of planning to go on doing so. But whatever be the truth in regard to those matters, they could hardly be considered as having provided a justification for the attack on the United States Embassy and its diplomatic mission. Whatever extenuation of the responsibility to be attached to the conduct of the Iranian authorities may be found in the offence felt by them because of the admission of the Shah to the United States, that feeling of offence could not affect the imperative character of the legal obligations incumbent upon the Iranian Government which is not altered by a state of diplomatic tension between the two countries.

Still...

Still less could a mere refusal or failure on the part of the United States to extradite the Shah to Iran be considered to modify the obligations of the Iranian authorities, quite apart from any legal difficulties, in internal or international law, there might be in acceding to such a request for extradition.

89. Accordingly, the Court finds that no circumstances exist in the present case which are capable of negating the fundamentally unlawful character of the conduct pursued by the Iranian State on 4 November 1979 and thereafter. This finding does not however exclude the possibility that some of the circumstances alleged, if duly established, may later be found to have some relevance in determining the consequences of the responsibility incurred by the Iranian State with respect to that conduct, although they could not be considered to alter its unlawful character.

*

* *

90. On the basis of the foregoing detailed examination of the merits of the case, the Court finds that Iran, by committing successive and continuing breaches of the obligations laid upon it by the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations, the Treaty of Amity, Economic Relations, and Consular Rights of 1955, and the applicable rules of general international law, has incurred responsibility towards the United States. As to the consequences of this finding, it clearly entails an obligation on the part of the Iranian State to make reparation for the injury thereby caused to the United States. Since however Iran's breaches of its obligations are still continuing, the form and amount of such reparation cannot be determined at the present date.

91. At the same time the Court finds itself obliged to stress the cumulative effect of Iran's breaches of its obligations when taken together. A marked escalation of these breaches can be seen to have occurred in the transition from the failure on the part of the Iranian authorities to oppose the armed attack by the militants on 4 November 1979 and their seizure of the Embassy premises and staff, to the almost immediate endorsement by those authorities of the situation thus created, and then to their maintaining deliberately for many months the occupation of the Embassy and detention of its staff by a group of armed militants acting on behalf of the State for the purpose of forcing the United States to bow to certain demands. Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights. But what has above all to be emphasized is the extent and seriousness of the conflict between the conduct of the Iranian State and its obligations under the whole corpus of the international rules of

which...

which diplomatic and consular law is comprised, rules the fundamental character of which the Court must here again strongly affirm. In its Order of 15 December 1979, the Court made a point of stressing that the obligations laid on States by the two Vienna Conventions are of cardinal importance for the maintenance of good relations between States in the interdependent world of today. "There is no more fundamental prerequisite for the conduct of relations between States", the Court there said, "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 institution of diplomacy, the Court continued, 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" (I.C.J. Reports 1979, page 19).

92. It is a matter of deep regret that the situation which occasioned those observations has not been rectified since they were made. Having regard to their importance the Court considers it essential to reiterate them in the present Judgment. The frequency with which at the present time the principles of international law governing diplomatic and consular relations are set at naught by individuals or groups of individuals is already deplorable. But this case is unique and of very particular gravity because here it is not only private individuals or groups of individuals that have disregarded and set at naught the inviolability of a foreign embassy, but the government of the receiving State itself. Therefore in recalling yet again the extreme importance of the principles of law which it is called upon to apply in the present case, the Court considers it to be its duty to draw the attention of the entire international community, of which Iran itself has been a member since time immemorial, to the irreparable harm that may be caused by events of the kind now before the Court. Such events cannot fail to undermine the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected.

* * *

93. Before drawing the appropriate conclusions from its findings on the merits in this case, the Court considers that it cannot let pass without comment the incursion into the territory of Iran made by United States military units on 24-25 April 1980, an account of which has been given earlier in this Judgment (paragraph 32). No doubt the United States Government may have had understandable preoccupations with respect to the well-being of its nationals held hostage in its Embassy for over five months. No doubt also the United States Government may have had understandable feelings of frustration at Iran's long-continued detention of the hostages, notwithstanding two resolutions of the Security Council as well as the Court's

own...

own Order of 15 December 1979 calling expressly for their immediate release. Nevertheless, in the circumstances of the present proceedings, the Court cannot fail to express its concern in regard to the United States' incursion into Iran. When, as previously recalled, this case had become ready for hearing on 19 February 1980, the United States Agent requested the Court, owing to the delicate stage of certain negotiations, to defer setting a date for the hearings. Subsequently, on 11 March, the Agent informed the Court of the United States Government's anxiety to obtain an early judgment on the merits of the case. The hearings were accordingly held on 18, 19 and 20 March, and the Court was in course of preparing the present judgment adjudicating upon the claims of the United States against Iran when the operation of 24 April 1980 took place. The Court therefore feels bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations; and to recall that in paragraph 47 I.B. of its Order of 15 December 1979 the Court had indicated that no action was to be taken by either party which might aggravate the tension between the two countries.

94. At the same time, however, the Court must point out that neither the question of the legality of the operation of 24 April 1980, under the Charter of the United Nations and under general international law, nor any possible question of responsibility flowing from it, is before the Court. It must also point out that this question can have no bearing on the evaluation of the conduct of the Iranian Government over six months earlier, on 4 November 1979, which is the subject-matter of the United States' Application. It follows that the findings reached by the Court in this Judgment are not affected by that operation.

*

* * *

95. For these reasons,

THE COURT,

1. By thirteen votes¹ to two²,

Decides that the Islamic Republic of Iran, by the conduct which the Court has set out in this Judgment, has violated in several respects, and is still violating, obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law;

2. By thirteen votes¹ to two²,

Decides that the violations of these obligations engage the responsibility of the Islamic Republic of Iran towards the United States of America under international law;

3. Unanimously,

Decides that the Government of the Islamic Republic of Iran must immediately take all steps to redress the situation resulting from the events of 4 November 1979 and what followed from these events, and to that end:

- (a) must immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff and other United States nationals now held hostage in Iran, and must immediately release each and every one and entrust them to the protecting Power (Article 45 of the 1961 Vienna Convention on Diplomatic Relations);
- (b) must ensure that all the said persons have the necessary means of leaving Iranian territory, including means of transport;
- (c) must immediately place in the hands of the protecting Power the premises, property, archives and documents of the United States Embassy in Tehran and of its Consulates in Iran;

4. Unanimously,

Decides that no member of the United States diplomatic or consular staff may be kept in Iran to be subjected to any form of judicial proceedings or to participate in them as a witness;

5. By...

¹President Sir Humphrey Waldock; Vice-President Elias; Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara and Baxter.

²Judges Morozov and Tarazi.

5. By twelve votes³ to three⁴,

Decides that the Government of the Islamic Republic of Iran is under an obligation to make reparation to the Government of the United States of America for the injury caused to the latter by the events of 4 November 1979 and what followed from these events;

6. By fourteen votes⁵ to one⁶,

Decides that the form and amount of such reparation, failing agreement between the Parties, shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fourth day of May one thousand nine hundred and eighty, in three copies, one of which will be placed in the archives of the Court, and the others transmitted to the Government of the United States of America and the Government of the Islamic Republic of Iran, respectively.

(Signed) Humphrey WALDOCK
President

(Signed) S. AQUARONE
Registrar

Judge LACHS appends a separate opinion to the Judgment of the Court.

Judges MOROZOV and TARAZI append dissenting opinions to the Judgment of the Court.

(Initialed) H.W.

(Initialed) S.A.

³President Sir Humphrey Waldock; Vice-President Elias;
Judges Forster, Gros, Nagendra Singh, Ruda, Mosler, Oda, Ago,
El-Erian, Sette-Camara and Baxter.

⁴Judges Lachs, Morozov and Tarazi.

⁵President Sir Humphrey Waldock; Vice-President Elias;
Judges Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Tarazi,
Oda, Ago, El-Erian, Sette-Camara and Baxter.

⁶Judge Morozov.

SEPARATE OPINION OF JUDGE LACHS

I wish to make some comments regarding the Judgment and the solution of the outstanding issues between the two States concerned. First I wish to express some preoccupation over the inclusion of the decision recorded in subparagraph 5 of the operative part.

It is not that there can be any doubt as to the principle involved, for that the breach of an undertaking, resulting in injury, entails an obligation to make reparation is a point which international courts have made on several occasions. Indeed, the point is implicit, it can go without saying. "Reparation", said the Permanent Court of International Justice, "is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself" (P.C.I.J., Series A, No. 9, p. 21). This dictum did not, as it happens, refer to a judicial decision but to a convention. But the Court's Judgment of 9 April 1949 in the Corfu Channel case illustrates the point in a decision of the Court, which then, in the operative paragraph, did not make any statement on the obligation to make reparation.

There was thus no necessity for the operative paragraph of the present Judgment to decide the obligation, when the responsibility from which it might be deduced had been clearly spelled out both in the reasoning and in subparagraph 2. I accordingly felt subparagraph 5 to be redundant. In the circumstances of the case it would, to my mind, have been sound judicial economy to confine the res judicata to the first four subparagraphs and to conclude with the reservation for further decision, failing agreement between the Parties, of any subsequent procedure necessitated in respect of a claim to reparation.

By so proceeding the Court would in my opinion have left the ground clear for such subsequent procedure, while not depriving the Applicant of a sufficient response to its present claim under that head.

*

I wish now to emphasize the value which the present Judgment possesses in my eyes. I consider it to constitute not only a decision of the instant case but an important confirmation of a body of law which is one of the main pillars of the international community. This body of law has been specifically enshrined in the Vienna Conventions of 1961 and 1963, which in my view constitute, together with the rules of general international law, the basis of the present Judgment. The principles and rules of diplomatic privileges and immunities are not - and this cannot be over-stressed - the invention or device of one group of nations, of one continent or one circle of culture, but have been established for

centuries...

centuries and are shared by nations of all races and all civilizations. Characteristically, the preamble of the 1961 Convention "Recall/s that peoples of all nations from ancient times have recognized the status of diplomatic agents" and concludes with the words: "Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention". Moreover, by 31 December 1978 the Vienna Convention of 1961 on Diplomatic Relations had been ratified or acceded to by 132 States, including 61 from Africa and Asia. In the case of the 1963 Convention on Consular Relations, the figures at the same date were 81, with 45 from those two continents. It is thus clear that these Conventions reflect the law as approved by all regions of the globe, and by peoples belonging to both North and South, East and West alike. The laws in question are the common property of the international community and were confirmed in the interest of all.

*

It is a matter of particular concern, however, that the Court has again had to make its pronouncements without the assistance of the respondent's defence, apart from the general arguments contained in two letters addressed to it. The Court took note of the claims of the Islamic Republic of Iran against the United States of America and kept the door open for their substantiation before it. But, unfortunately, Iran chose to deprive itself of the available means for developing its contentions. While discharging its obligations under Article 53 of its Statute, the Court could not decide on any claim of the Iranian Government, for no such claim was submitted; thus the responsibility for not doing so cannot be laid at the door of the Court.

In this context I am anxious to recall that the Court was called into being by the Charter of the United Nations as "the principal judicial organ of the United Nations" (Article 92), and is intended to serve all the international community in order to "decide in accordance with international law such disputes as are submitted to it" (Statute, Article 38, paragraph 1). But to be able to perform this task, the Court needs the assistance of the States concerned. Governments remain, of course, free to act as they wish in this matter, but I think that, having called it into existence, they owe it to the Court to appear before it when so notified - to admit, defend or counter-claim - whichever role they wish to assume. On the other hand, the Applicant, having instituted proceedings, is precluded from taking unilateral action, military or otherwise, as if no case is pending.

*

The Court having given its ruling on the issues of law placed before it, one should consider whether one can usefully point the way towards the practical solution of the problems between the parties.

Here...

Here it would not be realistic to ignore the fact that the mandate given by the Secretary-General of the United Nations to his special commission linked the grievances of either side.

The efforts of that commission thus brought the problem into a field of diplomatic negotiation where its solution should have been greatly facilitated. Unfortunately, those efforts failed, while further events contributed to an aggravation of the tension. Nevertheless, now that the Judgment has, with force of law, determined one of the major issues in question, it should in my opinion be possible for negotiations to be resumed with a view to seeking a peaceful solution to the dispute. I can only repeat the deep-rooted conviction I have expressed on other occasions, that, while the Court is not entitled to oblige parties to enter into negotiations, its Judgment should where appropriate encourage them to do so, in consonance with its role as an institution devoted to the cause of peaceful settlement.

Accordingly, both countries, as parties to the Charter and members of the international community, should now engage in negotiations with a view to terminating their disagreement, which with other factors is sustaining the cloud of tension and misunderstanding that now hangs over that part of the world. By taking such account of the grievances of Iran against the United States as it had been enabled to do, the Court gave its attention not only to the immediate question of responsibility for specific acts placed before it, but also to the wider disagreement that has perturbed relations between the two countries. In view of the fact that the Islamic Republic of Iran has radically severed its ties with the recent past under the former ruler, it is necessary to adopt a renewed approach to the solution of these problems, and while both parties are not on speaking terms I believe recourse should be had to a third-party initiative. The States concerned must be encouraged to seek a solution in order to avoid a further deterioration of the situation between them. To close the apparent abyss, to dispel the tension and the mistrust, only patient and wise action - mediation, conciliation or good offices - should be resorted to. The role of the Secretary-General of the United Nations may here be the key.

I append these words to the Judgment because I am hopeful that its pronouncements may mark a step towards the resolution of the grave differences which remain in the relations between the two States concerned. The peaceful means which I have enumerated may still appear difficult of application, but our age has shown that, with their aid, progress can be made towards the solution of even more complex problems, while perilous methods tend to render them even more intractable. Past efforts have failed for a variety of reasons, many of them deriving precisely from the lack of direct communication, and the situation being dominated by factors unrelated to the specific nature of the dispute. Against this background, the crucial element of timing went awry.

It will be necessary to seize the propitious moment when a procedure acceptable to both sides can be devised. But the uses of diplomacy which are corroborated on the present occasion will, I am confident, be vindicated in the event.

(Signed) Manfred LACHS

DISSENTING OPINION OF JUDGE MOROZOV

I voted against paragraphs 1, 2, 5 and 6 and in favour of paragraphs 3 and 4 of the operative part of the Judgment. Furthermore, there were some points in the reasoning which I could not accept, and I would like to explain the reasons for this.

1. I consider that the long-established rules of general international law relating to the privileges, inviolabilities and immunities of diplomatic and consular personnel are among those which are particularly important for the implementation of such basic principles of contemporary international law as the peaceful coexistence of countries with different political, social and economic structures. These rules are reflected in the Vienna Convention of 18 April 1961 on Diplomatic Relations and the Vienna Convention of 24 April 1963 on Consular Relations.

The obligations laid on the parties to the Conventions should be strictly observed and any violation of their provisions by any country should be immediately terminated.

2. But the Court will be competent to deal with the question of such violations at the request of one party to the dispute only if the other party in one or another of the forms provided by Articles 36 or 37 of the Statute has expressed its agreement to refer the case to the Court. For the purposes of this dispute, which has been referred to the Court only by one party, it is necessary to notice that the two Optional Protocols to the two Vienna Conventions provide in Article I that:

"Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol." (Emphasis added.)

The Optional Protocols were duly ratified by the United States and Iran.

3. It would therefore not have been necessary to undertake any further examination of the question of jurisdiction if the Court in operative paragraph 1 had limited itself to recognition of the fact that the Islamic Republic of Iran had violated several obligations owed by it under the Vienna Conventions of 1961 and 1963.

Instead, the Court qualified the actions of Iran as violations of its obligations "under international conventions in force between the two countries" (emphasis added).

The...

The formula adopted by the Court, read in combination with paragraphs 50, 51, 52, 53 and 54 of the Judgment, signifies recognition that the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran of 1955 is an additional source for jurisdiction of the Court in the current case.

If one compares the text of Article I of the two Optional Protocols to the Vienna Conventions with the text of Article XXI (2) of the Treaty of 1955, one finds without difficulty that the latter text (unlike the Optional Protocols) does not provide for unconditional jurisdiction of the Court at the request of only one party to the dispute.

In its Memorial (page 41) the Applicant concedes: "It is, of course, true that the text of Article XXI (2) does not provide in express terms that either party to a dispute may bring the case to the Court by unilateral application."

Following passages of the Memorial contain references to the understanding allegedly reached between the United States of America and other countries on some bilateral treaties of the same type. According to the Agent of the United States of America, a number of countries understand that a formula analogous to Article XXI (2) of the Treaty gives to any party the right to submit a dispute to the Court by unilateral application.

But as is correctly said on page 42 of the same Memorial: "Iran is not, of course, bound by any understanding between the United States and third countries." Thus the Applicant itself recognized that, legally speaking, the Treaty of Amity, Economic Relations, and Consular Rights of 1955 could not be used as a source of the Court's jurisdiction.

In the light of the actions taken by the Government of the United States of America in November 1979 and further during the period from December 1979 to April 1980 - military invasion of the territory of Iran, a series of economic sanctions and other coercive measures which are, to say the least, incompatible with such notions as amity -, it is clear that the United States of America, according to commonly recognized principles of international law, has now deprived itself of any right to refer to the Treaty of 1955 in its relations with the Islamic Republic of Iran.

In an endeavour to show that provisions of the Treaty of 1955 may be considered as a source of jurisdiction in this case, the Court, in some of its reasoning, goes so far as to consider the actions of the United States of America as some kind of normal counter-measures, and overlooks the fact that they are incompatible not only with the Treaty of 1955 but with the provisions of general international law, including the Charter of the United Nations.

4. On the other hand, the formula used by the Court in paragraph 1 of the operative part of the Judgment, read in combination with paragraph 55 of the reasoning and operative paragraphs 5 and 6, implies that the Court only in the present Judgment has decided not to enter into the question whether, in the particular circumstances of the case,

Article...

Article 13 of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, "provides a basis for the exercise of the Court's jurisdiction with respect" to the claims of the United States of America.

Taking into account the fact that in operative paragraph 6 the Court provides for a possible continuation of the case on a question of reparation, this implies that the Court does not exclude the possibility that the claim of the United States of America to found jurisdiction on the 1973 Convention might in future be re-examined. Therefore I am obliged to observe that the Convention of 1973 does not provide for the unconditional right of one party to a dispute to present an application to the Court. This right arises, according to Article 13 of the Convention, only if the other party in the course of six months has not accepted a request to organize an arbitration. The Memorial of the United States, as well as additional explanations given by Counsel for the United States at the public meeting of the Court on 20 March 1980, provide evidence that the United States Government never suggested to the Government of the Islamic Republic of Iran the organization of any arbitration as provided for by the Convention of 1973.

It is also necessary to take note that the 1973 Convention is not a substitute for either of the Vienna Conventions of 1961 and 1963; it was drawn up for the purpose of ensuring co-operation among States in their efforts to fight international terrorism.

The formula employed by the Court in operative paragraph 1, when read in combination with paragraph 91, serves also to level at Iran the unfounded allegation that it has violated the Charter of the United Nations and the Universal Declaration of Human Rights.

5. Paragraphs 2, 5 and 6 of the operative part of the Judgment relate to the question of the responsibility of the Islamic Republic of Iran towards the United States of America and the obligation of Iran to make reparation to the United States.

It is well known that, in accordance with the provisions of general international law, some violations of freely accepted international obligations may be followed by a duty to make compensation for the resultant damage.

But taking into account the extraordinary circumstances which occurred during the period of judicial deliberation on the case, when the Applicant itself committed many actions which caused enormous damage to the Islamic Republic of Iran, the Applicant has forfeited the legal right as well as the moral right to expect the Court to uphold any claim for reparation.

The situation in which the Court has carried on its judicial deliberations in the current case has no precedent in the whole history of the administration of international justice either before this Court, or before any international judicial institution.

While...

While declaring its intention to settle the dispute between the United States of America and the Islamic Republic of Iran exclusively by peaceful means, and presenting its Application to the Court, the Applicant in fact simultaneously acted contrary to its own declaration, and committed a series of grave violations of the provisions of general international law and the Charter of the United Nations. Pending the Judgment of the Court these violations included unilateral economic sanctions and many other coercive measures against Iran, and culminated in a military attack on the territory of the Islamic Republic of Iran.

One element of these violations was the decision to freeze Iranian assets in the United States, which, according to press and broadcast reports, amount to some 12 billion dollars. On 7 April 1980 new measures were taken by the President of the United States with the future disposal of the frozen assets by the American authorities in view. In the letter from the Deputy Agent of the United States of 15 April 1980, these actions of the President were explained particularly by the necessity to make an inventory and by the idea that the calculation might "well be useful in further proceedings before the Court as to the amount of reparations owed by Iran". But in this letter the Deputy Agent failed to comment on the crucial point of the statement of the President of the United States on 7 April 1980, which undoubtedly shows that the real purpose of his order relating to Iranian frozen assets is to use them in accordance with decisions which would be taken in a domestic framework by the United States itself.

In the statement of the President of the United States of 7 April 1980 we read:

"3. The Secretary of the Treasury will make a formal inventory of the assets of the Iranian Government which were frozen by my previous order and also make a census or inventory of the outstanding claims of American citizens and corporations against the Government of Iran. This accounting of claims will aid in designing a program against Iran for the hostages, the hostage families and other US claimants. We are now preparing legislation which will be introduced in the Congress to facilitate processing and paying of these claims." (Emphasis added.)

In the context of the statement, this implies that the United States is acting as a "judge" in its own cause. It should be noted that, according to a communication published in the International Herald Tribune on 19-20 April 1980, the above-mentioned request to the United States Congress included a provision to "reimburse the United States for military costs because of the hostage crisis" (emphasis added).

6. Furthermore, despite the fact that the Security Council did not adopt the suggestion of the United States to order sanctions against the Islamic Republic of Iran, the Government of the United States decided not only to undertake unilaterally all these sanctions but also to take some additional coercive measures.

In these completely unusual circumstances, it is not possible to include in the Judgment any provisions establishing the responsibility of the Islamic Republic of Iran towards the United States of America and a

duty...

duty to make reparation, as is done in paragraphs 2, 5 and 6 of the operative part of the Judgment. The Court has disregarded the unlawfulness of the above-mentioned actions of the United States of America and has consequently said nothing about the Applicant's responsibility for those actions to the Islamic Republic of Iran.

Operative paragraph 6 of the Judgment, which provides that the "form and amount of such reparation, failing agreement between the Parties, shall be settled by the Court" and "reserves for this purpose the subsequent procedure in the case", does not affect my objection. Even if these provisions are detached from operative paragraph 5, and read only with operative paragraph 2, it is still apparent that the Court has recognized an imperative duty on the part of Iran to make reparation to the United States.

It has been mentioned that the absence of Iran from the judicial proceedings allegedly created an obstacle to considering its possible counter-claims against the United States of America. But the wholly unilateral actions committed by the United States of America against Iran simultaneously with the judicial proceedings were clearly proved by documents presented at the request of the Court by the Applicant itself, and there was no legal obstacle to the Court's taking this evidence into account proprio motu under Article 53 of the Statute, at least when considering the question of responsibility.

7. Some parts of the reasoning of the Judgment described the circumstances of the case in what I find to be an incorrect or one-sided way.

It is not my intention to refer to all those paragraphs in the reasoning which I could not accept. Accordingly I confine myself to the inclusion in this opinion of the points which, it seems to me, are the most important.

8. I was unable to accept paragraphs 32, 93 and 94. The language used by the Court in those paragraphs does not give a full and correct description of the actions of the United States which took place on the territory of the Islamic Republic of Iran on 24-25 April 1980. Some of the wording used by the Court for its description of the events follows uncritically the terminology used in the statement made by the President of the United States on 25 April 1980, in which various attempts were made to justify, from the point of view of international law, the so-called rescue operation. But even when the President's statement is quoted, some parts thereof, which are important for a correct assessment of those events, are omitted.

What happened in reality? During the night of 24-25 April 1980 armed units of the military forces of the United States committed an invasion of the territory of the Islamic Republic of Iran. In accordance with the statement of the President of the United States of 25 April 1980, the planning of this invasion "began shortly after our Embassy was seized ... this complex operation had to be the product of intensive training and repeated rehearsal" (emphasis added). This means, first, that almost

simultaneously...

simultaneously with its filing of the Application with a view to settling the dispute by peaceful means, the United States started preparing for settlement of the dispute by the use of armed force, and, secondly, that it proceeded to carry out its plan while the Judgment of the Court was still pending.

It is a well-known fact that in the course of the period preceding the military invasion, the United States concentrated naval forces near the shore of Iran, including an aircraft-carrier, the Nimitz. And in the statement of the United States Secretary of Defense on 25 April 1980 we read: "The second helicopter /which participated in the invasion/ had difficulties, reversed course, and landed aboard the carrier Nimitz in the Arabian Sea." (Emphasis added.)

The Court requested the United States Agent to present documents related to the events of 24-25 April, and they were officially transmitted to it. Among them is the text of a report made by the United States to the Security Council on 25 April "pursuant to Article 51 of the Charter of the United Nations". In that report the United States maintained that the "mission" had been carried out "in exercise of its inherent right of self-defense".

The question of a military invasion committed by one Member of the United Nations against another should of course be considered on every occasion by the Security Council of the United Nations, in accordance with its exclusive competence as provided by the Charter of the United Nations.

But, as has been observed, the invasion of the territory of Iran was committed by the United States in a period of judicial deliberation, and was directed (at least according to the explanation given by the United States) not towards the settlement of the dispute in a peaceful way, for example, by negotiations or similar means (which could take place in parallel with judicial proceedings), but by force.

In my view, the Court should not, in this completely unusual situation, have limited itself to stating that "an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations" and to "recall/ing/ that in paragraph 47 I.B. of its Order of 15 December 1979 the Court had indicated that no action was to be taken by either party which might aggravate the tension between the two countries" (paragraph 93). At the same time the Court said that "the question of the legality of the operation of 24 April 1980, under the Charter of the United Nations and under general international law", is not "before the Court" and that "It follows that the findings reached by the Court in this Judgment are not affected by that operation" (paragraph 94).

I consider that, without any prejudice to the above-mentioned exclusive competence of the Security Council, the Court, from a purely legal point of view, could have drawn attention to the undeniable legal fact that Article 51 of the Charter, establishing the right of self-defence, may be invoked only "if an armed attack occurs against a Member of the United Nations". It should have added that in the documentation

officially...

officially presented by the United States to the Court in response to its request relating to the events of 24-25 April 1980 there is no evidence that any armed attack had occurred against the United States.

Furthermore, some indication should have been included in the Judgment that the Court considers that settlement of the dispute between the United States and the Islamic Republic of Iran should be reached exclusively by peaceful means.

9. Among the paragraphs of the reasoning which I described in point 7 above as incorrect or one-sided is paragraph 88, which deals with the authorization extended to the former Shah to come to New York. This authorization was extended to him even though the United States Government was well aware that he was considered by the Government and people of the Islamic Republic of Iran as a person whom the United States had restored to the throne after overthrowing the legitimate government of Dr. Mossadegh, and as a man who had committed the gravest crimes, having been responsible for the torture and execution of thousands of Iranians. His admission to the United States, and the subsequent refusal to extradite him, were thus real provocations and not, as the Judgment suggests, merely ordinary acts which just happened to give rise to a "feeling of offence".

(Signed) P. MOROZOV

DISSENTING OPINION OF JUDGE TARAZI

[Translation]

Having perused the Application instituting proceedings which the Government of the United States of America filed on 29 November 1979, read the Memorial filed by it on 15 January 1980 and listened to the oral arguments during the hearing of 18, 19 and 20 March 1980, the Court had before it a series of facts, historical developments and legal arguments which were to lead to its delivering a Judgment of, in my view, cardinal importance. I concurred in the findings of the Judgment concerning the necessity of compliance by the Government of the Islamic Republic of Iran with the obligations incumbent upon it under the Vienna Conventions of 1961 and 1963 on, respectively, Diplomatic and Consular Relations. I nevertheless found some difficulty, arising on the one hand from the situation which has developed in Iran since the overthrow of the régime of which the former Shah was the symbol, and on the other hand from the conduct of the applicant State both before and after the events of 4 November 1979, in deciding and declaring only that the Government of the Islamic Republic of Iran was responsible vis-à-vis that of the United States of America while neglecting to point out at the same time that the latter had also incurred responsibility, to an extent remaining to be determined, vis-à-vis the Government of Iran.

My intention here is to indicate, with as brief explanations as possible, the reasons for my attitude and position. To that end I will have to consider the following points:

1. The principle of the inviolability of diplomatic and consular missions and of the immunity enjoyed by their members;
2. The factors which enter into the assessment in principle of the responsibility incurred by the Government of the Islamic Republic of Iran;
3. The actions undertaken by the United States Government both before and after the seisin of the Court which were capable of affecting the course of the proceedings.

1. The inviolability of diplomatic and consular missions and the immunity enjoyed by their members

I entirely concurred in the reasoning of the Judgment on this point. I was pleased to note that the Judgment took particular account of the traditions of Islam, which contributed along with others to the elaboration of the rules of contemporary public international law on diplomatic and consular inviolability and immunity.

In a course of lectures which he gave in 1937 at the Hague Academy of International Law on the subject of "Islam and *jus gentium*", Professor Ahmed Rehid of the Istanbul law faculty gave the following account of the inviolability of the envoy in Muslim law:

"In...

"In Arabia, the person of the ambassador had always been regarded as sacred. Muhammad consecrated this inviolability. Never were ambassadors to Muhammad or to his successors molested. One day, the envoy of a foreign nation, at an audience granted to him by the Prophet, was so bold as to use unsulting language. Muhammad said to him: 'If you were not an envoy I would have you put to death.' The author of the 'Siyer' which relates this incident draws from it the conclusion that there is an obligation to respect the person of ambassadors."

Ahmed Rechid adds further on:

"The Prophet always treated the envoys of foreign nations with consideration and great affability. He used to shower gifts upon them and recommended his companions to follow his example, saying: 'Do the same as I¹."

In a work entitled International Law, published by the Institute of State and Law of the Academy of Sciences of the USSR, the following is to be read on the conduct in the Middle Ages of the Arabs, the bearers of the Islamic faith:

"The Arab States, which played an important part in international relations in the Middle Ages (from the 7th century) had well-developed conceptions regarding the Law of Nations, closely linked with religious precepts.

The Arabs recognised the inviolability of Ambassadors and the need for the fulfilment of treaty obligations. They resorted to arbitration to settle international disputes and considered the observance of definite rules of law necessary in time of war ('the blood of women, children and old men shall not besmirch your victory')."

2. Factors which enter into the assessment in principle of the responsibility incurred by the Iranian Government

The deductions made by the Court from the fact that the Government of the Islamic Republic of Iran had violated its binding international obligations to the United States of America with regard to diplomatic inviolability and immunity have led it to declare the former responsible by reason of acts of both omission and commission.

I find this approach inadequate. It is not right to proclaim the responsibility of the Iranian Government unless its examination is first preceded by an appropriate study of the historical facts antedating the seizure by Islamic students of the United States Embassy in Tehran on 4 November 1979. In that respect, it is a matter for deep regret that the Iranian Government refused to appear before the Court. Nevertheless, it emerges from the two identical

communications...

¹ Ahmed Rechid, "L'Islam et le droit des gens", 60 Recueil des Cours ADI, 1937-II, pp. 421 f.

communications addressed to the Court by the Iranian Minister for Foreign Affairs on 9 November 1979 and 16 March 1980 that the Government of the Islamic Republic of Iran considers that the present proceedings are only a marginal aspect of a wider dispute dividing Iran and the United States since the Shah was in 1953 restored to the throne thanks to the intrigues of the CIA and the United States Government continued to meddle in Iran's internal affairs.

In spite, and perhaps because, of the absence of the Government of Iran from the proceedings, it behoved the Court to elucidate this particular point before pronouncing on the responsibility of the Iranian State. That responsibility ought to have been qualified as relative and not absolute.

I recognize that the Court made a laudable effort in that direction. This, however, remained insufficient. It has been argued that more would mean examining deeds of a political nature which lay outside the framework of the Court's powers. But is it possible to ignore historical developments which have direct repercussions on legal conflicts? The Permanent Court of International Justice well clarified this point when in its Judgment of 7 June 1932 (Free Zones of Upper Savoy and the District of Gex), it stated:

"The era of the Napoleonic Wars preceding the Hundred Days was brought to an end by the treaties concluded at Paris on May 30th, 1814, between France, on the one hand, and Austria, Great Britain, Prussia and Russia respectively, on the other." (P.C.I.J., Series A/B, No. 46, p. 115.)

One could therefore have devoted some attention to the events of 1953 with a view to gauging to what extent the assertion of the Iranian Minister for Foreign Affairs was plausible. On this essential question, I have been able to glean some impression from a source that does not look with any favourable eye upon the Islamic Revolution of Iran. In his work entitled The Fall of the Shah, Mr. Feraydoun Hoveyda, the brother of the ex-sovereign's former Prime Minister, Mr. Abbas Amir Hoveyda, who was condemned to death and executed after the ex-sovereign left Iran, says:

"Some Iranian observers were sceptical, considering that foreign interests were pulling the strings: top-ranking non-British companies on the world market were pushing for a break of the contract with the AIOC [Anglo-Iranian Oil Company]. Be that as it may, when the nationalist uproar grew, the Iranian ruling class and various foreign powers got the wind up and turned to the Shah again. It was then that the CIA floated the idea of a coup d'état, and in 1953 Kermit Roosevelt visited Tehran to examine the possibilities and find a likely candidate. He found his man in General Zahedi, and the plotters staged the departure of the Shah after having him sign a decree naming Zahedi prime minister. He used CIA money to buy the services of Shaban-bi-mokh (literally Shaban the Scatterbrain), the master of a famous 'Zurkhané' (a traditional gymnastics club), in order to recruit a commando squad of 'civilians' to act in concert with the army. The operation begun in August 1953 did not take more than a day, and then the Shah made a triumphal return. And the very people who had followed Mossadeq right up to the eleventh hour scurried to the airport and prostrated themselves before the sovereign to kiss his boots!

In...

In spite of the facts, which have been disclosed by the Americans themselves, the Shah was pleased to consider the 1953 coup as a 'popular revolution' which gave him the mandate of the people. And apparently he ended up by believing his own propaganda. Already the sovereign was showing a tendency to bend the truth; it was to intensify to the point of cutting him right off from the realities of the country²."

Thus, in the eyes of the present Iranian leaders, the power of the Shah had lacked all legitimacy or legality ever since the overthrow of Dr. Mossadegh in 1953. This point should have been examined carefully, because these same leaders say that they are firmly convinced that the Shah would not have been able to maintain himself upon the throne without the backing given him by the Government of the United States of America.

This opinion concords with the reflections of Dr. Henry Kissinger, the former Secretary of State of the United States of America. In his work entitled The White House Years, Dr. Kissinger states that:

"Under the Shah's leadership, the land bridge between Asia and Europe, so often the hinge of world history, was pro-American and pro-West beyond any challenge. Alone among the countries of the region - Israel aside - Iran made friendship with the United States the starting point of its foreign policy. That it was based on a cold-eyed assessment that a threat to Iran would most likely come from the Soviet Union, in combination with radical Arab states, is only another way of saying that the Shah's view of the realities of world politics paralleled our own. Iran's influence was always on our side; its resources reinforced ours even in some distant enterprises - in aiding South Vietnam at the time of the 1973 Paris Agreement, helping Western Europe in its economic crisis in the 1970s, supporting moderates in Africa against Soviet-Cuban encroachment ... In the 1973 Middle East war, for example, Iran was the only country bordering the Soviet Union not to permit the Soviets use of its air space - in contrast to several NATO allies. The Shah ... refueled our fleets without question. He never used his control of oil to bring political pressure; he never joined any oil embargo against the West or Israel. Iran under the Shah, in short, was one of America's best, most important, and most loyal friends in the world. The least we owe him is not retrospectively to vilify the actions that eight American Presidents - including the present incumbent - gratefully welcomed³."

It...

²Fereydoun Hoveyda (trans. Roger Liddell), The Fall of the Shah, London 1979, pp. 92 f.

³H. Kissinger, The White House Years, London 1979 page 1262.

It is in these words that Dr. Kissinger himself describes the links which existed between the presence of the Shah at the head of the Iranian State and the exigencies of American worldwide and Middle-East strategy. These links do not in any way justify the occupation of the Embassy. But they should be placed in the balance when the responsibility incurred by the Iranian Government falls to be weighed.

Furthermore, the ex-Shah, when in Mexico, was authorized to enter United States territory. The United States authorities were perfectly aware that this authorization might have untoward consequences. They nevertheless granted it, thus committing a serious fault which the Court could have taken into consideration. In what has become a classic work, entitled Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle, the brothers Henri, Léon and Jean Mazeaud write:

"If the sole cause of the injury is an act of the complainant, the defendant should always be absolved, for it was not his fault if harm was done. He is thus entitled to rely on the complainant's act, whatever it be. Here it should be pointed out that the question whether the complainant's act contained an element of fault does not even arise. The defendant is absolved because it was not his act which was held to be the cause of the injury. In reality, he relies on the complainant's act solely in order to establish the absence of any causal connection between his own act and the harm done⁴."

Similarly, before reaching the point of declaring the Iranian State responsible, one should take into consideration the circumstances in which the facts complained of occurred. In doing so, one must bear in mind the essential point that Iran is at present traversing a period of revolution. It is no longer valid to assess the obligations of the Iranian State in accordance with the criteria which were current before the departure of the Shah. This corresponds to the essence of the theory recognized in French administrative law with regard to the influence of war on the obligations of the State and public bodies. In its Judgment of 30 March 1916 (Compagnie du gaz de Bordeaux) the French Conseil d'Etat confirmed the principle of the collapse of the economy of contracts on account of war⁵. This principle was endorsed by the great French jurist Maurice Hauriou, in his theory of the unforeseen⁶.

With this essential factor added to those already mentioned, the responsibility of the Government of the Islamic Republic of Iran ought to have been envisaged in the context of the revolution which took place in that country and brought about, as it were, a break with a past condemned as oppressive. Thus it would in my view be unjust to lay all the facts complained of at the door of the Iranian Government without subjecting the circumstances in which those acts took place to the least preliminary examination.

3. The...

⁴ H. L. and J. Mazeaud, Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle, Tome II, 6th ed., Paris 1970, p. 552.

⁵ Conseil d'Etat, 30 March 1916, Recueil Sirey, 1916, Part III, pp. 17 ff.

⁶ Maurice Hauriou, note to Judgment in question (ibid.)

3. The actions undertaken before and after the seisin of the Court which were capable of affecting the course of the proceedings

The Government of the United States of America referred its dispute with Iran to the Court on 29 November 1979. It is certain that the Court's jurisdiction is not automatic. The Court possesses only such jurisdiction as is conferred upon it. Two essential consequences flow from this:

- (a) any State is free to ignore the possibility of the judicial solution of a dispute, either by omitting to refer it to the International Court of Justice, or by refusing to submit to the Court's jurisdiction, to the extent that the circumstances of the case enable it so to refuse;
- (b) however, once a State presents itself before the Court as an applicant and requests it to direct the respondent State to submit to the law, the option it possessed before the institution of proceedings disappears. The whole dossier of the dispute at issue is taken in hand by the Court. The applicant State must refrain from taking any decisions on the planes of either domestic or international law which could have the effect of impeding the proper administration of justice.

Yet, even before turning to the Court, the Government of the United States of America had already decided to freeze the Iranian assets in United States dollars lodged in United States banks or their branches abroad.

Subsequently, just when the Court was embarking upon its deliberation prior to the Judgment it was to adopt, the President of the United States of America, on 7 April 1980, announced a series of measures he had decided to take which were closely connected with the case before the Court. Having regard to the normal exercise of the Court's powers, the most important of these measures was unquestionably the third, whereby he ordered the Secretary of the Treasury to:

"make a formal inventory of the assets of the Iranian Government which were frozen by my previous order and also make a census or inventory of the outstanding claims of American citizens and corporations against the Government of Iran. This accounting of claims will aid in designing a program against Iran for the hostages, the hostage families and other United States claimants."

The President added: "We are now preparing legislation which will be introduced in the Congress to facilitate processing and paying of these claims."

This, in my view, constituted an encroachment on the functions of the Court, for until the Court has ruled upon the principle of reparation the applicant State is not entitled to consider that its submissions, or part of them, have already been accepted and recognized as well founded. What is more, the decision of the United States President to propose the adoption by Congress of legislation granting victims the possibility of receiving compensation out of the Iranian assets frozen in the United States, when the action before the Court has not yet been exhausted, raises the problem of a conflict between the rules of municipal law and those of international law. Were the legislation contemplated to be passed, the conflict would be settled to the detriment of the latter.

However..

However, it was the military operation of 24 April 1980 which was the gravest encroachment upon the Court's exercise of its power to declare the law in respect of the dispute laid before it. This operation was called off by the President of the United States for technical reasons. It is not my intention to characterize that operation or to make any legal value-judgment in its respect, but only to allude to it in connection with the case before the Court. I must say that it was not conducive to facilitating the judicial settlement of the dispute.

In his report to the Security Council of 25 April 1980, Mr. Donald McHenry, the Permanent Representative of the United States of America, stated that the military operation of 24 April 1980 had been undertaken pursuant to Article 51 of the Charter of the United Nations. Yet Article 51 provides for the eventuality of that kind of operation only "if an armed attack occurs against a Member of the United Nations". One can only wonder, therefore, whether an armed attack attributable to the Iranian Government has been committed against the territory of the United States, apart from its Embassy and Consulates in Iran.

To sum up my position, I would like to mention the following points:

- (a) I consider that the Court has jurisdiction to decide the present case only under the provisions of the Vienna Conventions of 1961 and 1963 on, respectively, Diplomatic and Consular Relations. Any direct or indirect reference to the 1955 Treaty between the United States and Iran or to the 1973 Convention is, from my point of view, unacceptable.
- (b) I consider that the Iranian Government has violated its obligations under the two Vienna Conventions mentioned above. I concur in those parts of the operative paragraph which deal with this question.
- (c) On the other hand, I could not support the idea that the Iranian Government should be declared responsible unless the Court also found:
 - (i) that the responsibility in question is relative and not absolute, that it must straightway be qualified in accordance with the criteria which I have put forward and others which may be envisaged;
 - (ii) that the Government of the United States of America, by reason of its conduct both before and after the institution of proceedings, has equally incurred responsibility.

(Signed) S. TARAZI
