ORAL ARGUMENTS ON THE REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague,
on 10 December and on 15 December 1979,
President Sir Humphrey Waldock presiding

PLAIDOIRIES RELATIVES À LA DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au palais de la Paix, à La Haye,
le 10 décembre et le 15 décembre 1979,
sous la présidence de sir Humphrey Waldock, Président

FIRST PUBLIC SITTING (10 XII 79, 3 p.m.)

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

Also present:

For the Government of the United States of America:

The Honorable Roberts B. Owen, Legal Adviser, Department of State, *as Agent*;
The Honorable Benjamin R. Civiletti, Attorney-General of the United States,
Mr. Stephen M. Schwebel, Deputy Legal Adviser, Department of State, *as Counsel*;
Mr. David H. Small, Assistant Legal Adviser for Near Eastern and South Asian Affairs, Department of State,
Mr. Jack Goldklang, Office of the Legal Counsel, Department of Justice,
Mr. Robert Smith, Department of Justice, *as Advisers*.

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court meets to consider the request for the indication of provisional measures, under Article 41 of the Statute of the Court, and Articles 73 and 74 of the Rules of Court, made by the Government of the United States of America, in the case concerning *United States Diplomatic and Consular Staff in Tehran* brought by the United States of America against Iran.

The case was brought before the Court by an Application (see pp. 3-8, *supra*) filed in the Registry of the Court on 29 November 1979. In that Application the United States Government claims to found the jurisdiction of the Court on the Vienna Convention on Diplomatic Relations of 1961 and Article I of the Optional Protocol thereto concerning the compulsory settlement of disputes; the Vienna Convention on Consular Relations of 1963 and Article I of the Optional Protocol thereto concerning the compulsory settlement of disputes; Article XXI, paragraph 2, of a Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States of America and Iran; and Article 13, paragraph 1, of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The United States then alleges a sequence of events beginning on 4 November 1979 in and around the United States Embassy in Tehran, involving invasion of the Embassy premises and the seizure and detention of United States diplomatic and consular staff. On the basis of these allegations, it formulates a number of legal claims and asks the Court to adjudge and declare that the Government of Iran, in tolerating, encouraging and failing to prevent and punish the conduct described in the Application, violated its international legal obligations to the United States under the provisions of a number of international treaties and conventions; that the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals currently being detained and to assure that they are allowed to leave Iran safely; that the Government of Iran should pay reparation for the alleged violations of Iran's international legal obligations; and that the Government of Iran should submit to its competent authorities for the purpose of prosecution the persons responsible for the crimes committed against the premises and staff of the United States Embassy and Consulates.

On 29 November 1979, the day on which the Application itself was filed, the United States of America submitted the present request for the indication of provisional measures (see pp. 11-12, *supra*). I now ask the Registrar to read from that request the statement of the measures which the United States asks the Court to indicate.

The REGISTRAR: The Government of the United States of America requests that pending final judgment in this suit the Court indicate forthwith the following:

"*(a)* That the Government of Iran immediately release all hostages of United States nationality and facilitate the prompt and safe departure from Iran of these persons and all other United States officials in dignified and humane circumstances.

(b) That the Government of Iran immediately clear the premises of the United States Embassy, Chancery and Consulate of all persons whose presence is not authorized by the United States Chargé d'Affaires in Iran, and restore the premises to United States control.

(c) That the Government of Iran ensure that all persons attached to the United States Embassy and Consulate should be accorded, and protected in, full freedom within the Embassy and Chancery premises, and the freedom of movement within Iran necessary to carry out their diplomatic and consular functions.

(d) That the Government of Iran not place on trial any person attached to the Embassy and Consulate of the United States and refrain from any action to implement any such trial.

(e) That the Government of Iran ensure that no action is taken which might prejudice the rights of the United States in respect of the carrying out of any decision which the Court may render on the merits, and in particular neither take nor permit action that would threaten the lives, safety, or well-being of the hostages."

The PRESIDENT: The Government of Iran was informed forthwith by telegram of the filing of the Application and of the submission of the request for provisional measures, and the text of the latter document was set out in full in the telegram (see pp. 493-494, *infra*). A copy of the Application and of the request was sent to the Government of Iran by express airmail the same day.

On 30 November 1979, pending the meeting of the Court and in exercise of the power conferred on the President by Article 74, paragraph 4, of the Rules of Court, I addressed a telegram (see pp. 495-496, *infra*) to each of the two Governments concerned stressing that the case was now *sub judice* before this Court and calling their attention to the need to act in such a way as would enable any Order the Court may make in the present proceedings to have its appropriate effects. By those telegrams the two Governments were, in addition, informed that the Court would hold public hearings at an early date at which they might present their observations on the request for provisional measures; and that the projected date for such hearings was today's date, this date being later confirmed by further telegrams of 3 December 1979 (see p. 496, *infra*).

In preparation for the present hearings, as President of the Court, I put certain preliminary questions to the Agent of the United States Government on 4 December 1979. The text of the questions was communicated on the same date by telegram to the Government of Iran (see p. 496, *infra*). Accordingly I now ask the Registrar to read out this text.

The REGISTRAR:

"1. The President asks the Agent of the United States of America to be good enough to inform the Court:

(a) what, if any, exchanges have taken place between the Governments of the United States and Iran regarding recourse to arbitration, conciliation or any other pacific means for the settlement of their present differences; and to furnish the Court with copies of any documents relating thereto;

(b) whether the Government of either the United States or Iran has formally broken off diplomatic relations between the two Governments since the matters which are the subject of their present differences arose; and, if so, to furnish the Court with copies of any documents relating thereto.

2. The President, while noting the certificate of Mr. David D. Newsom appended to the United States Application, asks the Agent of the United States to be good enough also to furnish the Court:

(a) with copies of any statements made by the United States representatives in the Security Council in regard to the matters alleged in the United States Application of 29 November 1979;

(b) with copies of any official statements of the President of the United States, the Secretary of State or of other United States authorities relating to the matters alleged in the United States Application of 29 November 1979; and any statements by Iranian authorities evidencing those matters;

(c) with details of the number of the persons included respectively in the diplomatic, administrative, technical, consular and service staff who are the subject of the United States Application and request of 29 November 1979, with an indication as to the particular category to which each belongs.

3. The text of the above questions to the Agent of the United States is being communicated at the same time to the Government of Iran."

The PRESIDENT: On 7 December 1979 a letter from the United States Agent giving the response of his Government to the questions which have just been read out was received by the Registrar in the form of a declaration by Mr. David D. Newsom, Under Secretary for Political Affairs in the State Department, accompanied by a number of appendices (see pp. 43-115, *infra*). A copy of the letter and enclosures was immediately transmitted to the Government of Iran (see p. 499, *infra*).

On 4 December 1979 I also telegraphed a request (see p. 497, *infra*) to the Secretary-General to transmit to the Court as rapidly as possible the text of any resolution which the Security Council might adopt concerning the matter brought before the Court, as well as of the records of the discussions of that matter in the Security Council. In response to that request the Secretary-General has communicated to the Court the text of Security Council resolution 457 of 1979, together with certain records and documents (see pp. 225-226 and 497, *infra*).

I note the presence in Court of the Agent and Counsel for the United States of America.

The Government of Iran has not appointed an Agent. On the other hand, by a letter telegraphed to the President and received in the Registry in the late evening of yesterday, 9 December 1979, the Government of Iran has informed the Court of its view that on various grounds the Court cannot and should not take cognizance of the case submitted to it by the United States Government, or indicate the provisional measures formulated in the request. A copy of that letter was communicated immediately to the Agent of the United States of America.

I shall therefore ask the Registrar now to read the text of that letter.

Le GREFFIER:

«J'ai l'honneur d'accuser réception des télégrammes concernant la réunion, le 10 décembre 1979, de la Cour internationale de Justice, sur requête du Gouvernement des Etats-Unis d'Amérique, et de vous soumettre ci-dessous la position du Gouvernement de la République islamique de l'Iran à cet égard.

1. Tout d'abord, le Gouvernement de la République islamique de l'Iran tient à exprimer le respect qu'il voue à la Cour internationale de Justice et à ses distingués membres pour l'œuvre par eux accomplie dans la recherche de solutions justes et équitables aux conflits juridiques entre Etats. Cependant, le Gouvernement de la République islamique de l'Iran estime que la Cour ne peut et ne doit se saisir de l'affaire qui lui est soumise par le Gouvernement des Etats-Unis d'Amérique, et de façon fort révélatrice, limitée à la soi-disant question des «otages de l'ambassade américaine à Téhéran».

2. Cette question en effet ne représente qu'un élément marginal et secondaire d'un problème d'ensemble dont elle ne saurait être étudiée séparément et qui englobe entre autres plus de vingt-cinq ans d'ingérences

continuelles par les Etats-Unis dans les affaires intérieures de l'Iran, d'exploitation éhontée de notre pays et de multiples crimes perpétrés contre le peuple iranien, envers et contre toutes les normes internationales et humanitaires.

3. Le problème en cause dans le conflit existant entre l'Iran et les Etats-Unis ne tient donc pas de l'interprétation et de l'application des traités sur lesquels se base la requête américaine, mais découle d'une situation d'ensemble comprenant des éléments beaucoup plus fondamentaux et plus complexes. En conséquence, la Cour ne peut examiner la requête américaine en dehors de son vrai contexte à savoir l'ensemble du dossier politique des relations entre l'Iran et les Etats-Unis au cours de ces vingt-cinq dernières années. Ce dossier comprend entre autres tous les crimes perpétrés en Iran par le Gouvernement américain, en particulier le coup d'Etat de 1953 fomenté et exécuté par la CIA, l'éviction du gouvernement national légitime du docteur Mossadegh, la remise en place du Chah et de son régime asservi aux intérêts américains et toutes les conséquences sociales, économiques, culturelles et politiques des interventions directes dans nos affaires intérieures, ainsi que des violations graves, flagrantes et perpétuelles de toutes les normes internationales perpétrées par les Etats-Unis en Iran.

4. En ce qui concerne la demande de mesures conservatoires, telle que formulée par les Etats-Unis, elle implique en fait que la Cour ait jugé de la substance même de l'affaire qui lui est soumise, ce que celle-ci ne saurait faire sans violer les normes qui régissent sa compétence. D'autre part, les mesures conservatoires étant par définition destinées à protéger les intérêts des parties en cause, elles ne pourraient avoir le caractère unilatéral de la requête présentée par le Gouvernement américain.

En conclusion, le Gouvernement de la République islamique de l'Iran attire respectueusement l'attention de la Cour sur les racines profondes et l'essence même de la révolution islamique de l'Iran, révolution de toute une nation opprimée contre les oppresseurs et leurs maîtres, et dont l'examen des multiples répercussions relève essentiellement et directement de la souveraineté nationale de l'Iran.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments les plus distingués.

Téhéran, le 9 décembre 1979.»

The PRESIDENT: On receipt of a request for the indication of provisional measures of protection, the Court is bound under its Statute and Rules to proceed to consider as a matter of urgency whether there is a relevant legal basis for the exercise of those powers under Article 41 of its Statute and whether such measures ought to be indicated to preserve the respective rights of either party.

I therefore now call upon the Agent of the United States of America to present the oral observations of his Government on these questions. I would ask him in the course of his observations to inform the Court of the views of his Government on the matters referred to in the letter of the Iranian Government which has just been read by the Registrar. I would ask him also to inform the Court of the view of his Government on the following question, of which I have given him prior notice:

> What significance should be attached by the Court, for the purpose of the present proceedings, to resolution 457 adopted by the Security Council on 4 December 1979?

STATEMENT BY MR. OWEN

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. Roberts B. OWEN: Mr. President and distinguished Members of the Court. My name is Roberts Owen, and I have the honour to appear before the Court today as Agent of the United States of America in support of the request of the United States for provisional measures of protection against the Government of Iran. Mr. President, in view of the extraordinary nature of the matter which is to be argued before the Court this afternoon the President of the United States has requested the Attorney-General of the United States to appear before the Court as Counsel in support of our request for provisional measures. With the Court's permission therefore I would like at this time to introduce to the Court the Attorney-General, Mr. Benjamin R. Civiletti, who will commence the presentation on behalf of the United States.

ARGUMENT OF MR. CIVILETTI

COUNSEL FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. Benjamin CIVILETTI: Mr. President and distinguished Members of this Court, I appear today as Attorney-General of the United States and advocate in support of its request for provisional measures of protection from illegal acts of the Government of Iran.

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

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

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

Yet I find myself addressing the Court with awe, but with restrained anger. More than 50 of my countrymen are held prisoners, in peril of their lives and suffering even as I speak. This imprisonment, and this suffering, are illegal and inhuman. It takes no advocate to bring this cause to you. The facts are known worldwide, and every citizen of the world—trained in law or not—knows the conduct to be criminal.

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

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

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

For the first time in modern diplomatic history, a State has not only acquiesced in, but participated in and is seeking political advantage from the illegal seizure and imprisonment of the diplomatic personnel of another State. It even threatens to put these diplomatic personnel on trial. If our international institutions, including this Court, should even appear to condone or tolerate the flagrant violations of customary international law, State practice, and explicit treaty commitments that are involved here, the result will be a serious blow not only to the safety of the American diplomatic persons now in captivity in Tehran, but to the rule of law within the international community. To allow the illegal detention and trial of United States diplomatic personnel and other citizens to go forward during the pendency of this case would be to encourage other governments and individuals to believe that they may, with impunity, seize any embassy and any diplomatic agent, or indeed any other hostage, anywhere in the world. Such conduct cannot be tolerated; every civilized government

recognizes that and we therefore submit that this Court has a clear obligation to take every legitimate action to bring this conduct to an immediate end.

We shall this afternoon discuss the simple, clear issues presented and in the following order. I shall review the applicable basic principles of international law which bind both Iran and the United States, not only under customary international law, but also under four treaties to which both States are parties. These treaties are directly in point. Mr. Owen will then briefly summarize the facts to demonstrate to the Court that the Government of Iran has committed, is committing—and is proposing to commit—clear, flagrant violations of these principles of international law. We will next demonstrate that the Court has jurisdiction over this dispute and the authority to indicate the provisional measures requested by the United States. Finally, we shall explain why, on the basis of Article 41 of the Court's Statute, an indication of interim measures is urgently needed and amply justified.

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

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

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

> "1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
>
> 2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
>
> 3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

As to the personnel of such a diplomatic mission, Article 29 of the Convention goes on to provide that every diplomatic agent "shall be inviolable" and that he shall be free from "any form of arrest and detention". The language is unqualified: it prohibits any form of arrest or detention, regardless of any grievance which the host State may suppose that it has against a particular diplomat. There is a remedy available against a diplomat who a State believes has engaged in improper conduct—to require him to leave the country. But the Vienna Convention excludes any form of physical arrest or detention, for the purpose of prosecution or for any other reason.

The Convention re-emphasizes the principle of diplomatic inviolability in several different ways. Article 29 requires the receiving State to prevent any attack upon the person, freedom or dignity of a diplomatic agent. Article 31 requires that each such agent enjoy unqualified "immunity from the criminal jurisdiction of the receiving State". There is no exception; no matter what the cause, the receiving State is precluded from allowing the criminal prosecution of a diplomatic agent. In the last few days, as we will explain later in our argument,

this absolute immunity from criminal prosecution has taken on an overwhelming importance.

Article 37 of the Convention extends the same absolute inviolability and absolute immunity from assault and from criminal trial to the administrative and technical staff of an embassy. All but two of the more than 50 Americans currently being held hostage in Tehran are either diplomatic agents or embassy administrative and technical staff, some of whom also perform consular functions.

Other immunities and privileges pertinent to this case are found in Articles 24, 25, 26, 27, 44, 45 and 47 of the Vienna Convention on Diplomatic Relations. Among these are the inviolability of the archives and documents of the mission, the right of diplomatic agents and staff to communicate freely for official purposes, and the right to depart from the receiving State at any time they wish.

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

These uniformly recognized principles have been codified in Article 9 of the Vienna Convention. Under that Treaty, a receiving State can in effect expel an objectionable diplomat—but under no circumstances may a State imprison an emissary or put him or her on trial. In diplomatic history and practice there is no precedent or justification for the seizure of a diplomat—let alone an entire diplomatic mission. There is also no precedent or justification for the imprisonment and trial of such persons in an attempt to coerce capitulation to certain demands. It is difficult to think of a more obvious and more flagrant violation of international law.

Both Iran and the United States are also parties to the second international convention on which the United States relies in this proceeding—the 1963 Vienna Convention on Consular Relations. This Convention reflects many of the same principles I have just described. Under the Consular Convention every State party, including Iran, has an international legal obligation to protect the consular facilities and members of the consular posts of every other State party. Of course, when personnel of a diplomatic mission are providing consular services, they are entitled to the full protection afforded by the Vienna Convention on Diplomatic Relations. The Convention on Consular Relations also requires the receiving State to permit another State party's consular officers to communicate with and have access to their nationals. This right is manifestly violated when the consular officers are themselves held incommunicado by force.

Apart from these two Vienna Conventions, the United States and Iran are also parties to the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. One of the essential premises of the New York Convention is stated in its preamble. It is that crimes against such internationally protected persons, including diplomatic agents, are "a serious threat to the maintenance of normal international relations" and "a matter of grave concern to the international community".

The Convention defines a number of types of conduct as constituting crimes within its scope. Under Article 2 it is a criminal act to participate as an accomplice in an attack on the person or liberty of an internationally protected person or in a violent attack on official premises. Under Article 4 of the Convention, every State party, including Iran, is required to prevent such crimes.

Under Article 7, every State party must take steps to see that those responsible for such crimes are prosecuted. The Government of Iran has violated every one of these provisions in the plainest way.

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

Finally, the United States relies in this case upon a bilateral treaty—the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran. This Treaty is in a sense even broader than the three multilateral conventions to which I have previously referred. Under Article II, paragraph 4, of the Treaty of Amity, each party has a legal obligation to ensure that within its territory the nationals of the other party shall receive "the most constant protection and security". In addition, Article II provides that, if any United States national is in custody in Iran, Iran must in every respect accord him "reasonable and humane treatment". Under Articles II and XIX any such national is entitled to communicate with his own government and avail himself of the services of his consular officials. Article XIII requires that the consular officers and employees themselves be accorded the privileges and immunities accorded by general international usage and that they be treated in a fashion no less favourable than similar officers and employees of any third country.

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

ARGUMENT OF MR. OWEN

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. OWEN: May it please the Court.

The Attorney-General has summarized the treaty provisions which form the legal predicate for the United States' pending request for an indication of provisional measures—and I would like to open my portion of the argument by making one brief comment about those treaty provisions.

In my judgment, the most striking feature of the legal principles involved in this case is their clarity and simplicity. All of the substantive principles involved are well known and familiar, and they are clear and unambiguous. This is not a case involving complicated legal considerations or difficult questions of interpretation; the only question here is one of the application of the four treaties—and I suggest that the application of the treaties will become very clear indeed from a brief review of the facts—to which I now turn.

Like the legal principles involved, the facts are simple—and tragically so. I submit that a mere recitation of the events will demonstrate beyond any doubt whatever that the Government of Iran is today engaged, on a continuing basis, in gross and obvious violations of the international legal obligations which it owes to the United States and to the international community at large.

The immediate factual story began on 4 November of this year. On that day, in the course of a demonstration of several thousand people immediately outside the United States Embassy compound in Tehran, several hundred demonstrators broke away and commenced a physical assault on the Embassy. I will not burden you with the details of the two-hour attack on the Embassy or the manner in which the attackers physically cut their way into the Embassy, but I should emphasize that throughout the attack, United States officials were in contact with the Office of the Prime Minister of Iran and the Iranian Foreign Ministry, vigorously calling for security assistance—and yet the Government of Iran made absolutely no effort to prevent the seizure of the Embassy and its personnel. Indeed, in the days and weeks that have followed the initial attack and the seizure of more than 50 American hostages, the chief of the Iranian Government and the members of his Council have repeatedly praised and approved the conduct of the captors. Instead of honouring its legal obligations and seeking to prevent or remedy the violations of the rights of the United States, the Government of Iran has actually ratified those violations and made them its own.

Since this last point is important in fixing the responsibility of the Government of Iran, let me pause to emphasize that Government's complicity in the conduct involved. In response to a question from the President of the Court, we have submitted to the Court a collection of public statements made by Iranian officials in the last few weeks, and I would like to refer to two or three of those statements. On 4 November, the very day of the Embassy seizure by the so-called Iranian students, the Ayatollah Khomeini, then the *de facto* Chief of State, approved the students' action, and the next day, 5 November, a number of Iranian officials did exactly the same. On that day, 5 November, the Ayatollah Khomeini publicly refused to call upon the students to withdraw; the Commander of the Revolutionary Guard congratulated the students and pledged the Guard's full support for the action; the public prosecutor and the judiciary announced their support; and then the Foreign Minister of Iran declared: "The action of the students enjoys the endorsement and support of the Government."

On 18 November the Ayatollah Khomeini declared: "what our nation has done is to arrest a bunch of spies, who, according to the norms, should be investigated, tried and treated in accordance with our own laws." He made clear at the same time that the hostages would be released only if the United States first met certain specified demands of the Iranian Government.

I ask the Court to bear in mind that these statements emanated from a Government which is under a solemn and continuing legal duty to provide the most constant protection and security to United States personnel. Indeed, as documented in the materials we have submitted to the Court, two senior members of the Iranian Government have publicly acknowledged this legal duty, while at the same time approving its violation.

Continuing the story of the hostages, the fact is that since the time of their capture they have been subjected to a harrowing ordeal. Bound hand and foot and frequently blindfolded, they have been subjected to severe discomfort, complete isolation and threats, including repeated threats both by their captors and by the Iranian Government to the effect that, in certain circumstances, they, the hostages, would be put on trial and even put to death. They have been paraded blindfolded before hostile crowds, denied mail and visitors, and essentially held incommunicado. Some time ago, it is true, five non-American captives and 13 American hostages were released, but more than 50 United States citizens continue to be held in these inhumane and dangerous circumstances. Moreover, recent reports suggest that some of the hostages may have been transferred from the Embassy compound to other places of confinement. We have no way of knowing the details of the conditions of their confinement or their treatment at any such new locations.

When these facts are held up against the standards of international law to which the Attorney-General earlier referred, including the principles that every diplomatic agent must be kept inviolate from any form of arrest or detention and from any attack upon his person, freedom or dignity, I suggest that it is not really possible to imagine any clearer violations of the four applicable treaties than the violations presented in this case. On this score, I might also add, there is true unanimity among international legal scholars. Since early November there has been an outpouring of pronouncements from leading international legal scholars throughout the world, and all have unanimously condemned the Iranian treatment of the American nationals in Tehran.

In addition, the same view has received the public support of numerous well-known organizations of jurists, including various societies of international law, the International Law Association, and the International Commission of Jurists. Without exception, the scholars and learned societies have condemned the Iranian hostage-taking as the purest kind of violation of international law. To cite just a single example, the retired President of this Court stated in a recent interview as follows:

> ". . . the conduct of the Iranian authorities in this matter constitutes the most flagrant violation of the norms of international law honouring the privileges and immunity of diplomatic missions and their officials".

He went on to say that history will record Iran's actions as "the most complete list of infractions" against these universally recognized norms of international law.

I know of no dissent. Moreover, we are not speaking in the past tense. The violations are going forward and continuing as I stand here this afternoon. With each passing day—indeed with each passing hour—the rights of the United States and the rights of its citizens in Tehran are being assaulted in a manner which is totally inconsistent with the rule of law. That on-going and continuing violation of plainly established rights is the essence of the problem before the Court this afternoon.

Having reviewed the substantive elements, legal and factual, of the dispute with Iran which the United States has brought before this Court, I would like now to turn to the question of the Court's jurisdiction over the dispute. As I understand the teachings of the prior decisions of the Court with respect to the indication of provisional measures, it is not necessary for a State requesting such measures to establish conclusively that the Court has jurisdiction. The urgency of the situations which call for provisional measures is such that an effort to reach final and conclusive determinations with respect to jurisdiction could well defeat the purpose of Article 41 of the Court's Statute. For these reasons, as I understand it, the Court follows the principle that if the Party requesting interim protective measures makes a prima facie showing that the Court has jurisdiction over the dispute, that showing provides a sufficient jurisdictional predicate for the Court to act affirmatively on the request.

In this case, I respectfully submit, the United States can make more than a prima facie showing. Indeed, I think I can demonstrate that the Court has jurisdiction over the present dispute beyond any doubt at all.

In this connection let me refer to the jurisdictional provisions of the Optional Protocol to the Vienna Convention on Diplomatic Relations. Article I of the Protocol provides unequivocally:

> "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."

Needless to say, the United States is a party to a dispute with Iran. It has repeatedly called upon the Government of Iran to release the hostages pursuant to its international legal obligations, and Iran has repeatedly refused. Since both States are parties to the Protocol, and since one of them (the United States) has presented an application to the Court, Article I confers mandatory jurisdiction upon the Court.

It is true that Articles II and III of the Protocol go on to provide that the parties to the dispute may agree on other methods of settling the dispute, namely by arbitration or conciliation. That is to say, the compulsory jurisdiction of this Court under Article I is unqualified, but under Articles II and III the parties may mutually agree on arbitration or conciliation instead. I want to emphasize, however, that the settlement procedures contemplated by Articles II and III are purely optional. In the English version of the Protocol this is indicated not only by the permissive word "may" as it appears in Articles II and III, but also by the Preamble to the Protocol, which indicates explicitly the intention that the Court shall have jurisdiction "unless" arbitration or conciliation has been agreed upon by the parties. Moreover, I am informed that the same conclusion flows from the equally authoritative texts of the Protocol in French, Spanish, Russian and Chinese. And, finally, the same conclusion—the conclusion that the Court has jurisdiction if no such optional agreement on arbitration or conciliation has been reached—is confirmed by two articles by well-known scholars, both of which appear in a volume whose English title is *A Collection of Studies on International Law, In Honor of Paul Guggenheim*, published in 1968. May I refer the Court respectfully to pages 634 and 695 of that volume, at which Herbert Briggs and Paul Ruegger emphasize that under treaty provisions of this kind the Court's jurisdiction is obligatory where the parties have not in fact resorted to other means of settlement.

The Court will not be surprised to hear from me that no agreement on other means of settlement has been reached in this case. In response to questions propounded by the President, the United States Under Secretary of State for Political Affairs, Mr. Newsom, has provided the Court with a factual account (see

p. 43, *infra*) of the efforts made by the United States to open negotiations with the Iranian authorities, and the total rejection of all such overtures by the Government of Iran. Specifically, in early November, after the seizure of the hostages, when the United States Government dispatched a distinguished emissary, a former United States Attorney-General, to visit Iran to discuss the hostage-taking with the Government of Iran, that Government refused even to let him enter the country. He stayed in Istanbul for several days attempting assiduously to open discussions, but eventually he returned home without having been able to meet any representative of the Government of Iran. Moreover, as Mr. Newsom has stated, subsequent efforts by the United States to negotiate have been equally unsuccessful. In fact, every one of the United States' repeated efforts to open direct communications between the two parties has been rebuffed by Iran which, incidentally, has even refused to attend the relevant meetings of the United Nations Security Council. Under such circumstances the United States respectfully submits that, even if Articles II and III of the Protocol required a prior attempt to arbitrate or conciliate as a condition on this Court's jurisdiction—and we do not believe that they do—that requirement would have been obviated by this Iranian conduct. I should add that exactly the same is true with respect to the Vienna Convention on Consular Relations whose jurisdictional provisions are identical to those of the Vienna Convention on Diplomatic Relations.

Turning to the elements of the dispute which arise under the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, the jurisdiction of the Court is again, I submit, crystal clear. Article XXI, paragraph 2, of the treaty provides in its entirety as follows:

> "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."

Again, in view of the fact that the repeated efforts of the United States to deal with the dispute by diplomacy have been consistently rebuffed by the Government of Iran, it seems indisputable that under the Treaty of Amity, this case is properly before this Court.

A final jurisdictional issue arises under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. With respect to that Convention, the jurisdictional showing that we can make is admittedly less compelling than the showing we have made with respect to the other three treaties. In contrast with the Vienna Conventions on Diplomatic and on Consular Relations, Article 13 of the Convention on Internationally Protected Persons might be read as requiring a six-months' effort by the parties to arbitrate the dispute as a prerequisite to the Court's jurisdiction. It is the position of my Government, however, that where, as in this case, one of the parties has closed down the Embassy of the other and has flatly refused even to open communications, either through the other's special emissary or in any other fashion, the arbitration requirement is rendered inoperable. It is our position, therefore, that we have made out a prima facie showing of jurisdiction, even under the Internationally Protected Persons Convention. Moreover, even if no such showing had been made, all of the major claims presented in the Application of the United States are solidly based, I submit, upon the other three treaties—as to which, in our view, the Court's jurisdiction appears not merely prima facie, but beyond dispute.

At this point, in response to a question raised by the President of the Court, I should make one final comment on the Court's jurisdiction. As the Court is aware, the Security Council of the United Nations has addressed the present dispute, and in resolution No. 457, adopted six days ago, the Council called

upon the Government of Iran to bring about the immediate release of the hostages. In such circumstances it might conceivably be suggested that this Court should not exercise jurisdiction over the same dispute.

I respectfully submit that any such suggestion would be untenable. It is, of course, an impressive fact that the 15 countries represented in the Security Council—15 countries of very diverse views and philosophies—have voted unanimously—15 to nothing—in favour of the resolution to which I have referred. The fact remains, however, that the Security Council is a political organ which has responsibility for seeking solutions to international problems through political means. By contrast, this Court is a judicial body with the responsibility to employ judicial methods in order to resolve those problems which lie within its jurisdiction. There is absolutely nothing in the United Nations Charter or in this Court's Statute to suggest that action by the Security Council excludes action by the Court, even if the two actions might in some respects be parallel. By contrast, Article 12 of the United Nations Charter provides that, while the Security Council is exercising its functions respecting a dispute, the General Assembly shall not make any recommendation on that dispute—but the Charter places no corresponding restriction on the Court. As Rosenne has observed at page 87 of his treatise, *The Law and Practice of the International Court of Justice*, the fact that one of the political organs of the United Nations is dealing with a particular dispute does not militate against the Court's taking action on those aspects of the same dispute which fall within its jurisdiction.

To sum up on this point, the United States has brought to the Court a dispute which plainly falls within the Court's compulsory jurisdiction, and I respectfully submit that, if we can satisfy the Court that an indication of provisional measures is justified and needed in a manner consistent with Article 41 of the Court's Statute, the Court will have a duty to indicate such measures, quite without regard to any parallel action which may have been taken by the Security Council of the United Nations. As to whether the actions of the Security Council affect the need for provisional measures, I will have more to say a little later in my argument, but first I would like to explain the specific reasons which underlie our request for such an indication of such measures.

On this subject I start from the premise that an essential purpose of such provisional measures is to preserve the rights of the parties pending the final decision of the Court. Putting the matter in other terms, it is familiar jurisprudence that the Court may look to see whether any injury which may be done to one party or the other during the pendency of the case will be, on the one hand, an injury which can be remedied through the Court's final decision or, on the other hand, whether during the pendency of the case one party will be subject to an injury which is actually irreparable. An injury of the former kind may or may not justify an indication of provisional measures, but where an irreparable injury threatens or is actually being inflicted during the pendency of the case, there is clear justification—and indeed an urgent need—for interim protective measures. As the Court observed in the *Fisheries Jurisdiction* cases, the *Nuclear Tests* cases, and the *Aegean Sea* case, Article 41 of the Court's Statute "presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings".

Applying this standard of irreparable injury to the present case, I submit that the United States is clearly entitled to interim measures of protection. The simple fact is that the United States' rights of the highest dignity and importance are being currently and irreparably violated by the Government of Iran. Specifically, the international agreements upon which we base our claim have conferred upon the United States the right to maintain a working and effective embassy in Tehran, the right to have its diplomatic and consular personnel protected in their lives and persons from every form of interference and abuse, and the right to have its nationals protected and secure. As I indicated earlier, with each

passing hour those rights are being destroyed, and the injury, once incurred, is plainly and completely irreparable. The trauma of being held hostage day after day in conditions of danger cannot be erased; the weeks of interruption of diplomatic functions cannot be repaired. If the hostages are physically harmed, this Court's decision on the merits cannot possibly heal them. Given the nature of the rights involved, an ultimate award of monetary damages simply could not make good the injuries currently being sustained as this case awaits the Court's judgment.

That being so, I would direct the Court's attention to an early and similar case decided by the Permanent Court of International Justice. In that case, entitled the case concerning the *Denunciation of the Treaty of 2 November 1865 between China and Belgium*, interim measures were requested in order to provide for the protection and security of nationals and property, the performance of consular functions and freedom from arrest and criminal penalties except in accordance with law. In indicating the requested protective measures, the President of the Court emphasized that the injury expected to occur during the pendency of the case "could not be made good by the payment of an indemnity or by compensation or restitution in some other material form". In that case, given the threat of irreparable injury, interim measures were indicated, and we seek the same relief here.

Moreover, I should emphasize that the threat of future irreparable injury is growing. The situation in Tehran is volatile in the extreme, and the danger for the hostages can sharply increase at any moment. The current Chief of the Iranian State himself has spoken of the possible destruction of the hostages—the ultimate in irreparable injury. In this connection it should be recalled that in recent months over 600 Iranian nationals have actually been executed after peremptory trials by revolutionary councils. The defendants in those trials were denied the right to counsel, the right to present defensive evidence, the right to appeal—indeed, the right to any legal process at all—and the penalty was death. Against that background, the often repeated threats to put the American hostages on trial for alleged crimes create an ominous and an unacceptable threat, not only for the hostages and for the United States, but for the entire international community. In the words of the Secretary-General of the United Nations, "The present crisis poses a serious threat to international peace and security", a threat which may well be alleviated if this Court promptly indicates the interim measures requested by the United States.

The Court adjourned from 4.10 to 4.30 p.m.

Before the recess I had reviewed the need for provisional measures based upon the irreparable injury now being suffered by the citizens of the United States in Tehran, and I would like now to turn to an alternative standard under which the United States in our submission is now entitled to the requested relief.

As the Court is aware, in many legal systems it is recognized that interim relief of the kind requested here is appropriate in order to preserve the status quo *pendente lite*—and it is the position of the United States that this principle also cries out for immediate judicial action in this case.

On this point, however, I do not wish to be misunderstood. Obviously I am not asking the Court to maintain the status quo as created by the Government of Iran over the past days and weeks. Obviously the status quo which we seek to preserve—or, more correctly, to which we seek to return—is the status quo *ante*, the situation immediately prior to the Iranian seizure of the Embassy and the hostages.

There is, I submit, clear authority for such relief, as noted in Dumbauld's treatise, *Interim Measures in International Controversies*. Referring to the general

principle of enforcing or sanctioning the status quo through indications of interim measures—and citing cases and authorities—Judge Dumbauld states as follows (and I quote from p. 187 of his treatise):

> "It should be noted that the status quo thus sanctioned is not that at the time of the judgment, or at the date suit is brought, but the last uncontested status prior to the controversy."

The controversy which we have brought before the Court arose with the seizure of the Embassy and the hostages in Tehran on 4 November 1979, and I submit that the situation cries out for interim measures calling upon Iran to release the hostages and the Embassy and thus return to the status quo as of 3 November 1979.

In order to test the validity of this conclusion, I should like to pose for the Court a simple hypothetical case. Let us assume that on 4 November 1979, instead of allowing the Embassy and the hostages to be seized, the Revolutionary Council of Iran had announced that, unless certain demands were met by the United States by—let us say—10 December 1979, the United States Embassy in Tehran would then be attacked and its personnel taken hostage.

If in that situation the Government of the United States had brought its case to this Court and requested an indication of provisional measures calling upon Iran to desist from its threat, I suggest that the Court would have acted affirmatively on that request. In that situation, I submit, the Court would have called upon Iran to leave the American diplomatic staff in Tehran free and inviolable and immune from prosecution—and I want to emphasize that that, in essence, is exactly the basic provisional measure we are requesting from the Court now. In other words, we would have been entitled, in our view, to such a provisional measure if Iran had not yet violated its international legal obligations to the United States, and, in our view, that necessarily means that we are entitled to the same protective measures now—now that Iran has actually embarked upon a profound and continuing violation of our rights. To hold otherwise at this time—to withhold such protective measures—would be to allow Iran to benefit from actually using force instead of merely threatening to do so.

For the foregoing reasons, we believe that we are clearly entitled, as a matter of law and logic, to the protective measures which we are seeking, and we submit that humanitarian considerations require no less.

At this point I would like to turn to the question of whether there are any possible legal obstacles to our request. We have considered that question with care and we, at least, have concluded that there are none.

On this subject I would refer at the outset to the telegraphic message (see pp. 18-19, *supra*) which has just been received by the Court from the Government of Iran and reference to which was made by the President at the opening of the hearing. Since that message constitutes Iran's only response to the United States' request for provisional measures, I should like to reply thereto on behalf of my Government.

I think it is significant that the opening paragraph of the Iranian statement expresses great respect for this Court and its achievements in resolving legal conflicts between States. It is our hope and expectation that this respect will lead the Government of Iran to honour in full whatever action the Court may take in response to the pending United States request.

The main theme of the telegraphic statement of the Government of Iran is that the question of the American hostages in Tehran is only one of several problems or disputes that now exist as between the two Governments. It is alleged in general terms that in various ways the Government of the United States has behaved improperly towards Iran in past years and that in this larger context the problem of the American hostages in Tehran is only a marginal and secondary problem.

There are, I suggest, two short answers to this proposition. First of all, Iran's view of its treatment of the American hostages as a *secondary* problem is not shared by the Secretary-General of the United Nations or the Security Council of the United Nations. They have unanimously characterized the hostages' captivity as a major threat to international peace. Secondly, to the extent that there are *other* disputes between Iran and the United States, Iran has made absolutely no effort to bring any such matters before the Court. The fact is that the *only* dispute which *has* been brought before the Court is the dispute relating to the taking of the American hostages and we submit, with the greatest respect, that that is the only dispute with which the Court can now deal. The Government of Iran asserts that the Court should not take cognizance of the dispute relating to the hostages, but for the reasons I have previously indicated, that is simply incorrect as a matter of law. The hostage question clearly lies within the Court's jurisdiction and, we submit, is properly presented for your decision now.

Paragraph 4 of Iran's statement of yesterday goes on to suggest—albeit somewhat indirectly—that the United States is now improperly seeking part or all of the relief which it seeks on the merits. In fact, if the Court compares our request for interim measures with the form of judgment that we are seeking, it will find that the two pleadings request different forms of relief—except in one respect. The only respect in which our request and our Application overlap is that both pleadings ask in effect for an order calling for the immediate release of the hostages and their safe departure from Iran.

I submit, however, that this convergence of the two requests results merely from an excess of caution on the part of the United States. Frankly, we are hopeful that this Court will indicate measures calling for immediate release of the hostages and that Iran, consistent with its asserted respect for this Court, will comply long before it becomes necessary for the Court to write its final judgment. It is our hope and expectation, therefore, that the request for a judgment requiring release of the hostages will have become moot long before the Court acts on our Application for such a judgment. In a very real sense, therefore, our request for release of the hostages, being one of the very greatest urgency, should have appeared only in our pending request for an indication of provisional measures—and should not have been included in our application for judgment. Nevertheless, not wishing to presume as to how the Court will rule as a result of today's hearing, we took the conservative course of including a similar request in our Application. I earnestly submit, however, that such conservatism on our part does not in any way militate against our request for an indication of interim measures; the need for such relief is urgent in the extreme.

This brings me to the final point made in yesterday's statement by the Government of Iran. It is there suggested that if provisional measures are indicated by the Court, they cannot properly be made unilateral—the implication being that the Court could not properly call for the release of the hostages by Iran without calling for some equivalent action by the United States.

That suggestion is simply, I submit, incorrect. Article 41 of the Court's Statute authorizes the Court, where circumstances so require, to indicate "any provisional measures which ought to be taken to preserve the respective rights of *either* party". I submit that clearly contemplates that where one of two parties is unilaterally causing irreparable injury to the other, a unilateral provisional measure is entirely appropriate. As I shall indicate in a moment, the United States would have no objection if the Court were to include, in an indication of provisional measures, the conventional provisions calling upon both parties to avoid aggravation of the dispute and preserve their rights—but we nevertheless assert an urgent need for unilateral action by Iran to release the hostages.

Having provided that response to the recent statement of the Government of Iran, I should now like to return to the question of whether there are any legal

obstacles which might militate against our pending request. In this respect we have considered with care the possibility that the Court's 1976 decision in the *Aegean Sea Continental Shelf* case might be viewed as contrary authority against our request, having in mind the recent action of the United Nations Security Council. I respectfully submit, however, that the facts and law of the *Aegean Sea* case are so distinguishable that, far from militating against an indication of provisional measures in this case, they actually support the present position of the United States.

In the Aegean Sea dispute between Greece and Turkey, both parties participated in the Security Council debates on the dispute. Both parties agreed in the Security Council that a solution to the dispute could be achieved only through direct negotiations between the parties. After the Council called upon both parties to negotiate, both parties expressly agreed that they would do so. Moreover, in the *Aegean Sea* case the question whether violations of international law were occurring was open to legal question, and the jurisdiction of the Court was also in doubt. In that situation, when Greece requested that this Court indicate provisional measures calling upon Turkey to refrain from certain exploratory activities on the disputed continental shelf, the Court assumed that both States would honour their undertakings to negotiate and that aggravation of the dispute would thereby be avoided. Most importantly, the Court was not persuaded that the activities of which Greece complained were actually threatening irreparable injury. For those reasons, as we read that case, the Court concluded that an indication of provisional measures was unnecessary.

The contrast with the present case, I submit, is very clear indeed. In the present case the Court plainly has jurisdiction; the authorities of Iran have refused to send a representative to take part in the proceedings of the Security Council; they have rejected the Council's resolution as "an American plot"; they have refused to communicate with the United States Government in any way at all; their violations of international law are clear; by threatening trials, they are continuing to aggravate the dispute; and truly irreparable injury is proceeding day by day. In the present case the need for protective measures, I submit, could not be more imperative.

If there were any doubt about the distinctions between the *Aegean Sea* case and the present one, I think it is laid to rest by the terms of the resolution of the Security Council in this case and the debate which attended its adoption. Resolution 457, to which the President of the Court has earlier referred, in its first operative paragraph,

> "Urgently calls on the Government of Iran to release immediately the personnel of the Embassy of the United States of America being held in Tehran, to provide them protection and to allow them to leave the country."

The second operative paragraph

> "Further calls on the Governments of Iran and the United States of America to take steps to resolve peacefully the remaining issues between them to their mutual satisfaction in accordance with the purposes and principles of the United Nations."

That is to say, the resolution calls upon the parties to take steps directed not to the release of these hostages, but to "the remaining issues" between the two States. Those remaining issues, however, are not before this Court, and the Court can take no responsibility for them. Under its Statute the Court's function "is to decide in accordance with international law such disputes as are submitted to it . . ." and that is a judicial function which has not been, and of course could not be, undertaken by the Security Council.

In short, there is a clear division of responsibilities here and that division was clearly recognized during the proceedings in the Security Council. At that time United States Ambassador Donald McHenry stated as follows:

> "The United States wishes to place on the record that the adoption of this resolution by the Security Council clearly is not intended to displace peaceful efforts in other organs of the United Nations. Neither the United States nor any other Member intends that the adoption of this resolution *shall have any prejudicial impact whatever on the request of the United* States for the indication of provisional measures of protection by the International Court of Justice."

Before making that statement Ambassador McHenry and his colleagues informed Council Members that the United States would speak in this vein during the debates about this pending case before the Court, and all of the Members so consulted were in agreement with the statement. Moreover, after the statement was made, no Member of the Council disagreed with the stated intention to the effect that the Council's action should not impede the United States' pending request before this Court. Thus all 15 Members of the Security Council evidently agree that the Court is free to act affirmatively on the pending request of the United States if it is inclined to do so.

Let me conclude my argument in favour of interim protective measures by reciting exactly what measures are being requested. The Government of the United States respectfully requests that the Court, pending final judgment in this case, indicate forthwith the following:

First, that the Government of Iran immediately release all hostages of United States nationality and facilitate the prompt and safe departure from Iran of these *persons and all other United States officials in dignified and humane circum*stances.

Second, that the Government of Iran immediately clear the premises of the United States Embassy, Chancery and Consulate in Tehran of all persons whose presence is not authorized by the United States Government and restore the premises to United States control.

Third, that the Government of Iran ensure that all persons attached to the United States Embassy and Consulate should be accorded, and protected in, full freedom of movement necessary to carry out their diplomatic and consular functions. That is to say, to the extent that the United States should choose, and Iran should agree, to the continued presence of United States diplomatic personnel in Tehran, they must be permitted to carry out their functions in accordance with their privileges and immunities.

Fourth, that the Government of Iran not place on trial any person attached to the Embassy and Consulate of the United States—and refrain from any action to implement any such trial.

Now, in connection with this fourth request, I should like to draw the Court's attention to recent reports that Iran may intend to continue the captivity of these hostages so that they may appear before some sort of international commission. Whatever the purpose of the continued detention, of course, it remains totally unlawful. Accordingly, in light of these recent reports, with the Court's permission, the United States wishes now to amend its fourth request for interim measures to add: that the Government of Iran must not detain or permit the detention of these persons in connection with any proceedings, whether of an "international commission" or otherwise, and that they not be forced to participate in any such proceeding.

Finally, the fifth request of the United States is that the Government of Iran ensure that no action is taken which might prejudice the rights of the United States in respect of the carrying out of any decision which the Court may render

on the merits, and in particular neither take, nor permit, action that would threaten the lives, safety, or well-being of the hostages.

This recitation of the provisional measures requested by the United States makes clear, we believe, that we are seeking an indication which is relatively specific as to the measures to be taken. We recognize that in some cases it may be appropriate simply to indicate, in general terms, that each party should take no action to aggravate the dispute or prejudice the rights of the other party in respect of the carrying out of the Court's decision on the merits. As I indicated earlier, the United States has no objection to the inclusion of such general provisions, subject, of course, to the usual specification that such measures will apply on the basis of reciprocal observance. I earnestly submit, however, that, in the circumstances of this particular case, any provisional measures indicated by the Court should be specific as to the release of the hostages, the clearing of the Embassy, and the inadmissibility of putting the hostages on trial, or bringing them before any international commission. Every effort should be made to ensure that the Court's message will be clearly understood in Iran, thus maximizing the chance that it will be effective.

There is ample precedent, I submit, for the specificity of our request. In the *Anglo-Iranian Oil Co.* case, the Court, in indicating provisional measures, included not only the usual language about avoiding prejudice to the rights of the parties and aggravation of the dispute; it also included particularized measures as to the method by which the Anglo-Iranian Oil Company should be managed during the pendency of the litigation. Similarly, as another example, in the *Fisheries Jurisdiction* cases, the Court indicated very specific provisional measures as to the enforcement of fisheries regulations and even permissible annual catches of fish. I respectfully submit that, if such specific measures were appropriate in the context of these commercial cases, they are the more appropriate in a case which involves the lives and liberties of some 50 human beings and in which, because of divergences in culture and language, misunderstandings as to meaning may arise unless any provisional measures indicated by the Court are as specific and hence as clear as possible. The specific measures indicated in the case between Belgium and China which I have earlier discussed are illustrative of what is required; the measures there indicated are not unlike those sought here.

In concluding my argument this afternoon, I would respectfully—most respectfully—urge that the Court rule on the request of the United States with the maximum possible expedition. We have taken the liberty of reviewing the timing of the Court's actions on requests for provisional measures in years past, and we have found that in one case, the Court indicated provisional measures 13 days after the request was filed; in another case the Court ruled on the request in nine days; and in a third case, the Court acted in only six days. Today is the eleventh day since the pending United States request was filed, and we recognize, of course, that the Court will need some amount of additional time to deliberate and to act. Nevertheless, we respectfully request that the Court act with the maximum possible speed—because we are dealing here, again, not with commercial interests, but with the lives and liberties of persons who have now been under close confinement and imminent peril for more than five weeks. The danger for these 50 or more lives increases as each day goes by. It is critically important to my Government to achieve the immediate release of these individuals, and I suggest that it is no less important to the world community and to the rule of law.

Mr. President, distinguished and learned Members of the Court, we believe that this case presents the Court with the most dramatic opportunity it has ever had to affirm the rule of law among nations and thus to fulfil the world community's expectation that the Court will act vigorously in the interests of

international law and international peace. The current situation in Tehran demands an immediate, forceful, and explicit declaration by the Court, calling upon Iran to conform to the basic rules of international intercourse and human rights. Only in that manner, I respectfully suggest, can the Court discharge its high responsibilities under the Charter of the United Nations.

On behalf of the Government of the United States of America, I respectfully request that the Court indicate provisional measures calling upon the Government of Iran to bring about the immediate release of the United States nationals now held captive in Iran and the transfer of control of the American Embassy in Tehran to the Government of the United States.

QUESTIONS BY JUDGE MOSLER AND BY THE COURT

The PRESIDENT: Mr. Owen, Judge Mosler has one question which he would like to put to you as Agent of the United States Government, and I have certain further questions to put to you on behalf of the Court. You may either reply to these questions now, if you think that is convenient, or you may reply in writing, but for the very reason which you yourself indicated at the end of your argument, this is a very urgent matter and therefore we would wish to have your replies with the utmost despatch.

Judge MOSLER: With your permission, Mr. President, I would like to put the following question to the Agent of the United States of America.

The first submission of the United States request for the indication of provisional measures is worded as follows:

> "That the Government of Iran immediately release all hostages of United States nationality and facilitate the prompt and safe departure from Iran of these persons and all other United States officials in dignified and humane circumstances."

Would the Agent of the United States be so good as to provide further details regarding the persons referred to herein as "all other United States officials"?

The PRESIDENT: Mr. David D. Newsom, in response to my request of 4 December 1979 for certain information, stated in paragraph 3 of his Declaration of 6 December 1979 that Mr. Ramsey Clark had gone to Iran on 7 November 1979 in a vain attempt "to deliver a message from the President of the United States to the Ayatollah Khomeini and to seek the immediate release of the hostages". He further stated in that paragraph that the United States Government has "communicated positions on various matters relating to the crisis to the Iranian Chargé d'Affaires in Washington" and has also "put specific questions to the Chargé d'Affaires". Would the Agent of the United States please be good enough to furnish the Court with a copy of the message intended to be delivered by Mr. Ramsey Clark and of any documents or questions communicated to the Iranian Chargé d'Affaires in Washington.

In paragraph 8, that is, the final paragraph of the declaration by Mr. David D. Newsom, to which I have referred, he furnished certain information concerning the categories of persons stated to be held in the United States Embassy or elsewhere in Iran. The Court would, however, be grateful if you would provide it with more details, making clear the particular status of everyone in each category and specifying the manner of their accreditation.

Reference is made in the Application to the seizure of two United States Consulates in, respectively, Tabriz and Shiraz. The Court would be grateful to receive such information as the United States Government may possess as to what happened to the premises and personnel of these consulates and, in general, to its consular staff in Iran.

Am I understanding that you would wish to reply now, or would you wish to reply in writing?

Mr. OWEN: Mr. President, to some extent these questions call for factual detail of a kind which I do not have available as I stand here this afternoon and I, therefore, respectfully ask the Court's permission to assemble those factual details in the course of the evening and we will have a written response to all of those questions in the hands of the Court tomorrow morning before the opening of business (see pp. 116-117, *infra*).

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT: Well, I thank the Agent and Counsel of the United States of America for the assistance they have given the Court. I ask the Agent to remain at the disposal of the Court for any further information that it may require. Subject to that reservation, I declare the oral proceedings on the request of the United States of America for the indication of provisional measures in this case closed.

The Court will give its decision on the United States' request at a very early date in the form of an Order read at a further public hearing.

The Court rose at 5.10 p.m.

SECOND PUBLIC SITTING (15 XII 79, 5 p.m.)

Present: [See sitting of 10 XII 79.]

READING OF THE ORDER

The PRESIDENT: The Court meets today to deliver its decision on the request made by the United States of America for the indication of provisional measures[1] in the case concerning *United States Diplomatic and Consular Staff in Tehran*, pursuant to Article 41 of the Statute of the Court.

The Court's decision takes the form of an Order, which I shall now read. In accordance with the usual practice, I omit the opening formal paragraphs reciting the institution of proceedings, and subsequent procedural steps.

[The President reads paragraphs 11 to 46 of the Order[2].]

I shall ask the Registrar to read the operative clause of the Order in French.

[The Registrar reads the operative clause in French[3].]

The decision of the Court is unanimous, and no Member of the Court has appended any opinion or declaration thereto.

Article 41, paragraph 2, of the Statute requires that notice of the measures indicated by the Court be forthwith given to the parties and to the Security Council. I note the presence in Court of the Counsel of the United States of America, to whom a sealed copy of the Order has been delivered during the present sitting. The Government of Iran is being informed by telegram[4] of the measures indicated, and a copy of the Order is being transmitted to it by the most rapid possible means. A similar telegram, and a copy of the Order, are being despatched to the Secretary-General of the United Nations.

I declare the sitting closed.

(Signed) Humphrey WALDOCK,
President.

(Signed) S. AQUARONE,
Registrar.

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[1] See pp. 11-12, *supra*.
[2] *I.C.J. Reports 1979*, pp. 12-20.
[3] *Ibid.*, pp. 20-21.
[4] See pp. 504-505, *infra*.