INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN

(UNITED STATES OF AMERICA *v.* IRAN)

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE RELATIVE AU PERSONNEL DIPLOMATIQUE ET CONSULAIRE DES ÉTATS-UNIS À TÉHÉRAN

(ÉTATS-UNIS D'AMÉRIQUE c. IRAN)

ORAL ARGUMENTS

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague,
from 18 to 20 March and on 24 May 1980,
President Sir Humphrey Waldock presiding

PLAIDOIRIES

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au palais de la Paix, à La Haye,
du 18 au 20 mars et le 24 mai 1980,
sous la présidence de sir Humphrey Waldock, Président

THIRD PUBLIC SITTING (18 III 80, 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*;
Mr. Stephen M. Schwebel, Deputy Legal Adviser, Department of State, *as Deputy-Agent and Counsel*;
Mr. Thomas J. Dunnigan, Chargé d'Affaires a.i., Embassy of the United States of America, *as Deputy-Agent*;
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*.

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court meets today to hear oral argument on the case concerning *United States Diplomatic and Consular Staff in Tehran* brought by the United States of America against the Islamic Republic of Iran. The case, which concerns a sequence of events beginning on 4 November 1979 in and around the United States Embassy in Tehran, involving the over-running of the embassy premises and the seizure and detention of United States diplomatic and consular staff, was begun by an Application (see pp. 3-8, *supra*) filed 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 Optical 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 XIII, paragraph 1, of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. 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 a Request for the indication of provisional measures (see pp. 11-12, *supra*), and after a public hearing on 10 December 1979, the Court, by an Order dated 15 December 1979[1], indicated certain provisional measures pending final judgment in the case.

By an Order dated 24 December 1979[2], time-limits were fixed for the written proceedings. The Memorial (see pp. 123-247, *supra*) of the United States of America was filed within the allotted time-limit. The time-limit fixed by the Order[1] for the Counter-Memorial of the Islamic Republic of Iran was 18 February 1980, "with liberty for the Islamic Republic, if it appoints 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". No Counter-Memorial was filed by the Islamic Republic of Iran, and no request was made by it for reconsideration of the time-limit. The written proceedings thus became closed, and the case ready for hearing.

The fixing of the date for the oral proceedings was deferred for a short time at

[1] *I.C.J. Reports 1979*, p. 7.
[2] *Ibid.*, p. 23.

the request of the United States[1]. Subsequently the Court, after consulting the United States[1] and giving the Islamic Republic of Iran the opportunity of expressing its views, fixed today as the date for the opening of the oral proceedings, pursuant to Article 54 of the Rules of Court.

The Islamic Republic of Iran has not appointed an Agent in accordance with Article 42 of the Statute and Article 40 of the Rules of Court; nor has it exercised its right under Article 31 of the Statute to choose a judge *ad hoc* to sit in the present case. During the phase of the proceedings devoted to the Request of the United States for the indication of provisional measures, a letter addressed to the President of the Court by the Iranian Government and dated 9 December 1979 was received in the Registry, the text of which was made public at the hearing held on 10 December 1979 (see pp. 18-19, *supra*). Yesterday, on 17 March 1980 a further communication was received by telex from the Minister for Foreign Affairs of Iran, laying before the Court the viewpoint of the Islamic Republic of Iran on similar lines to those in its previous communication of 9 December 1979. I shall ask the Registrar to read out the communication received yesterday.

Le GREFFIER:

«J'ai l'honneur d'accuser réception des télégrammes concernant la réunion, le 17 mars 1980, de la Cour internationale de Justice, sur requête du Gouvernement des Etats-Unis d'Amérique, et de vous exposer ci-dessous encore une fois la position du Gouvernement de la République islamique d'Iran à cet égard:

Le Gouvernement de la République islamique d'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 et à attirer 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.

Le Gouvernement de la République islamique d'Iran estime que la Cour ne peut et ne doit se saisir de l'affaire qui lui est soumise par le Gouvernement d'Amérique, et de façon fort révélatrice, limitée à la soi-disant question des «otages de l'ambassade américaine à Téhéran».

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.

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 années.

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

[1] See *I.C.J. Reports 1980*, p. 22, para. 41.

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.

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

Téhéran, le 16 mars 1980.

(Signé) Sadegh GHOTBZADEH,
ministre des affaires étrangères
du Gouvernement de la République
islamique de l'Iran.»

The PRESIDENT: I note the presence in Court of the Agent and Counsel of the United States of America; as already mentioned, the Court has not been notified of the appointment of an agent for the Government of the Islamic Republic of Iran, and I note that no representative of that Government is present in Court. I now call upon the Agent of the United States of America to address the Court, and 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 from the Iranian Government which has just been read by the Registrar. I would also ask him in the course of his observations[1] to inform the Court of the views of his Government on the following questions, of which I have given him prior notice:

1. Whether the establishment or work of the commission of inquiry sent by the Secretary-General to Tehran affects in any way the jurisdiction of the Court to continue the present proceedings or the admissibility or propriety of these proceedings.

2. Whether a State may have an inherent right in any extreme circumstances to override its obligations under the rules of diplomatic and consular law to respect the inviolability of diplomatic and consular personnel and premises; and if so in what circumstances.

3. The United States in its Application and Memorial has alleged the complicity of the Iranian authorities in the overrunning of its Embassy by the demonstrators in Tehran and the holding of its diplomatic and consular personnel as hostages. If the Court were to so find, what implications would that finding have in relation to the United States' request in *(b)* (v) of its Application that the Iranian Government

> "... 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".

[1] See pp. 270-272, 294-295 and 307-308, *infra*.

ARGUMENT OF MR. OWEN

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. OWEN: Mr. President, distinguished Members of the Court. My name is Roberts Owen. Once again I have the honour to appear before the Court as Agent of the Government of the United States of America in the case concerning United States Diplomatic and Consular Staff in Tehran. As we commence the present hearing, I should like at the outset to emphasize the extraordinary importance of the case which we will be presenting to the Court today and tomorrow.

I start from the premise that the paramount purpose of the United Nations, as recited in the opening words of the first paragraph of the first article of the first chapter of the United Nations Charter, is to maintain international peace and security. Similarly, the maintenance of peaceful relations among States is the essential function of this Court and of those principles of international law under which nations conduct their diplomatic relations. To the extent that a State uses force to assault the mechanisms of peaceful diplomacy, it strikes at the jugular of the entire system by which the world seeks to maintain the peace.

These principles have been so uniformly recognized that for literally centuries no State has used force against the diplomatic envoys and embassies of another. Occasionally rebellious political groups or individuals have assaulted embassies and diplomats, but governments have not. For centuries international wars have come and gone, but by universal agreement embassies and their diplomatic staffs have been regarded as inviolable from official interference through the use of force.

That great tradition of recognizing and honouring the inviolability of embassies and diplomats has now been shattered for the first time in modern history. On 4 November 1979, as this Court is well aware, the United States Embassy in Tehran, and more than 60 of its personnel, were forcefully seized with the co-operation and endorsement of the Government of the Islamic Republic of Iran. Moreover, this shattering attack upon the mechanisms of peaceful relations among nations was not a temporary aberration for which apology and reparation were quickly made; the captivity of 53 American diplomatic agents and staff has continued under the official auspices of the Iranian Government for four-and-a-half months. It seems, to me at least, hard to believe, but the attack on the American Embassy in Tehran occurred more than one-third of a year ago, and 53 of my countrymen are still held in precarious captivity as I stand before the Court today.

During these hearings, as the Court listens to the argument of the Government of the United States, I would respectfully request that the Court continuously bear in mind the implications of the Iranian conduct in terms of the cause of world peace and the cause of fundamental human rights and freedoms. Consider, if you will, what would happen to the fabric of international relations if this Court and the world community were to exhibit any degree of tolerance for what the Iranian Government has done and continues to do. Such tolerance would promote repetition, and repetition would lead tragically, to the unravelling of orderly international relations. It is for this reason that I submit, very seriously, that in this case the Court has a compelling responsibility to condemn, in the most severe terms, the course of conduct which has been pursued by the Islamic Republic of Iran and thus to create the maximum deterrent against its repetition by any country in any part of the world.

Order of Presentation

I should like now to explain the order in which we propose to present our case to the Court. At the outset I propose to review the factual events which have occurred during the four-and-a-half months that the American hostages have been held in captivity in Tehran. At the hearing which the Court held on the tenth of December, we described a number of the relevant events, but in the ensuing three months there have emerged a number of additional facts which are plainly relevant to our case on the merits, and I would be glad of an opportunity to present them to the Court.

Thereafter we would appreciate it if the Court would hear from my colleague, Mr. Stephen Schwebel, who appears as counsel in the case. As the Court may be aware, Mr. Schwebel is a member of the International Law Commission and the Deputy Legal Adviser of the United States Department of State. Mr. Schwebel will develop our argument to the effect that the current dispute between the United States and Iran falls squarely within the jurisdiction of the Court and that there is no valid reason why the Court should not proceed to adjudicate the claims currently being presented by the United States.

Following Mr. Schwebel's presentation, I would appreciate it if the Court would allow me to resume the argument and to develop, in additional detail, the specific substantive claims advanced by the United States as against Iran. I would propose to include within that discussion a point which, in our view, deserves particular attention—namely, that although the United States Embassy in Tehran was originally seized by a mob of people who did not purport to be agents of the Government of Iran, in fact the mob received almost immediate support and endorsement from the Government and have since been operating with the authorization of the Chief of State of the Islamic Republic of Iran. As a result, as I shall explain in more detail, the Government of Iran is internationally responsible for all of the conduct upon which the United States claims in this case are based.

In the course of describing those claims I shall also observe that, although the Government of Iran has suggested that it has grievances of various kinds against the United States, none of those grievances has been presented to this Court, and none can be treated as having any relevance whatever to these proceedings. No such alleged grievance can be allowed to interfere with or detract from the pending claims of the United States.

Finally, I shall develop our contentions as to the relief which we seek in this litigation. In essence, we seek a series of declarations which will conclusively establish to all within the international community that the Government of Iran has committed gross violations of its international obligations to the United States and that it is bound to put an end to the present unlawful situation.

We also seek a declaration to the effect that Iran's unlawful conduct has given rise to an obligation to make reparations to the United States of America. As indicated in our Memorial, the determination of the amount of damage that is due to the United States must necessarily be postponed until Iran's on-going unlawful conduct has been brought to an end, but it is nevertheless important, for reasons which I will subsequently explain, that the Court now affirm that the United States is entitled to reparation in an amount to be subsequently determined.

This is the order in which we intend to proceed, with the Court's permission, and at this time I should like to turn to the essential facts.

Sources of Information

As a preliminary matter I should make one comment about the factual sources upon which we have had to rely in formulating our claims. Since the United States nationals who would normally be supplying the relevant informa-

tion to the United States Government are now in captivity, all normal sources of information have been completely unavailable to us throughout the crisis, and to a very large extent we have had to rely on press reports of actions taken and statements made by the Government of Iran. Under some circumstances of course isolated press reports may be of questionable reliability, but the events that have occurred in Tehran over the last four-and-a-half months have been so dramatic that they have been covered by a multitude of reporters whose reports are substantially unanimous as to the essential facts, giving a clear indication of substantial reliability. In any event, as to many of the events in the story, the press reports are all that we have—not through any fault of the Government of the United States, but as a direct result of the unlawful conduct of the Government of Iran.

The fact that the Respondent in this case is responsible for depriving us of direct proof of our allegations, I respectfully submit, entitles the United States here to rely upon the principle laid down by the Court in the *Corfu Channel* case. There the Court took note of the predicament of a State which has been made the victim of a breach of international law and which for that reason is unable to obtain direct proof of its claims. The Court stated as follows:

> "Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion."

That statement appears in *I.C.J. Reports 1949*, at page 18. It is our submission, of course, that the inferences of fact and circumstantial evidence upon which the United States is entitled to rely here overwhelmingly demonstrate multiple and flagrant violations of international law by the Government of Iran.

I should note also that many of the facts to which I will give special emphasis during my argument are referred to in our Memorial with appropriate citations to the source materials. When I refer to a fact which could not be included within our Memorial, I shall be relying upon the supplemental documents[1] which the Court has given us permission to submit.

Political Structure in Iran

Turning to the facts, I propose to start with one brief comment on the political structure which has existed within the State of Iran throughout the relevant period. As the Court is aware, the Islamic Revolution in Iran began in late 1978. The former Shah left the country, and the reins of power thereupon came into the hands of the Ayatollah Khomeini. With great rapidity the Ayatollah established himself as the *de facto* Chief of State, and he has been, without any question, the supreme political authority in Iran ever since that time. Throughout the period with which this case is concerned the Ayatollah Khomeini has been in direct control of the Iranian Armed Forces; he has received foreign envoys, accepted resignations of prime ministers and other officials, delegated authority to the Revolutionary Council, and in general exercised ultimate control over all important governmental decisions. To date the Ayatollah and his immediate colleagues have admittedly been operating as an interim government, but under the constitution which was formally adopted in December 1979, the Ayatollah will continue to be the supreme authority in the political structure of Iran. Indeed, although Mr. Bani-Sadr has now been elected President, Principles 5, 107 and 110 of the Iranian Constitution expressly place the ultimate power to govern in the hands of the Ayatollah Khomeini, who is identified by

[1] See pp. 331-462, *infra*.

name in the Constitution, and that constitutional arrangement will obviously continue in force even after the installation of a new legislature in April or May. It should be emphasized additionally that the Ayatollah's role is not titular; as demonstrated by additional facts which I shall describe in a moment, the Ayatollah Khomeini enjoys ultimate power of decision over the entire governmental apparatus and over the so-called militant students who have been holding the American hostages in captivity for so long. Against that political background I should like now to turn to the autumn of 1979, when the story of this case begins.

Before describing what happened on 4 November 1979, the date of the actual seizure of the American Embassy, I should like to refer to two significant events which occurred before and after 4 November. The two dates involved are 1 November 1979, three days before the attack on the Embassy, and 1 January 1980—almost two months after the initial attack. The two dates have something in common: on each an Iranian mob threatened to attack a foreign embassy, and on each the Government of Iran took effective action and protected the embassy in question.

Let me begin with 1 November 1979. Four days previously the Ayatollah Khomeini had delivered an inflammatory speech saying in effect that all of the problems of Iran stemmed from America, and, in the next few days, the United States Embassy in Tehran heard rumours that a mass demonstration in the vicinity of the Embassy was planned for 1 November. On the morning of 1 November the people in the Embassy took stock of the security situation and concluded that there were a sufficient number of Iranian police in the area to deal with the planned demonstration, and, in that conclusion, they were correct. At one point during the day there were as many as five thousand demonstrators marching back and forth in front of the Embassy, but the Chief of Police was present with adequate forces and the Government kept the entire situation under complete control. We think it is indisputable that on 1 November the Government of Iran recognized its duty to provide complete protection for the Embassy and all those within its walls, and on that day the Government of Iran fulfilled its duty in a completely satisfactory way.

Exactly the same phenomenon occurred two months later, although a different embassy was involved. On 1 January 1980 a large mob physically attacked the Tehran Embassy of the Soviet Union, but, again, the security forces of the Iranian Government were on hand to prevent its seizure. Regrettably, those forces were unable to prevent the defilement of a Soviet flag, but the news films of the attack of 1 January, as well as the films of a second attack on the Soviet Embassy on 3 January, graphically portrayed the security forces of the Government of Iran protecting the Embassy premises. As I shall indicate in a moment, the events of 1 November and 1 and 3 January stand out in dramatic contrast with the events which began to unfold on 4 November 1979.

The Attack on the Embassy and the Iranian Government's Responsibility

At this point in these proceedings the Court is certainly familiar with the story in general terms. It has been told in the Application which we filed on behalf of the United States, it was amplified in our Request for Provisional Measures and in the Oral Argument which we presented to the Court on 10 December, and it has been laid out in considerable detail in the Memorial which we submitted on 15 January. Nevertheless, I would like to touch briefly on some of the more important facts which have particular significance in the context of these proceedings on the merits.

First of all, the evidence makes clear that the Government of Iran, including the Ayatollah Khomeini, either knew or should have known in advance that the United States Embassy was going to be attacked by an organized group of

people who claim to be university students. In the preceding days the Ayatollah had made a number of speeches calling for anti-American demonstrations, and the students have since publicly proclaimed that when they attacked the Embassy they were acting in response to the Ayatollah's call to "intensify their attacks against America".

Moreover, the students have recently revealed that prior to the attack they consulted with a man named Mosavi Kho'ini, an official of the Iranian Government's broadcasting organization. They wanted to know whether the proposed attack would be consistent with the policy of the Ayatollah Khomeini and he confirmed that it would. Moreover, Mr. Kho'ini then contacted Mr. Gotbzadeh—then in charge of Iranian broadcasting and now the Foreign Minister of Iran—to urge him to support the attack when it occurred, and, as we know, that support was given. All of these facts are set forth in our Supplemental Documents Nos. 18 and 111 (pp. 340-342, and 416-419, *infra*). In addition, the son of the Ayatollah Khomeini has stated that before the attack he was in touch with the attackers, although he has said that he did not know an attack would actually be made.

On 1 November, as I mentioned earlier, the police authorities were fully aware that in that period there was a very real danger that the current demonstrations in the Embassy area might lead to an attack and the police had demonstrated through their actions of 1 November that they had the ability to deal with and thwart any such attack if they wished to do so. The simple fact is that on 4 November, when an attack actually occurred, they evidently made a deliberate choice *not* to do their duty.

On 4 November there was a demonstration of approximately 3,000 people in front of the American Embassy. The size of the crowd was not unmanageable; it was substantially smaller than the crowds of 5,000 and more than the Iranian security forces had previously demonstrated their ability to control. But, 4 November they evidently decided to stay out of the way. The relatively small group which carried out the assault on the American Embassy was hardly a formidable military force, and, yet, according to eye-witnesses, the Iranian security personnel stationed in the area simply "faded" from the scene. Since that was exactly the opposite of the conduct which they had displayed during the much larger demonstration of three days before, it is hard to believe, I submit, that their mysterious withdrawal resulted from anything other than a deliberate political decision by their superiors.

This last conclusion is supported by the dramatic events which followed. As soon as the attack began, responsible officials in the Embassy began to make repeated calls for help to the Iranian Foreign Ministry and all such calls were ignored. Responsible Iranian officials were certainly aware of the need for help. It happens that the American Chargé d'Affaires, Mr. Bruce Laingen, was at the Foreign Ministry at the time of the attack and he made repeated, urgent and personal appeals to the Iranian Foreign Minister seeking Government assistance. Although ample security forces were available, absolutely nothing was done to prevent the attack from going forward and succeeding.

Moreover, the deliberateness of the decision to allow, and indeed encourage, the attack is made clear by yet another significant event. It appears that, as a result of the repeated American requests for assistance, specific orders were actually given to an official security force known as "The Revolutionary Guards". According to a subsequent official statement, as reflected in our Memorial at p. 194, *supra*, the Revolutionary Guards were actually ordered to proceed to the Embassy immediately, but, instead of being ordered to terminate the attack which was then going on or to clear the Embassy grounds of intruders, they apparently were ordered to protect the attackers. According to the statement to which I have just referred, the students later thanked the Revolutionary Guards for their support in taking possession of the Embassy.

All this makes it apparent that when the Embassy was seized and the captives taken, whether or not the Government of Iran had a role in actually planning the attack, the Government was itself an active participant in the entire venture. The *de facto* Chief of State incited the attack, the police authorities did nothing to prevent it, the Foreign Minister did not respond to calls for help, and the Revolutionary Guards provided protection for the Embassy attackers. As we will emphasize in later portions of our argument, it is difficult to imagine a course of conduct which more flagrantly violates uniformly recognized norms of international law.

The complicity of the Iranian Government in the operation has been shown again and again by that Government's own subsequent conduct. Starting on the very day of the attack and continuing in the days and weeks that followed, a whole series of Iranian Government officials—from the Ayatollah Khomeini on down through the governmental structure—have treated the invading militants as national heroes. On 4 November the Ayatollah telephoned the students to approve of their capture of the American diplomats, the Foreign Minister "endorsed" that action, the Commander of the Revolutionary Guards pledged continuing support by his forces, the public prosecutor joined in, and—perhaps strangest of all—the *judiciary* expressly endorsed these plain violations of the law.

Now in connection with these official endorsements of the actions taken by the militant students, I suppose that it might conceivably be suggested that the Government of Iran felt powerless to prevent such violations of law and therefore should not be criticized too harshly for participating in and condoning this course of conduct. As a matter of law, of course, no such defence could be accepted, and it is also refuted by the *facts*. Indeed, refutation is to be found in an event which took place just two days after the seizure of the American Embassy. On 6 November an Iranian mob seized the Consulate of Iraq in retaliation for an Iraqi seizure of an Iranian Consulate, but, within a matter of hours, the Ayatollah Khomeini had issued an order directing that the Iraqi Consulate be surrendered by the mob and they obeyed by five o'clock in the afternoon. These facts, which re-emphasize the practical control exercised throughout this period by the Ayatollah Khomeini, are set forth at pages 77 and 78, *supra*. From 4 November down to the present day the Ayatollah has simply not chosen to exercise his power to free the hostages and clear the Embassy.

The United States Reactions to the Seizure

Protests by the United States began to be heard by the Government of Iran from the moment of the inception of the attack. As I have mentioned earlier, the beginning of the attack prompted immediate calls for help from the senior United States official in Tehran, Mr. Laingen, who vigorously protested the Government's failure to prevent the attack and demanded that the Government of Iran fulfil its duty to protect the Embassy and its personnel.

Moreover, as soon as it became apparent that the seizure of the Embassy and the American diplomats was more than temporary, the President of the United States summoned a former United States Attorney-General, Mr. Ramsey Clark, to Washington and commissioned him a special emissary to travel to Iran and seek the release of the hostages. Mr. Clark's principal responsibility was to negotiate with the authorities in Tehran and he set off for Iran on 7 November, stopping in Istanbul to change planes.

That was as far as he got. By the time Mr. Clark reached Istanbul the Government of Iran, through the Ayatollah Khomeini and others, had stated very clearly that the hostages would not be released until the United States had fulfilled certain political demands, including particularly the extradition of the

former Shah, who was then undergoing treatment for cancer in a New York hospital. On 7 November, when Mr. Clark had reached Istanbul, the Ayatollah Khomeini proclaimed that discussions between the United States and Iran could not even begin until the Shah had been turned over to the Iranian authorities. Demonstrating his power in the official hierarchy in Iran, the Ayatollah forbade any official of the Government of Iran or of the Revolutionary Council to meet with Mr. Clark or any other United States envoy. I need hardly remind the Court that under the United Nations Charter, all States, including Iran, have an obligation to seek to resolve disputes by peaceful means, including of course negotiation, and yet on 7 November, as reflected at page 78, *supra*, the Ayatollah decreed that there could be absolutely no negotiations with any American envoy until after the Shah had been extradited. Iran had in effect 2,2.0declared its intention to pursue its goal by coercion, the seizure of hostages, instead of by negotiation. According to a statement issued on 20 November by the Ayatollah's son, there were other elements within the Government of Iran who favoured discussions with President Carter's special envoy, but that view was flatly rejected by the Ayatollah and he, after all, was and is the ultimate authority in Iran.

This is not to say that there were no conversations between Mr. Clark and the authorities in Tehran. As a matter of fact, while Mr. Clark was in Istanbul he had a series of telephone conversations with senior members of the Iranian governmental structure, including the Ayatollah Beheshti, who was then Secretary of the Revolutionary Council; Mr. Gotbzadeh, then Minister for National Guidance; and Mr. Bani-Sadr, the Supervisor of the Ministry of Foreign Affairs at that time. During these conversations Mr. Clark made it very clear that the United States regarded the seizure of the hostages and the Embassy as totally illegal and unjustifiable. Although Mr. Clark never had an opportunity to carry out the essential function that he was supposed to perform, namely to open negotiations with the Government of Iran, nevertheless he managed to lodge unequivocal protests which made clear—if indeed any clarification was needed—that an enormously important dispute had arisen between the two States.

Such protests were repeatedly voiced as the United States pursued its efforts to resolve the dispute. On 9 November, just five days after the hostages had been seized, Ambassador Donald McHenry, the United States Permanent Representative to the United Nations, presented to the United Nations Security Council the letter which is set out at page 46, *supra*. In that letter the United States asserted that the action taken by the Government of Iran against our Embassy and diplomatic personnel struck at the "fundamental norms by which States maintain communication, and violate the very basis for the maintenance of international peace and security and of comity between States". The United States requested the Security Council to consider what might be done to secure the release of the hostages, and over the next several weeks the Security Council and the General Assembly responded with a series of statements and resolutions calling upon Iran to release the hostages without delay. These statements are set forth in our Memorial at pages 221-222, 225-226 and 139-140, *supra*. I will have more to say about the actions of the United Nations at a later point, but I should simply note here in passing that from an early point in the crisis the conduct of the Government of Iran was vigorously protested both by the United States and by the United Nations.

During the time it was making these public protests with respect to Iran's illegal conduct, the United States was also employing diplomatic channels for the same purpose. During the first few days following the Embassy take-over, the United States asked other governments which maintained embassies in Tehran to make démarches on the Iranian Foreign Ministry calling upon Iran to release the American hostages. Indeed, other countries have pursued that goal so vigorously that on 30 November, as indicated in our Memorial at page 220,

supra, the Ayatollah Khomeini confessed that "probably not a day passes" without such messages from third countries being received by the Iranian Foreign Ministry.

IRAN'S USE OF THE HOSTAGES FOR POLITICAL COERCION

Thus far in my argument I have emphasized four basic facts: first, that the Government of Iran very clearly was aware that it had an obligation to protect the American Embassy and its diplomatic personnel from the mob; second, that it had the capability of doing so; third, that the Government of Iran made an apparently deliberate political decision that the Embassy and its personnel should be seized and implemented that decision not only by failing to provide protective security forces but by sending in the Revolutionary Guards to ensure that the invaders would succeed in their mission; and fourthly, that the United States reacted promptly, peacefully, and constructively to those events. At this point, then, I would like to turn to another aspect that I have touched upon but not yet emphasized—namely, that the Government of Iran, once it had accomplished the capture of the American hostages, decided to use those hostages as a political instrument for coercing the United States into taking specific political actions desired by the Iranian authorities.

As the Court is aware, various different kinds of political action have been demanded by the Iranians during the crisis but at the beginning of the dispute the single most basic demand was that the United States send the former Shah back to Iran for prosecution. As early as 7 November the Ayatollah and the students began to demand the extradition of the Shah and the same demand was echoed at every level of the Iranian Government. On 7 November for example, in discussing the question whether Mr. Clark would be received by the Iranian Government, the Ayatollah Khomeini declared that the return of the Shah was a precondition not only for release of the hostages but for the mere opening of discussions with the United States. As stated two days later on the Tehran radio, the Ayatollah was absolutely firm in the position that until the deposed Shah had been extradited, there could be no negotiations with the American envoys. The declaration to that effect is set forth at pages 79-80, *supra*.

The efforts of the Iranian Government to coerce the Government of the United States reached an initial crescendo on 17 November: at that time the Ayatollah Khomeini had decided that certain female and black hostages then held captive in the American Embassy should be released, and on 17 November the Ayatollah issued an official decree to that effect which was broadcast over the Tehran radio, as indicated at pages 199-200, *supra*, of our Memorial. In the decree it was stated explicitly that once the specified hostages had been released the remaining American hostages would be held under arrest until the American Government had returned the Shah to Iran for trial and had returned all of the wealth that he had allegedly plundered.

I submit that the Iranian Decree of 17 November, as set forth at pages 199-200, *supra*, of our Memorial, is a unique document in the history of modern international relations, and quite appalling in its implications. In that official pronouncement the Government of Iran not only confirmed its role in bringing about and endorsing the seizure of the Embassy and the hostages; it also confirmed that the Iranian Government itself was holding diplomatic personnel captive in an attempt to bring about desired political action. As I shall subsequently explain when I address the merits of our claims, it is the position of the United States that the conduct of the Iranian Government as exemplified in the decree of 17 November in a very real sense constituted compound or multiplied violations of international law: the Government of Iran violated the law when it failed to protect the Embassy and the American diplomatic personnel; it compounded that violation when it supported and endorsed the

capture and it compounded the violation again when it began to use the hostages as an instrument of coercion or blackmail. As I stand here today, this brutal strategy, a negation of the rule of law, has not attained its stated objective; on the other hand, for international peace it has raised grave risks which have been avoided, if I may say so, only because of the self-control of the United States Government and the American public.

The United States Restraint

Incidentally, if I may be permitted a personal aside, I happen to reside only a few blocks from the Iranian Embassy in Washington and I pass the Iranian Embassy almost every day on my way to and from the State Department. Almost every day over the past four-and-a-half months I have been struck anew by the irony of the fact that while our Embassy and our diplomats in Iran have been in a state of captivity, the Embassy of the Islamic Republic of Iran in Washington has been fully protected by the United States and has been going about its business in a perfectly peaceful fashion without the slightest molestation of any kind.

For four-and-a-half months our Embassy has been physically held captive and has been totally unable to function as an Embassy; and the Iranian Embassy in Washington has been functioning without interruption throughout.

For four-and-a-half months—more than one-third of the year—the American hostages have been imprisoned and for at least part of this time, bound hand and foot and intimidated and threatened and harassed in inhumane conditions, while the Iranian diplomats still in Washington have been left free to come and go as they please, to carry out their diplomatic duties and to enjoy the ordinary peaceful pleasures of life.

For the past four-and-a-half months the premises and records and documents and archives of the American Embassy in Tehran have been ransacked, used at will by the militants in Tehran and discussed in the public press by high Iranian officials, while the Iranian premises and archives in Washington have been preserved inviolate.

I submit that the restraint thus demonstrated by the United States should not be regarded as a sign of weakness. It should be regarded as a sign of strength, a demonstration of the ability of the United States Government and the American people to overcome and control the very strong and understandable temptation to strike back at Iran. In the decision to exercise such restraint the United States commitment to the rule of law has played a great part, and we are gratified by the fact that our commitment has been supported by almost universal approbation of our restraint, and by a correspondingly universal condemnation of the conduct of the Government of Iran, especially as reflected in the proceedings of the United Nations.

Nevertheless, we feel very strongly indeed that if such condemnation is to operate as a deterrent to repetition of the Iranian conduct, either in Iran or elsewhere, there is one more element that must be added—namely, a final judgment of this Court on the merits of the claims of the United States. It is because we believe that a clear and emphatic judgment is bound to be a deterrent to future and similar violations of international law that we have been moving forward as vigorously as we can in pursuit of a final decision.

The Iranian Government's Control

At this point I should like to pause to comment on a relatively recent development which some may regard as undercutting our claim that the Government of Iran itself continues to be a whole-hearted participant in the violations of international law that have occurred in this case. In very recent

weeks, according to press accounts, there has developed a certain tension between some elements of the Iranian Government and the so-called militants occupying the Embassy compound. The newly elected President, Mr. Bani-Sadr, and some of his colleagues have criticized the students for their recent independence of action, asserting that the students are improperly attempting to act as "a government within a government". I respectfully submit, however, that this recent tension should not be permitted to obscure the fundamentally important fact that from 4 November down to the present time, the students have repeatedly emphasized their subservience to the orders of the Ayatollah Khomeini. Again and again they have stated to the world that they would obey any instructions received from the Imam, who continues to be the supreme authority in Iran and to whom even the elected President is answerable under the constitution. On 17 November, as I noted earlier, the Ayatollah directed the students to release certain specified hostages and the students obeyed. On 28 December the students were asked whether an order from the Ayatollah to release the rest of the hostages would be obeyed and they replied unequivocally in the affirmative. In very recent days there may have arisen reason to doubt that the students will obey orders from Mr. Bani-Sadr, but as recently as 10 March the students reiterated their willingness to bow to the authority of the Ayatollah Khomeini. Such recent reaffirmations are reflected in several of the supplemental documents which we will be submitting to the Court[1].

The power to control the fate of the hostages therefore lies in the Ayatollah's hands and he has decided against their release for the time being. Instead he has publicly announced that the question of the hostages is for the National Assembly to decide [2]. That body will not even take office until late April at the earliest, and it may not begin functioning until the month of May [3]. In the interim the Ayatollah supports the continued detention of the hostages. It is thus entirely clear that the internationally wrongful acts for which the United States seeks judicial redress have been and are under the continuous control of the leader of the Government of Iran which must take full responsibility for the conduct of which we complain here.

The United States Efforts in the United Nations

As I mentioned earlier all of the United States reactions to the conduct of the Government of Iran have been peaceful actions taken within the law, and I would like at this point to describe for the Court the additional actions which the United States has taken in seeking to bring about a solution to its on-going dispute with Iran over the hostages and the Embassy. Those efforts started, as I mentioned previously, with the immediate despatch of Mr. Ramsey Clark on a mission to negotiate with the Government of Iran, but after an extended stay in Istanbul seeking to open negotiations Mr. Clark returned to the United States totally rebuffed.

The next step was to take the matter up with the United Nations. On 9 November 1979, as I mentioned earlier, Ambassador McHenry urgently requested on behalf of the United States that the Security Council undertake

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[1] For these and other indications of Ayatollah Khomeini's control over the hostages situation, see Supplemental Documents 13, 21, 34, 58, 62, 65, 66, 72, 101, 102, 115, 117, 133, 134, 135 and 140 (pp. 336-439, *infra*).

[2] Supplemental Documents 100, 102, 134, 135 and 141 (pp. 404-445, *infra*).

[3] Supplemental Documents 107 and 152 (pp. 414-415 and 451-452, *infra*).

immediate deliberations as to what might be done and the same day the President of the Security Council expressed "profound concern over the prolonged detention of American diplomatic personnel in Iran". I might note incidentally that it now seems odd that a statement issued on 9 November, just five days after the attack on the Embassy, should have referred to the prolonged detention of the hostages. Little did we know that that detention would still be continuing almost five months later.

At any rate, in his statement of 9 November the President of the Security Council called attention to the violations of international law involved. As indicated in our Memorial at page 221, *supra*, he urged "that the principle of the inviolability of diplomatic personnel and establishments be respected in all cases in accordance with internationally accepted norms" and on the same day the President of the United Nations General Assembly appealed to the Ayatollah Khomeini for the release of the hostages—as demonstrated in our Memorial at page 221, *supra*.

Ironically, it was shortly after these United Nations declarations that the authorities in Iran began to threaten criminal trials of the hostages. The Ayatollah Khomeini made a series of such threats himself, and as indicated at pages 57-59, *supra*, the United States Government responded with a series of statements charging that any such trials would be clear violations of international law. The same protest was also asserted by the Secretary-General of the United Nations on 20 November.

It was on 25 November with captivity and threats of trial continuing that the Secretary-General exercised his extraordinary authority under Article 99 of the United Nations Charter to convene the Security Council in an urgent effort to resolve the crisis which the Secretary-General characterized as a serious threat to the international peace and security. He made a full statement to the Security Council on 27 November stating in part that over the preceding three weeks he had been continuously involved in efforts to find a means of resolving the problem. At the same time he announced that the then Foreign Minister of Iran, Mr. Bani-Sadr, had requested that the meeting of the Security Council be adjourned until 1 December in order to allow him to participate personally. The Council granted that request. In fact, when the Security Council reconvened on 1 December the Iranian Government had changed its mind and boycotted the meeting.

The initial result of the Security Council deliberations, as the Court is aware, was Security Council resolution No. 457, which is reprinted in our Memorial at pages 225-226, *supra*. In that resolution the Security Council reaffirmed the solemn obligation of all States parties to both the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations to respect the inviolability of diplomatic personnel and premises and it also called upon Iran to immediately release the hostages.

In this connection I should point out one significant aspect of the language of resolution No. 457. As I mentioned earlier in my argument, the evidence clearly established that the Government of Iran was a direct and active and continuing participant in the capture and continuing detention of the hostages, and those facts seem to have been clearly recognized by the Security Council. The resolution of 4 December urgently called upon the Government of Iran—not the students but the Government itself—to release immediately the personnel of the Embassy of the United States. In another portion of the resolution the Council called upon the two Governments "to take steps to resolve peacefully the remaining issues between them", but in the earlier paragraph relating directly to the hostages, there was no call "to take steps" to achieve the hostages' release. On the contrary, there was simply a direct command to the Government of Iran to release, thus recognizing the fact that in substance, if not in form, the hostages were and are in the custody of the Iranian Government.

THE UNITED STATES EFFORTS IN THIS COURT

Throughout this period, in the months of November and December 1979, the United States Government continued its efforts to achieve a resolution of the dispute through peaceful means, and for present purposes the most important of those efforts was our institution of the present proceeding before this Court. When we filed our Application on 29 November we had in mind two different kinds of commitments previously made by the Government of Iran. First, in each of four different treaties, as cited in our Application, Iran had formally acquiesced in and bound itself to the proposition that a dispute of the kind presented here is within the jurisdiction of this Court. Frankly we did not see how Iran could make any plausible argument that this dispute is not within the jurisdiction of this Court, and in fact Iran has not done so. Secondly, at the time we filed our Application we had in mind that as a member of the United Nations, Iran has formally undertaken, pursuant to Article 94, paragraph 1, of the Charter of the United Nations, to comply with the decision of this Court in any case to which Iran might be a party. Accordingly it was the hope and expectation of the United States that the Government of Iran, in compliance with its formal commitments and obligations, would obey any and all Orders and Judgments which might be entered by this Court in the course of the present litigation.

These considerations prompted the United States, when it filed its Application on 29 November, to file simultaneously a request for an indication of provisional measures. As the Court is fully aware, we respectfully requested the earliest possible hearing on that request and the Court acknowledged the gravity of the matter by allowing both parties full argument on 10 December.

The Court will recall that on the day before the hearing the Minister for Foreign Affairs of Iran made a formal submission to the Court in the form of a letter transmitted by telex. Although we will have more to say about the letter of 9 December at a later point, I should like to note now two significant aspects of that letter. My first point appears in the first paragraph of the letter, and indeed in the first sentence of that paragraph, which I should like to quote:

> "First of all, 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 of just and equitable solutions to legal conflicts between States."

Again, that seemed to us to be a good sign in terms of the likelihood that Iran would obey any Orders entered by the Court.

The second significant feature of the Iranian letter of 9 December, I submit, was the total absence of any legal or factual argumentation to the effect that the Iranian seizure of the hostages and the Embassy was lawful. Although the United States Application and request for provisional measures had made clear that we were accusing the Government of Iran of flagrant and plain violations of Iran's international legal obligations under the four cited treaties, the Iranian letter of 9 December made absolutely no response to those charges. The Court will recall that the letter simply took the position that the Court should not take cognizance of the case on the theory that the seizure of the hostages was only "a marginal and secondary aspect" of a larger problem. The net result of that Iranian position on 9 December, I respectfully submit, was and is that the Government of Iran has virtually conceded the total illegality of the course of conduct upon which it embarked on 4 November 1979.

At this point, incidentally, I should take note of the fact that a second message was conveyed by Iran to the Court just two days ago. I will not discuss that message separately however because it really is simply a reiteration of the message of 9 December. Two or three sentences of the earlier message have been

omitted and the position of another sentence has been changed, but the substance of the two is absolutely identical. Thus in substance, if not in form, all that Iran has chosen to say to the Court about the case is set forth in the message of 9 December—and we read that letter as a concession of illegality.

Furthermore, and more importantly, there is other documentary evidence that confirms such a concession. The fact is that in the four-and-a-half months since the attack on the Embassy, both the new President of Iran, Mr. Bani-Sadr, and the Iranian Foreign Minister, Mr. Gotbzadeh, have expressly acknowledged that the seizure of the Embassy and the hostages was carried out in violation of the Vienna Convention on Diplomatic Relations, and another government official has expressly acknowledged the responsibility of the Iranian Government for all that has transpired. These significant facts are set forth in Supplemental Documents Nos. 18, 115, and 139 (pp. 340-342, 420-421 and 436, *infra*), as well as in our Memorial at page 135, *supra*.

The Court adjourned from 16.40 to 16.50 p.m.

QUESTIONS DE MM. GROS ET TARAZI

M. GROS: 1. A) Le mémoire cite trois engagements pris par le Gouvernement de l'Iran à l'égard du Gouvernement des Etats-Unis au sujet de la protection de l'ambassade. Pourriez-vous communiquer ces engagements à la Cour ou les commentaires envoyés par l'ambassade des Etats-Unis à Téhéran au département d'Etat à l'époque? La référence à ces engagements se trouve dans le mémoire, ci-dessus pages 126-127, note 5, et pages 118-119.

B) Entre le 14 février et le 4 novembre 1979, dans les échanges diplomatiques qui ont eu lieu entre les Gouvernements des Etats-Unis et de l'Iran soit à Washington, soit à Téhéran, le Gouvernement iranien avait-il déjà soulevé des critiques contre l'action de l'ambassade des Etats-Unis et des consulats des Etats-Unis en Iran comme il l'a fait ensuite en invoquant l'hypothèse d'«espionnage» ou même d'«actions illégales» contre le Gouvernement de la République islamique? Les autorités iraniennes ont-elles, à cette même époque, jamais indiqué qu'elles avaient l'intention de déclarer certains éléments du personnel diplomatique ou consulaire des Etats-Unis en Iran comme *persona non grata* ou comme «non acceptable»?

2. Quelles sont les réponses du Gouvernement des Etats-Unis aux arguments publiquement présentés par les autorités iraniennes selon lesquels:

L'ambassade aurait été un «centre d'espionnage»;

Les Etats-Unis auraient été impliqués dans des opérations de «sabotage au Kurdistan et au Khuzestan» et avaient «des plans d'intervention en Iran»? Les citations sont reproduites au mémoire des Etats-Unis soit à la page 132, notes 43 et 44, soit aux pages 211-212 ci-dessus.

3. M. l'agent du Gouvernement des Etats-Unis peut-il indiquer les bases juridiques qui fondent le rejet par le Gouvernement des Etats-Unis de la thèse juridique présentée par le Gouvernement iranien (communication du 9 décembre 1979, répétée dans le télégramme du 17 mars 1980 auquel M. l'agent vient de faire allusion), selon laquelle le différend entre les deux Etats porterait fondamentalement, selon le Gouvernement iranien, sur l'attitude du Gouvernement des Etats-Unis à l'égard de l'Iran antérieurement au 4 novembre 1979, et seulement à titre subsidiaire sur les événements du 4 novembre et leurs suites? Un Etat saisissant la Cour peut-il définir unilatéralement le différend qui l'oppose à un autre Etat, alors que ce dernier définit autrement le différend dans des communications officielles?

M. TARAZI: La seule question que je voudrais adresser à M. l'agent des Etats-Unis est la suivante: les autorités américaines compétentes et responsables étaient-elles au courant du fait que l'octroi à l'ancien chah d'Iran de l'autorisation de séjourner aux Etats-Unis pourrait éventuellement conduire à l'occupation de l'ambassade américaine à Téhéran et à la prise des otages?

The PRESIDENT: It is of course open to the representatives of the United States Government to reply to these questions at the point of the presentation of their case which they find most convenient (see pp. 303-304, 309-310, *infra*).

ARGUMENT OF MR. OWEN (cont.)

AGENT FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. OWEN: Mr. President. May I say at the outset that I will be answering the first of the Court's questions very shortly in my argument and the rest of the questions will be answered during our presentation tomorrow, with the Court's permission.

Before the recess I had been pursuing a chronology of the proceedings in this case and I had reached 15 December when the Court announced its unanimous decision to order provisional measures calling upon Iran to ensure the immediate release of the hostages and the immediate restoration of the premises of the Embassy to United States control. I think it is fair to say that the world generally regarded that pronouncement by the Court as a major step towards the solution of the crisis, and hoped that that would turn out to be so. It is tragic that it has not as yet.

The Government of Iran has remained not only unmoved by the Court's action but, if I may say so, defiant. As reflected in an annex at page 226, *supra*, of our Memorial, on 16 December—just seven days after he had expressed profound respect for the Court—the Foreign Minister of Iran referred to the Court's provisional measures as a "prefabricated verdict" which was "clear . . . in advance", and instructed the Iranian Embassy here in The Hague officially to reject the decision. That reaction, I submit, simply re-emphasizes the responsibility of the Government of Iran for the seizure and continuing captivity of the hostages.

The Security Council's Resolution

The United States, disappointed by Iran's decision to continue in this illegal course of conduct, thereafter returned to the United Nations Security Council and sought further action from the Council. On 31 December 1979 the Security Council adopted resolution 461, which is set forth in our Memorial at pages 139 and 140, *supra*. In that resolution the Security Council again recognized that the hostages were being held in Iran in violation of international law and that the situation resulting from the conduct of Iran could have grave consequences for international peace and security. The resolution also took into account the Order of this Court of 15 December and re-emphasized the responsibility of States to refrain, in their international relations, from the threat or use of force. The resolution then urgently called, once again, on the Government of Iran to release the hostages immediately and announced the decision of the Security Council, in the event of non-compliance by Iran, to adopt effective measures under Articles 39 and 41 of the Charter of the United Nations. Although the Security Council has since been prevented from carrying out its decision to adopt effective measures against the Government of Iran, the fact remains that the members of the Security Council were unanimous in expressing the view that the conduct of which we complain here constitutes a plain violation of international law and that the hostages should be released immediately.

The United Nations Commission of Inquiry

My discussion has now reached the point in January when the United States filed its Memorial. Since two months have now elapsed since that filing, and since that two-month period has encompassed some events in which the Court

has a proper interest, I intend to turn to this new subject now. Regrettably, since the hostages remain in captivity, the fundamental problem of which we complain here has not been altered in any of its legal essentials, but there have been a number of developments which are worthy of comment and which are reflected in the supplemental documents which we are submitting to the Court. In summarizing these events I shall not attempt to trace through every twist and turn of Iranian politics. As the Court is aware from the public press, over the past two months there has been literally an outpouring of varied and confusing and inconsistent political statements from many different figures on the Iranian political scene, and I must content myself here with a summary of only the most significant events based on the supplemental documents.

One major political development occurred in late January when Mr. Bani-Sadr was elected President of the Islamic Republic. I think it fair to say that the world generally regarded the installation of the new President as a hopeful event which might well lead to a new element of stability on the Iranian political scene, thus perhaps improving the chance that the Iranian Government would begin to behave responsibly with respect to the hostages.

Then in February the Secretary-General of the United Nations decided, building on his January discussions in Tehran, to form a commission to visit Iran as an aid towards the solution of the hostage crisis. The commission was officially established by the Secretary-General on 20 February (Supplemental Document 156, p. 455, *infra*); in the last several weeks, as the Court is aware, the commission has visited Iran and conducted a series of interviews, and on 11 March it left Iran with its task unfinished because the Ayatollah Khomeini had, in effect, refused to create the conditions necessary for the completion of the commission's work (Supplemental Documents 149, 151, 161 and 162, see pp. 450, 451, and 457-461, *infra*).

Mr. President, you have asked us (see p. 254, *supra*) to respond to a question as to whether the commission of enquiry in any way affects the jurisdiction of the Court with respect to these proceedings and I should like to give a detailed answer to that question at this point. In our view, the answer to the question is very clearly—no. To demonstrate that that is so, I should refer at once to the official announcement of the establishment of the commission on 20 February (Supplemental Document 156, p. 455, *infra*). The announcement of the Secretary-General is short, and I should like to read it in its entirety. This is what he said:

> "I wish to announce the establishment of a commission of enquiry to undertake a fact-finding mission to Iran to hear Iran's grievances and to allow an early solution of the crisis between Iran and the United States. Iran desires to have the commission speak to each of the hostages."

The Secretary-General's statement then listed the names of the five members of the commission and then he continued as follows:

> "The members from Algeria and Venezuela will serve as the Co-Chairman of the commission. The commission, which will leave for Tehran from Geneva over the weekend, will complete its work as soon as possible and submit its report to the Secretary-General."

It should be noted that, as stated by the Secretary-General, the commission's responsibilities were very limited, both in terms of function and in terms of subject-matter. As to function, the commission of inquiry was to serve as a fact-finding body, which obviously makes clear that it was not to reach legal judgments or otherwise engage in the function of adjudication as such. In addition, so far as the process of finding facts is concerned, the subject-matter is confined to what the Secretary-General described as "Iran's grievances". The Secretary-General also expressed the hope that the process of allowing Iran to express its grievances—and having the commission find the facts with respect

thereto—would promote an early solution to the crisis between the two Governments, but neither the Secretary-General nor the two Governments gave the commission any responsibility whatever with respect to the adjudication of the claims of the United States. That function remains entirely, and we think very clearly, within the jurisdiction of this Court. The conclusions which I have just expressed are fully corroborated, I submit, by the statements made by officials of both of the Governments involved. On the United States side, on 20 February following the establishment of the commission, the White House declared that both the United States and Iran "have concurred in the establishment of the commission *as proposed by* the Secretary-General". The statement (Supplemental Document 157, pp. 455-456, *infra*) took specific note of the Secretary-General's statement that the commission "will undertake a fact-finding mission". While the statement included language to the effect that the commission would hear grievances of "both sides", its reference in that regard was in the context of the stated hope that the commission would help bring about the early release of the hostages for whose welfare the American people have been concerned for so many months. The White House statement flatly asserted the position of the United States that the commission "will not be a tribunal".

Subsequent statements by United States officials are consistent on this point. In a press briefing on 23 February (Supplemental Document 158, p. 456, *infra*) the State Department spokesman reiterated the understanding that the purposes of the commission were to hear Iran's grievances and to bring about an early end to the crisis. He emphasized that "the official mandate is as stated in the Secretary-General's own release on this subject". That position was re-emphasized by the spokesman on 26 February when he said: "The Secretary-General has outlined the objectives of the commission that he put together and sent to Iran. He has projected what it is; we agree with that" (Supplemental Document 159, p. 456, *infra*).

In response to questions at a press conference on the same day, the Secretary of State of the United States repeated this understanding of the commission's objective and also added the following:

> "Let me say that the understanding of the United Nations and ourselves has been clearly set forth by the Secretary-General. He was asked what the mandate was after a question had been raised as to the nature of the mandate, and he confirmed that it was as he had originally stated it.
>
> I think the terms of reference and the understanding with respect to those terms of reference was clear, remains clear, and I think they have been correctly reflected by what the Secretary-General has said." (Supplemental Document 160, p. 457, *infra*.)

The Iranian Government has also made relevant statements on this subject and those statements clearly indicate the understanding on the part of Iran that the commission has no function with respect to the claims which are presently pending before this Court. In announcing the establishment of the commission, President Bani-Sadr stated the Iranian view that the commission was to engage in "an inquiry and investigation into past American intervention in the internal affairs of Iran through the régime of the former Shah, and investigation of their treachery, crimes and corruption" (Supplemental Document 90, p. 398, *infra*). Similarly, in a message issued on 23 February the Ayatollah Khomeini referred to the commission as a body which is "investigating and studying past US interventions in Iran's internal affairs through the bloodletting Shah régime" (Supplemental Document 100, p. 405, *infra*). And in an interview on 25 February President Bani-Sadr stated to German correspondents that "it is the task of the committee to investigate the crimes of the Shah and his dependence on the United States and to make the results known to the world public. The committee has no other mission" (Supplemental Document 106, pp. 413-414, *infra*).

It is evident, I submit, that neither the Secretary-General nor either of the two Governments involved has ever viewed the commission as having any responsibility for the adjudication of the United States claims which are now before this Court. Even if the commission had met with full success in its mission to Iran, the United States would still be presenting its claims here today. It is thus very clear, we submit, that the jurisdiction of the Court has been and remains unaffected by the activities of the United Nations commission.

Perhaps the best way for me to conclude my discussion of the commission is to quote from Judge Lachs' opinion in the *Aegean Sea Continental Shelf* case. In discussing the relationship between the functions of the Court and other methods of peaceful settlement of disputes, Judge Lachs used language which to my mind precisely fits the crisis in the United States-Iranian relations since 4 November and I would like to quote:

> "The frequently unorthodox nature of the problems facing States today requires as many tools to be used and as many avenues to be opened as possible in order to resolve the intricate and frequently multi-dimensional issues involved. It is sometimes desirable to apply several methods at the same time or successively. Thus no incompatibility should be seen between the various instruments and fora to which States may resort, for all are mutually complementary. Notwithstanding the interdependence of issues, some may be isolated, given priority and their solution sought in a separate forum. In this way it may be possible to prevent the aggravation of a dispute, its degeneration into a conflict. Within this context, the role of the Court as an institution serving the peaceful resolution of disputes should, despite appearances, be of growing importance."

The United States Government consented to the establishment of the United Nations commission in the hope that by providing Iran with an opportunity to air its grievances, the climate would be that much more favourable for the release of the hostages and the eventual resolution of other issues now pending between the two States. Unfortunately the commission's efforts have not yet borne fruit. But, and I think this is the critical point made by Judge Lachs in the passage I have quoted, the Secretary-General's attempt to allow Iran to air its grievances by establishing the commission was not and is not in any way incompatible with the simultaneous pursuit of our case before this Court or with the Court's full and prompt consideration of our case on the merits.

Summary of Substantive Legal Principles

That concludes my discussion of the factual background underlying the claims of the United States, and I should like now to turn for just a moment to a preliminary review of the legal issues. In a moment, with the Court's permission, I shall take my seat so that Mr. Schwebel can proceed with the argument with respect to the Court's jurisdiction under the treaties upon which we rely, but before Mr. Schwebel addresses those issues, perhaps it would be useful if I summarize very briefly the substantive principles of law which underlie our claims.

As the Court will recall from the hearing which took place on 10 December, the United States relies in this case upon four treaties, the first and most significant of which is the 1961 Vienna Convention on Diplomatic Relations. As we pointed out to the Court at that time, the purpose of that Convention, to which both the United States and Iran have long been parties, was to codify a set of principles which have been firmly established in customary international law for centuries. The essential principle involved is that diplomatic agents and their staff and the embassy premises in which they serve, enjoy an immunity and inviolability which must be respected in all events and that in no circumstances

may the receiving State arrest or incarcerate such persons or enter or seize such premises. One of the essential provisions of the Vienna Convention, Article 22, reads as follows:

> "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 I shall explain later in our presentation, the Iranian course of conduct that commenced on 4 November has included flagrant and very serious multiple violations of every one of these three paragraphs of Article 22.

Turning from the physical premises to the more important question of the immunity of the people within such diplomatic premises, Article 29 of the same Vienna Convention provides that every diplomatic agent "shall be inviolable" and "free from any form of arrest and detention". Moreover Article 31 requires that every such agent enjoy complete "immunity from the criminal jurisdiction of the receiving State". There is absolutely no doubt but that the Government of Iran had a duty to prevent any seizure or detention of any of the United States diplomatic agents and staff in Tehran. Under Article 9 of the Vienna Convention Iran could in effect have expelled any of the American diplomats whom Iran considered objectionable, but the Government of Iran was totally without any legal right to seize, or to allow the seizure of, any of the American diplomatic personnel involved in this controversy.

The basic rights that I have just been describing find relevant elaboration in a number of other treaty provisions to which we will be referring at a later point in our presentation. For present purposes it is enough to say that additional relevant guarantees of protection are set forth in the 1963 Vienna Convention on Consular Relations, in the New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, and in the 1955 bilateral Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran. Under the latter treaty, for example, the Government of Iran was and is under a legal obligation to ensure that all United States nationals in Iran receive "the most constant protection and security", as well as "reasonable and humane treatment", but as we will later describe to the Court treaty provisions of this kind, as incorporated in the four treaties to which I have referred, have been violated by Iran on a multiple and daily basis for the past four-and-a-half months.

ARGUMENT OF MR. SCHWEBEL

DEPUTY AGENT AND COUNSEL FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. SCHWEBEL: Mr. President and distinguished Members of the Court. While I have been privileged to join in representing the United States before the Court on two previous occasions, this is the first on which I have the honour of submitting oral argument to the Court. It is an honour that I deeply appreciate.

I shall address myself to questions of jurisdiction and admissibility. To save the time of the Court, I shall, like Mr. Owen, refrain from reading out certain citations and captions which it would be useful to reproduce in the written record of these proceedings.

SUMMARY OF ARGUMENT ON JURISDICTION

The arguments of the United States on the jurisdiction of this Court to render judgment on the dispute before it are simple and straightforward.

First, the United States and Iran are, as Members of the United Nations, parties to the Statute of the Court.

Second, the United States and Iran are parties to four conventions whose paramount provisions Iran has violated and continues to violate.

Third, these four conventions or their protocols give to this Court jurisdiction to render judgment upon any dispute that arises between the parties to those conventions over their interpretation or application.

Fourth, there is a dispute between the United States and Iran.

Fifth, that dispute is over the interpretation or application of the conventions.

Sixth, resort to alternative means of third-party settlement which are referred to in these conventions is entirely optional. There is no requirement of preliminary recourse to such alternative procedures.

Seventh, even if *arguendo* preliminary recourse to these alternative means of peaceful settlement, namely arbitration or conciliation, were to be viewed as normally required, on the facts of *this* case such recourse would not be.

Eighth, in any event, any need for such recourse has been obviated in this case by the lapse of time.

And finally, the remedies sought by the United States in this case are appropriately addressed to the violations by Iran of the four conventions in question; accordingly, the Court has jurisdiction to grant those remedies.

Let me, Mr. President, elaborate these points and after doing so address any questions which there may be of the admissibility of the claims of the United States.

JURISDICTION UNDER THE VIENNA CONVENTIONS

Iran and the United States are parties to the Statute and to the four conventions on which the United States relies. Optional protocols to two of those conventions, the Vienna Conventions on Diplomatic and Consular Relations, afford the Court jurisdiction over disputes over their interpretation and application. As the Court noted in its Order of 15 December 1979, both Iran and the United States are parties to each of these two conventions, as also "to each of their protocols concerning the compulsory settlement of disputes, and in all cases without any reservation to the instrument in question". Because these two conventions are so central to the substance of this case, and because the

Court in its order of 15 December held that their optional protocols furnished a basis upon which the jurisdiction of the Court might be founded, these conventions will be addressed first.

The States represented at the two Vienna Conferences of Plenipotentiaries which concluded the Vienna conventions on Diplomatic and Consular Relations decided to provide for third-party settlement in optional protocols. No State was, or is, obligated to become party to these protocols, but both Iran and the United States exercised their option to do so. They thereby accepted the compulsory jurisdiction of the Court over any dispute arising out of the interpretation or application of the pertinent convention. The terms of Article 1 of each of the protocols could not be clearer:

> "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."

It follows that there are only two jurisdictional questions relating to the Vienna Conventions which the Court must resolve: first, whether there is a dispute between the United States and Iran; and second, whether that dispute arises out of the interpretation or application of the conventions.

The Existence of a Dispute

First, the question whether there is a dispute. That can hardly give rise to controversy.

Since the attack on the Embassy and the seizure of the hostages on 4 November, the United States has maintained that Iran stands in breach of its international obligations to respect diplomatic and consular immunities, particularly as those obligations are specified by the two Vienna Conventions. Nevertheless, Iran has persisted and persists in its occupation of the Embassy's premises and in the holding as hostage of United States diplomats and diplomatic and consular staff. Accordingly, there is a dispute within the meaning of that term as it is used in Article I of the Optional Protocols.

The Court is aware that the classic definition in the jurisprudence of the Court of the term dispute is that contained in the case of *The Mavrommatis Palestine Concessions*: "A disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." (*P.C.I.J., Series A, No. 2*, p. 11.) In the *South West Africa* cases, the Court quoted this definition and proceeded to set forth a simple standard for determining, a criterion for testing, the existence of a dispute: "It must be shown that the claim of one party is positively opposed by the other." (*I.C.J. Reports 1962*, pp. 319, 328.) The United States, it is submitted, has made just that showing. We have claimed persistently and vigorously, before this Court, in the Security Council of the United Nations, and elsewhere, that the conduct of Iran since 4 November gives rise to multiple flagrant and profound violations of the fundamental rules of international law contained in the Vienna Conventions, which must cease immediately. Most fundamentally, we have claimed that the hostages must be immediately and unconditionally released. We have made this conviction known to the authorities of the Government of Iran directly and through intermediaries, including Ambassadors of third States accredited to the Government of Iran. We have made our position plain in public pronouncements and through diplomatic and private channels, and yet the hostages have been held for 136 days, and continue to be held. The Embassy of the United States in Tehran has been occupied for 136 days and continues to be occupied. Numerous other violations of diplomatic and consular immunities continue to occur daily and the Government of Iran

still refuses to bring this situation to an end by complying unconditionally with what this Court described in paragraph 41 of its Order of 15 December as its "imperative obligations . . . now codified in the Vienna Conventions of 1961 and 1963, to which both Iran and the United States are parties".

It is submitted that more positive opposition to the claims of the United States could hardly be imagined.

Now to be sure, the existence of this dispute between the United States and Iran is not reflected in elaborate exchanges of diplomatic notes. Iran's conduct, in its essence, has made such formal exchanges immaterial as well as impractical. Not only is the United States Embassy in Tehran over-run and inoperative and its officers held hostage, but from the middle of November Iranian officials have refused to have direct contact with United States officials outside of Tehran.

Nonetheless, Iran was made fully aware of the nature and the legal bases of the claims of the United States. In the first weeks after the Embassy take-over and prior to filing our Application in this Court on 29 November, the United States made strenuous efforts of its own to persuade Iran to abide by its treaty commitments. In addition, during this period, third country ambassadors in Tehran at the request of the United States made a series of démarches in Tehran calling the attention of the Government of Iran to Iran's obligations under the Vienna Conventions. Many countries circulated documents at the United Nations making the same point, among them, the Members of the Organization of American States[1] and, on more than one occasion, of the European Community[2], and African States such as Guinea[3], Tunisia[4], the Ivory Coast[5] and Upper Volta[6]. Many heads of State or Government sent telegrams or letters to Iranian authorities appealing for respect for Iran's international obligations. A number of these messages were referred to during the Security Council debates during early December.

Much of this material is already before the Court. One point merits emphasis: Iran's own statements make clear beyond doubt that these messages had been received by Iranian authorities and that Iran chose to persist in its conduct despite the claims that this conduct was illegal and must cease.

May I respectfully direct the Court's attention particularly to the 22 November speech by Mr. Bani-Sadr, then supervisor of the Iranian Foreign Ministry, reproduced at pages 103-105, *supra*, where Mr. Bani-Sadr mentions the Vienna Convention by name. The Court may also wish to note the 29 November 1979 interview, quoted at page 217 *supra*, with Ayatollah Beheshti, spokesman for the Revolutionary Council, in which the Ayatollah admits that the taking of hostages is not in accordance with diplomatic traditions. And finally, I would ask the Court to examine interviews given by the Ayatollah Khomeini himself. These interviews, reprinted at pages 88-90 and 219-220, *supra*, make clear that the highest authority in Iran not only knew that the holding of hostages was

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[1] Declaration of 26 November 1979 of the Permanent Council of the Organization of American States, UN doc. S/13659 of 29 November 1979.

[2] Statement by the Heads of State or Government and the Foreign Ministers of the nine Member States of the European Community of 30 November 1979, UN doc. S/13668 of 30 November 1979.

[3] Message by Comrade President Ahmed Sekou Touré of 22 November 1979, UN doc. S/13667 of 30 November 1979.

[4] Letter dated 1 December 1979 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council, UN doc. S/13670 of 1 December 1979.

[5] Message from the Minister for Foreign Affairs of the Ivory Coast, UN doc. S/13673 of 3 December 1979.

[6] Telegram from the President of the Republic of Upper Volta, H.E. El Hadj Aboubakar Sangoulé Lamizana of 4 December 1979, UN doc. S/13678 of 4 December 1979.

considered to be a violation of international law but that, in Ayatollah Khomeini's own words, "Probably not a day passes without messages being received by our Foreign Ministry from abroad, from various countries to whom they have appealed. They keep appealing to us to release the hostages and so forth." (Ann. 41, at p. 220.)

It is apparent then that despite the absence of a series of formal diplomatic exchanges, Iran was aware of, rejected and refused to negotiate the claims of the United States.

It should be added that, in any event, there is no rule of international law that a dispute in the international legal sense exists only if it is reflected in a formal exchange of official representations. Any such rule would suggest a stultifying formalism inconsistent with the jurisprudence of this Court and with the realities of international life.

Rather the Court has taken the position that, whether there exists an international dispute is a matter for objective determination. (*Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, pp. 65, 74.) Formal diplomatic exchanges are one, but only one, kind of evidence which is relevant to the determination of this question of fact. Other evidence may be equally probative, particularly where, as here, the jurisdictional clause in question does not provide that the failure of negotiations is a prerequisite to recourse to the Court.

Indeed, even where the failure of negotiations has been such a prerequisite, the Court has declined, as in the case of *The Mavrommatis Palestine Concessions* and in the *South West Africa* cases, to find in such clauses a requirement for an extended series of formal bilateral exchanges. In the case now before the Court, it is submitted both that there is abundant evidence of the existence of a dispute between the United States and Iran and that a contrary conclusion simply cannot be supported on the record before the Court.

In fact, the Government of Iran itself appears to admit the existence of a dispute with the United States. It has done so, in effect, in two communications to the Court, those of 9 December 1979 and 16 March 1980 (see pp. 18-19 and 253-254, *supra*). These letters do not question the existence of a dispute but maintain that the question of the hostages in Tehran "only represents a marginal and secondary aspect of an overall problem". It thus referred to the conflict between Iran and the United States as one not of the interpretation and application of the treaties on which the American Application is based but a conflict which results from an overall situation containing more fundamental and complex elements but the existence of a dispute is thus acknowledged, if implicitly, by Iran.

Moreover, the existence of a dispute between the United States and Iran has been recognized by third States and by the Security Council of the United Nations. The records of the Security Council are replete with references to the dispute between the United States and Iran. The representatives of Gabon, Liberia, Canada, Malawi, Yugoslavia, the United Kingdom, Czechoslovakia, the German Democratic Republic and the Soviet Union all used the term dispute in describing the differences between Iran and the United States. Security Council resolution 457 itself recalls the obligation of States to settle their international disputes by peaceful means.

Furthermore, this Court itself, in referring to the letter from the Iranian Minister for Foreign Affairs of 9 December noted 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. (*I.C.J. Reports 1979*, Order of 15 December 1979, para. 24.) Indeed, the Court characterized the instant case as "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" and thus a dispute which by its very nature "falls within international jurisdiction". (*Ibid.*, para. 25.)

In sum and in short, there can be absolutely no doubt that there is a dispute between the United States and Iran.

The Dispute Arises from the Interpretation or Application of the Conventions

I turn next to the question of whether the dispute is one arising from the interpretation or application of the two Vienna Conventions. While reserving a decision upon its jurisdiction in its Order of 15 December, the Court, it is submitted, so indicated in the passage from the Order which has just been quoted, where it noted that the dispute involves "the interpretation or application of multilateral conventions codifying the international law governing diplomatic and consular relations".

It is submitted that the validity of the Court's characterization is self-evident. The United States case against Iran in large measure consists of claims that Iran has committed material violations of many provisions of the Vienna Conventions. It is clear that these claims must, as the Court declared in the *Ambatielos* case, "stand or fall" on the interpretation of these provisions and their application to the facts of the case. (*Ambatielos* case, merits, obligation to arbitrate, Judgment of 19 May 1953, *I.C.J. Reports 1953*, pp. 10, 18.) As the Permanent Court point out in the case concerning *Certain German Interests in Polish Upper Silesia*, the question whether the dispute is one arising from the interpretation or application of a convention can only be answered by asking "whether the clauses upon which the decision on the Application must be based, are amongst those in regard to which the Court's jurisdiction is established". (*P.C.I.J., Series A, No. 6*, at p. 15.) The Court's decision on the merits in this case, as in any in which the violation of treaty obligations is alleged, must be based upon the treaty provisions which the Applicant claims have been violated by the respondent. Since the United States here claims that among other things the provisions of the Vienna Conventions have been violated by Iran it follows that any judgment of the Court must in some measure be based upon the provisions of the Vienna Conventions. Since the jurisdiction of the Court under Article 1 of the Optional Protocols to the Vienna Conventions embraces disputes arising under each and every provision of the Conventions, it is also clear that the Court has jurisdiction over claims based on the particular provisions on which the United States relies.

It is submitted that the Court's Judgment on the *Appeal Relating to the Jurisdiction of the ICAO Council* squarely supports the foregoing analysis. That case, it will be recalled, came to the Court on appeal from a decision by the Council of the International Civil Aviation Organization, holding that the Council had jurisdiction to consider the merits of a dispute between India and Pakistan. The Court, after determining that it had jurisdiction to consider the appeal, addressed the question of the ICAO Council's jurisdiction to entertain Pakistan's claims against India. Under the relevant jurisdictional provisions, the Council's jurisdiction extended only to disagreements relating to the interpretation or application of the treaties on which Pakistan based its claim. India maintained that the treaties had been terminated or suspended and that consequently no issue of their interpretation or application could arise. But the Court noted that Pakistan's Complaint to the Council, the equivalent of an application instituting proceedings in this Court, cited specific provisions of the relevant treaties as having been infringed by India's denial of overflight rights. The Complaint also affirmed the existence of a disagreement relating to the application of the treaties. The Court then declared:

"... there can therefore be no doubt about the character of the case presented by Pakistan to the Council. It was essentially a charge of breaches of the treaties, and in order to determine these, the Council would inevitably be obliged to interpret and apply the treaties, and thus to deal with matters unquestionably within its jurisdiction." (*Appeal Relating to the Jurisdiction of the ICAO Council, Judgment, I.C.J. Reports 1972,* pp. 46, 66.)

In this case the United States Application cites specific provisions of the Vienna Conventions as having been violated by Iran's conduct since 4 November. The Application affirms the existence of a dispute within the scope of Article 1 of each of the Optional Protocols. In order for the Court to determine whether breaches of the Vienna Conventions have occurred, the Court will inevitably be obliged to interpret and apply the Conventions, and, to use the Court's words in the ICAO Council case, "thus to deal with matters unquestionably within its jurisdiction". The dispute in this case then, it is submitted, does arise from the interpretation or application of the Vienna Conventions.

It might be contended that Iran's conduct is so manifestly lacking in arguable legal justification that there is no genuine dispute between the United States and Iran over the interpretation or application of any provision of the Vienna Conventions. It might be argued that Iran's conduct amounts simply to a refusal to apply the Conventions and does not therefore give rise to a dispute regarding the manner in which to construe the Conventions or to apply them to a particular set of facts.

Obviously, such an argument would be specious. Although the Court may not earlier have considered a case involving equally flagrant violations of treaty obligations, the sum and substance of every case brought to the Court under the compromissory clause of a treaty is the claim that the Respondent's conduct violates its obligations under that treaty. It would be anomalous to hold that the Court has jurisdiction where there is an arguable claim that a treaty has been violated, but lacks jurisdiction where there is a manifestly well-founded claim that the same treaty has been violated. Such a contention has no support in the jurisprudence or traditions of this Court, or in the terms of the Optional Protocols. Indeed, any such rule would provide an incentive for States to flout their treaty obligations and to avoid offering any justification for their conduct in order to defeat the Court's jurisdiction. In short, Iran's failure to advance any plausible construction of the Vienna Conventions at variance with that advanced by the United States does not detract from the fact that the dispute between the United States and Iran ineluctably involves the interpretation and application of the Vienna Conventions.

One further argument on this issue should be addressed in view of the position taken by the Government of Iran in its letters of 9 December 1979 and 16 March 1980.

The Court will recall that Iran maintained that the claims of the United States arising out of the Embassy takeover are only a marginal and secondary aspect of an overall problem. Iran contended that because the Embassy takeover bears some relation in its view, to these broader questions the conflict between the United States and Iran is thus not one of the interpretation and application of the treaties upon which the American Application is based. In paragraph 23 of its Order of 15 December 1979 it is submitted that the Court quite properly rejected the view that the outrages perpetrated in Tehran since 4 November could be viewed as secondary or marginal. This point of course is fundamental. But in addition the legal argument advanced by Iran in its 9 December and 16 March letters is fallacious. This Court has previously held that a dispute which relates to the interpretation or application of a treaty does not lose that character simply because in the view of one of the parties the dispute bears some relation to issues outside the treaties. In the *Appeal Relating to the Jurisdiction of*

the ICAO Council the Court faced this question directly. The Court stated that the ICAO Council could not be deprived of jurisdiction,

> "... merely because considerations that are claimed to lie outside the treaties may be involved if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question ... As has already been seen in the case of the competence of the Court, so with that of the Council, its competence must depend on the character of the dispute submitted to it and on the issues thus raised, not on those defences on the merits, or other considerations which become relevant only after the jurisdictional issues had been settled." (*I.C.J. Reports 1972,* pp. 46, 61.)

For these reasons, we submit that the argument advanced in Iran's letters of 9 December and 16 March must be rejected.

Let me now summarize what I endeavoured to show so far. The United States and Iran are both parties to each of the Vienna Conventions and to their Optional Protocols on the Compulsory Settlement of Disputes. Article I of each of the Optional Protocols provides without qualification that disputes relating to the interpretation or application of the Conventions shall lie within the compulsory jurisdiction of this Court and may be brought before the Court by unilateral application. There is, we have shown, a dispute between the United States and Iran and it is a dispute which arises from the interpretation or application of the Vienna Conventions. Consequently the dispute lies within the compulsory jurisdiction of the Court and the United States was entitled to bring the case before the Court by unilateral application. Nothing more need be shown. The Court is competent to consider the merits of the United States claims against Iran under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations.

The case for the Court's jurisdiction under Article I of the Protocols is, we believe, lucid, simple and decisive. In accordance with the Vienna Convention on the Law of Treaties, "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Art. 31).

The matter could not be put more clearly and cogently than this Court put it in its Order of 15 December, when it held that it is manifest from the information before the Court and from the terms of Article I of each of the two Protocols that the provisions of these Articles furnish a basis on which the jurisdiction of the Court might be founded with regard to the claims of the United States under the Vienna Conventions. The Court declared that:

> "Whereas, while it is true that Articles II and III of the above-mentioned Protocols provide for the possibility for the parties to agree under certain conditions to resort not to the International Court of Justice but to an arbitral tribunal or to a conciliation procedure, no such agreement was reached by the parties; and whereas the terms of Article I of the Optional Protocols provide in the clearest manner for the compulsory jurisdiction of the International Court of Justice in respect of any dispute arising out of the interpretation or application of the above-mentioned Vienna Conventions." (*I.C.J. Reports 1979,* Order of 15 December, para. 17.)

All this said, the Court will of course recall, however, that in the light of Article 53 of the Court's Statute, the United States devoted considerable attention in its Memorial to refuting a possible argument against the Court's jurisdiction. The argument was, in essence, that the United States Application was prematurely filed, that the Court consequently lacks jurisdiction, and that the case should therefore be dismissed.

The argument rests on a reading of Articles II and III of the Optional Protocols according to which no Application may be filed for a period of two

months after one party has notified the other of the existence of a dispute. During this two-month period, the parties are to explore the possibility of submitting the dispute to arbitration or conciliation. Now it is not intended today to repeat the detailed refutation of this argument which is found in the United States Memorial. However, I wish to emphasize—*ex abundanti cautela*—some points which are set out in the Memorial in greater detail, which demonstrate that such an argument against the Court's jurisdiction rests on an invalid construction of the Optional Protocols.

Before doing so, however, I should like to draw the Court's attention to a crucial fact intervening between the time the Memorial was filed and today's argument. More than two months have now elapsed since the latest date, 29 November, on which it might be held that the United States notified Iran of the existence of the dispute which is the subject of proceedings in this Court. 29 November of course is the date on which the United States filed its Application in this case. That Application was duly and promptly communicated to the Government of Iran. On 29 November, if not before, the Government of Iran was notified of the existence of a dispute, and the claims of the United States which were set forth with particularity in its Application. 29 November then is the latest date on which the United States might conceivably be held to have notified Iran of the existence of a dispute.

More than two months have now elapsed since 29 November. The United States and Iran have not agreed to submit the dispute to arbitration or conciliation. In fact, Iran has never indicated the slightest interest in submitting the dispute to arbitration or conciliation. Indeed, Iranian representatives, having been forbidden to discuss the dispute with the United States, could hardly agree to its arbitration or conciliation. In consequence, even if it were held that no Application could properly be filed prior to the expiration of the two-month period, an Application filed at any time after 29 January would be timely. It follows, then, in our submission, that the only consequence of a decision to dismiss the United States Application on grounds of prematurity would be to require the United States to file a second Application. Under the rule established by the Court in the *Mavrommatis Palestine Concessions* case, quoted in the Memorial at page 151, *supra*, the Court will not engage in such a futile exercise. In other words, even if one makes the two assumptions most hostile to the success of the United States case, namely: first, that no Application may be filed prior to the expiration of two months from the date on which the United States notified Iran of the dispute; and second, that the United States first notified Iran of the existence of the dispute on 29 November, dismissal of the United States case would be unwarranted.

It is not, of course, necessary or proper to make these two assumptions, which rest on incorrect constructions of the relevant facts and law. In our submission, correctly construed, the Optional Protocols do not require a two-month waiting period prior to filing a case before the Court. Article I of the Optional Protocols contains no mention whatsoever of such a waiting period, and none should be implied from the permissive provisions of Articles II and III.

Article I, as I have noted, provides that disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the Court—a provision which is imperative and unconditional. But Articles II and III provide that the parties may agree, within a two-month period, to resort not to the Court but to arbitration or conciliation. The optional intent of Articles II and III, and the mandatory import of Article I, is emphasized by the terms of the preamble to the two Protocols: expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period.

Article I is in this respect quite similar to Article 23 of the Geneva Convention of 1922 between Germany and Poland which the Permanent Court construed in the case concerning *Certain German Interests in Polish Upper Silesia*. Article 23 of the Geneva Convention provided that any difference of opinion relating to certain articles of the Convention could be submitted to the Court by either party. Article 23 of the Geneva Convention, like Article I of the Optional Protocols, did not require either that diplomatic negotiations first have failed or that another special procedure precede reference to the Court. The Court held that, "under Article 23 recourse may be had to the Court as soon as one of the Parties considers that a difference of opinion arising out of the construction and application of Article 6 of the Convention exists" (*P.C.I.J., Series A, No. 6*, at p. 14). Precisely the same may be said of Article I of the Optional Protocols now before the Court; that is to say, under Article I a party may bring a case to the Court as soon as a dispute relating to the interpretation or application of the Vienna Conventions has arisen.

Articles II and III of the Protocols Are not Surplusage

Now, Mr. President, may it be argued that this construction of the Optional Protocols is open to attack—open to attack on the ground that this construction deprives Articles II and III of all meaning, that it reduces those Articles to surplusage? May it be argued that obviously the parties to a dispute always are free to resort to arbitration or conciliation rather than the Court if they so agree, and that, if this is all these Articles mean, they are meaningless? In our view it may not be so argued, for the construction that we have given of these Articles rather than depriving them of meaning gives Articles II and III of the Optional Protocols three consequential effects.

First, the inclusion of Articles II and III makes it impossible to construe the Optional Protocols as restricting the freedom of the parties by mutual consent to submit disputes to arbitration or conciliation. As noted in the United States Memorial, at pages 145 and 146, *supra*, there was some support among eminent members of the *Institut de droit international* for a rule that States be required to submit to this Court all disputes relating to multilateral conventions concluded under United Nations auspices. Articles II and III were intended, we submit, to make clear that this position had not been accepted.

Second, Articles II and III point the parties to particular dispute settlement mechanisms which they might wish to consider as alternatives to judicial settlement by this Court.

Third, Articles II and III make clear that a party which, in good faith, explores the possibility of resort to arbitration or conciliation, or even a party which accepts such an approach in principle subject to the negotiation of an acceptable *compromis*, does not thereby waive the right to institute proceedings in this Court unless final agreement on a *compromis* is reached within a period of two months.

These conclusions are supported by the legislative history of each of the Optional Protocols which is set out in detail in the United States Memorial. Each of the Vienna Conferences considered and rejected a dispute settlement clause which would have required an attempt to arbitrate or conciliate the dispute prior to submitting it to the Court. The legislative history of the Optional Protocol to the 1958 Geneva Conventions on the Law of the Sea upon which the Vienna Optional Protocols were modelled is of like import. In the face of this legislative history, it is not possible to accept the proposition that the drafters of the Optional Protocols intended to require a two-month waiting period prior to resort to the Court.

Mr. President, the United States submits, in sum, that proceedings in this Court may unilaterally be instituted at any time after a dispute of the appropriate character has arisen. There is no mandatory waiting period.

The Court rose at 6 p.m.

FOURTH PUBLIC SITTING (19 III 80, 10 a.m.)

Present: [See sitting of 18 III 80.]

ARGUMENT OF MR. SCHWEBEL (cont.)

COUNSEL FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. SCHWEBEL: Mr. President, when I stopped yesterday I was addressing the question of jurisdiction under the Vienna Conventions on Diplomatic and on Consular Relations.

A finding of jurisdiction under those Conventions does not actually require acceptance of the contention with which I closed yesterday, namely, that under the Protocols to those two Conventions there is no mandatory waiting period before a case may be filed in this Court. That is our submission but, even if it is not accepted, we would maintain that in the circumstances of this case the United States Application in any event was not prematurely filed on 29 November. As set forth more fully in the Memorial at pages 149 and 150, *supra*, even if, *arguendo*, there is a two-month waiting period, the only right enjoyed by a potential respondent is a right existing for a maximum of two months to try to convince the potential applicant to resort to arbitration or to conciliation. The two-month waiting period may not, however, be a bar to the institution of proceedings in this Court in any case where the potential respondent has evinced no interest whatsoever in arbitration or in conciliation within a reasonable time after receiving notice of the existence of a dispute. This, we submit, is particularly the case where the respondent is engaging in a course of coercive conduct in violation of its obligations under Article 2, paragraph 3, Article 2, paragraph 4, and Article 33 of the United Nations Charter.

In the case at bar, Iran must be held to have been given notice of the existence of a dispute as early as 7 November 1979 when the President of the United States dispatched a special emissary to Tehran with instructions to deal with the dispute. Before filing its Application on 29 November, the United States also made other representations, directly and through intermediaries, in Washington, Tehran and at the United Nations. Some of these representations were made as early as the second week of November. Iran accordingly had more than a reasonable time prior to 29 November to express an interest in settling this dispute by conciliation or arbitration, had it wished to do so. It did not avail itself of this opportunity. On the contrary, the Ayatollah Khomeini gave instructions against even negotiating the dispute with the United States. Iran persisted in its unlawful effort to coerce the United States by holding hostage diplomatic and consular officers in Tehran and threatening further violations of their immunities and, indeed, threatening their well-being and safety. To hold that, even in such circumstances, no Application to this Court may be made prior to the expiration of the two-month period would be to adopt a rule which rewards unlawful coercion and penalizes respect for the procedures of peaceful settlement.

Permit me now to recapitulate the discussion of the supposed two-month waiting period. First, the United States has shown that there is no such two-month waiting period. Under Article I, an Application may be filed at any time after a dispute of the appropriate character has arisen.

Second, even if there ordinarily is a two-month waiting period, the Application of the United States was not prematurely filed in the circumstances of this case. There is no bar to the institution of proceedings in a case where, as here, the Respondent evinced no interest in arbitration or conciliation within a reasonable time after receiving notice of the existence of a dispute, broke off direct contact with the Applicant, and engaged in unlawful coercion. Indeed, it may be maintained that, by its conduct, Iran would be estopped from arguing, if it were here in court to argue, that the United States was required to wait two months during which it should have sought arbitration or conciliation before filing an Application in this Court. It is submitted that it is not for the Court to construct for Iran an argument which it would not be open for Iran itself to advance.

Third, even if there is an absolute and unqualified rule that no Application may be made prior to the expiration of the two-month period, dismissal of the United States case would be unwarranted, more than two months having now elapsed from the latest date on which it might conceivably be held that the United States notified Iran of the existence of the dispute.

For all these foregoing reasons it is submitted that the Court has jurisdiction to consider the claims of the United States under the two Vienna Conventions.

I turn now to the question of jurisdiction over the claims of the United States under the Treaty of Amity, Economic Relations, and Consular Rights. Article XXI, paragraph 2, of that treaty provides that disputes related to the interpretation or application of the Treaty "not satisfactorily adjusted by diplomacy, shall be submitted" to the Court unless the Parties agree to some other method of peaceful settlement.

On the question of whether a dispute existed on 29 November and exists today, the considerations submitted earlier respecting disputes under the Vienna Conventions equally apply and need not be repeated. It may additionally be noted that there were numerous complaints by United States officials, both before and after 29 November, regarding the detention of the hostages, which clearly is inconsistent with the enjoyment of the most constant protection and security, complaints which went as well to the conditions under which the hostages have been held. Some of the statements are collected in Appendix B to the Declaration of Under-Secretary of State Newsom which has already been submitted to the Court. May I particularly refer the Court to the statement issued by the White House on 19 November, at page 58, *supra*, and the statement made by President Carter at a conference on 28 November, at pages 60-66, *supra*. These statements were made soon after the return to the United States of the 13 hostages who had been released. During this same period prior to 29 November, the ambassadors of several third countries represented in Tehran also expressed in the strongest terms their concern over the hostages' captivity and conditions. Ambassador McHenry's speech to the Security Council on 1 December (p. 47, *supra*) likewise emphasized our insistence that basic conditions of humanity be respected pending release of the hostages. Other similar expressions of concern have been made since that time. Iran still has not reacted to these protests in a satisfactory manner. It is an inescapable fact that Iran has opposed the claims of the United States not only for the constant protection and security of its nationals but also for decent and humane treatment for its nationals while detained in Iran.

There is no need to labour the point that the dispute was not "satisfactorily adjusted by diplomacy" by 29 November. Suffice it to say that the United States had made strenuous efforts to resolve the dispute prior to filing this case. Distinguished representatives of the international community, the Secretary-General of the United Nations, the President of the General Assembly, the President of the Security Council, all had contributed to the search for a solution and for improvement in the conditions under which the hostages were held including guaranteed international access to the hostages. It is submitted that, even if, as it

does not, Article XXI, paragraph 2, required that the dispute be one which "cannot be resolved by diplomacy", that requirement would be met in this case.

Furthermore, the dispute relates to the interpretation or application of the Treaty of Amity for the same reasons as our case under the Vienna Conventions relates to the interpretation or application of those instruments. The United States has charged Iran with violating several provisions of the Treaty of Amity. Such a charge inevitably requires the interpretation or application of the Treaty.

There was of course no agreement between the United States and Iran to resolve the dispute by some method other than reference to the Court. Although part of the mandate of the United Nations Commission of Enquiry was to visit and interview the hostages in order to obtain current objective information regarding their health and well-being, there was no agreement to divest this Court of jurisdiction over any United States claims under the Treaty of Amity or other treaties on which the United States relies.

I shall elaborate this point shortly in endeavouring to respond to one of the questions which the President has been good enough to put.

In these circumstances, then, the Court has, it is submitted, jurisdiction under Article XXI, paragraph 2, of the Treaty of Amity.

I should like to make one further point in concluding my remarks on the Court's jurisdiction under the Treaty of Amity. The Memorial advances several arguments in support of the conclusion that Article XXI, paragraph 2, confers a right of unilateral resort to the Court. In addition to these arguments, I wish to refer the Court once more to the decision in the case concerning *Certain German Interests in Upper Silesia*. The Court there construed a compromissory clause which, like Article XXI, paragraph 2, provided that certain disputes "shall be submitted" to the Court, but did not expressly provide a right of unilateral resort to the Court. The Court there interpreted the clause as providing that unilateral right (*P.C.I.J., Series A, No. 6,* at 14).

Jurisdiction under the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons

Our final jurisdictional argument is this. It is submitted that jurisdiction also exists in the extraordinary circumstances of the instant case under Article 13, paragraph 1, of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.

The United States readily concedes that Article 13, unlike, and by way of instructive contrast with, the Optional Protocols or the Treaty of Amity, gives priority to arbitration and ordinarily permits resort to the Court only if the parties have been unable to agree on the organization of the arbitration within a period of six months from the request for arbitration. However, the United States contends that this limitation of the Court's jurisdiction should have no application in circumstances such as these where the party in whose favour the six-month rule would operate has, by its own policy and conduct, made it impossible to have discussions related to the organization of an arbitration, or, indeed, even to communicate a direct formal request for arbitration. It is submitted that, when such an attitude as the Iranian attitude has been manifested, an application to the Court may be made without regard to the passage of time. It would be anomalous to hold that, in a case where judicial relief is urgently needed by the Applicant and the Respondent has refused to allow any direct communication between the parties, the latter is nevertheless entitled for six months to hold off judicial redress by referring to another mode of settlement in which it demonstrably has no interest whatever.

I would like to add this further thought which turns on the fact that Iran, in so behaving, is behaving illegally—and we submit that it *is* in refusing to negotiate. If it were allowed to invoke the six-month rule, it would seek to profit from its own

wrong, which would violate the principle of international law that no legal right may spring from a wrong. I believe that in the jurisprudence of this Court one can find support for the proposition that those who fail in their procedural obligations may not cite procedural obligations against their opponents. (*Factory at Chorzów, Jurisdiction, Judgment, No. 8, 1927, P.C.I.J., Series A, No. 9,* p. 31, and the construction placed upon it by the United States Memorial at p. 151.)

It may finally be noted that the remedies sought by the United States in this case directly relate to the violation of its international legal rights by Iran—that is to say, they directly relate to Iran's breaches of treaty obligations which it owes to the United States under the four treaties on which the United States relies. As has been demonstrated in the United States Memorial, and will be further demonstrated in the course of this oral argument, Iran stands in incontestable breach of these treaties in multiple respects. Each of these treaties independently furnishes a basis for the Court's jurisdiction to deal with claims within its purview.

Possible Questions of Admissibility

Mr. President and distinguished Members of the Court, may I now turn from questions of jurisdiction to what, under Article 79 of the Rules of Court, is described as any objection by the Respondent to the admissibility of the application or other objection, the decision upon which is requested before any further proceedings on the merits. Article 79 provides that such a preliminary objection shall be made in writing within the time-limit fixed for the delivery of the Counter-Memorial. That time-limit expired on 18 February. No such objection from the Government of Iran was received within the time-limit. Accordingly, it would appear to follow that there is no bar to further proceedings on the merits.

Nevertheless, possibly the Court may choose to consider, *proprio motu*, whether there are preliminary objections which might be raised even though Iran has failed to raise them. In prior cases objections of this kind have related to such questions as mootness, standing of the Applicant to espouse the claim, and exhaustion of local remedies. May we submit the following observations on these points.

The Case is not Moot

Since 53 United States nationals continue to be held hostage, obviously this case is not moot. The dispute submitted in the Application of the United States persists. While there may be reason to hope that the hostages will soon be released and the United States Embassy in Tehran restored to the control of the United States, even these long-sought and repeatedly deferred developments would not render these proceedings moot.

This is so because the United States Application and its final conclusions seek more than the release of the hostages and the restoration of the Embassy to United States control. The Court is asked to adjudge and declare that Iran has violated its international legal obligations to the United States by its conduct, conduct that cannot be erased by a change of policy on the part of Iran. The Court is asked to require the Government of Iran to ensure the inviolability and effective protection of the premises of the United States Embassy, Consulates and Chancery, as well as their restoration to United States control. Iran is asked not only to release the hostages and afford them freedom and facilities to leave the territory of Iran, but to ensure all diplomatic and consular personnel of the United States in Iran the protection, privileges and immunities to which they are entitled, including immunity from any form of criminal or other jurisdiction. Iran is asked to prosecute or extradite the persons responsible for the crimes committed against the personnel and premises of the United States Embassy and

Consulates in Iran. And, finally, the Court is asked to adjudge and declare that the United States 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 Iran for the violations of the international legal obligations which it owes to the United States, in a sum to be determined by the Court at a later stage of the proceedings. Even if, as the United States profoundly hopes, the hostages are home before this Court renders judgment, the United States will wish to maintain these claims.

A declaration that an international legal obligation has been violated would be appropriate even if the violation were not continuing. The Court so recognized in the *Corfu Channel* case (*I.C.J. Reports 1949*, p. 36) where it held that past action of the United Kingdom had violated Albanian sovereignty. This declaration vindicated aspects of the Albanian legal position. It also served to clarify the law not only with respect to rights in the Corfu Channel but with respect to as vexed and vital a question as intervention.

In the *Northern Cameroons* case (*I.C.J. Reports 1963*, pp. 15, 37), this Court observed that a declaratory judgment has continuing applicability if it expounds a rule of customary international law or interprets a treaty which remains in force. In this case, the Court's judgment would serve both functions, since the relevant treaties—certainly the Vienna Conventions—in many respects codify customary international law. These cardinal codifications of international law are contained in treaties which remain fully in force despite the daily violations of their paramount provisions by the terrorists in Tehran and by the Government of Iran which, at its highest level, reaffirms its support for the holding of hostages and continues to seek to exploit that grossly illegal act for purposes of unconcealed coercion.

A declaration of the rights of the United States and of the obligations of Iran will leave no possible ambiguity about the legal principles at issue in this case. It will constitute an authoritative holding by the principal judicial organ of the United Nations as to the meaning of the legal principles at stake—principles which are of profound importance to the viability of diplomatic relations and to civilized intercourse among States. The Court's judgment will, we trust, also require the Government of Iran not only to terminate but never to repeat such violations of its international obligations.

This case, accordingly, is fundamentally different, we submit, from the *Nuclear Tests* case. In that case, Australia—and in a parallel case against France, New Zealand—simply and solely sought that the Court adjudge and declare that "the carrying out of *further* atmospheric nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of international law" and that the Court order that the French Republic "shall not carry out any *further* such tests" (*Nuclear Tests (Australia* v. *France), Judgment of 20 December 1974, I.C.J. Reports 1974*, pp. 253, 256 (emphasis added)). When the Court found that France had given assurances binding in international law that it would conduct no further nuclear tests in the atmosphere it declared the case to be moot.

But the present case could not be mooted by any declaration on the part of the Government of Iran, nor could it be mooted simply by its release of the hostages—profoundly important, profoundly welcome, and urgently essential as that release is. For in this case, unlike *Nuclear Tests*, the United States seeks a declaration that the conduct of Iran which has taken and is taking place is in violation of its international legal obligations—obligations which not only are not controverted but incontestable. And in this case, unlike *Nuclear Tests*, the United States seeks not only that the Respondent refrain from certain acts but that it be ordered to take certain acts, among them, in addition to the critical act of release of the hostages, ensuring that all United States nationals held hostage be accorded the full protection, privileges and immunities to which they are

entitled under treaties in force and general international law. The United States seeks that the premises of the United States Embassy, Chancery and Consulates be restored to United States control and their inviolability and effective protection ensured, as provided by treaties in force and general international law. The United States seeks the prosecution or extradition of those persons responsible for the crimes in point.

And finally, unlike the *Nuclear Tests* cases where the Applicants presented no claim for damages, the United States most decidedly seeks reparation. Of course, in this case Iran has neither freed the hostages nor given the least sign, still less undertaking obligations binding in international law, that it will observe a course of lawful conduct.

For reasons which are no less compelling and no less dispositive, the Court's Judgment in the case concerning the *Northern Cameroons* in no way could support a holding of mootness. This is so for a multiplicity of reasons, especially that in that case the Court was asked to make a declaration about a treaty obligation no longer in force and a declaration which would have been without operative effect.

May I now turn to another question that might be and indeed has been raised with respect to whether this case is moot or otherwise inadmissible. The question which you, Sir, put in these terms:

> "Whether the establishment or work of the commission of enquiry sent by the Secretary-General to Tehran affects in any way the jurisdiction of the Court to continue the present proceedings or the admissibility or propriety of these proceedings."

Mr. Owen has described the mandate of the commission of enquiry: fact-finding with respect to the grievances of Iran. It was hoped, and is hoped, that by proceeding to discharge this mandate, the commission would thus promote—allow, was the term the Secretary-General used—the release of the hostages. But the commission's mandate to which, to the best of our knowledge, the commission has adhered, in no way includes or trenches upon the claims which the United States has submitted to the Court. This is because the commission is limited to the finding of facts and because those facts relate only to the grievances of Iran, grievances as to which the judgment of this Court has not been requested. For these reasons, it is submitted, neither the admissibility nor the propriety of these proceedings have been affected by the establishment or work of the United Nations commission of enquiry.

It should be added that the fact that the Secretary-General of the United Nations has endeavoured to promote the solution of the hostages crisis by setting up a commission of enquiry on grievances of Iran or the fact that the United States has repeatedly let it be known that it is open to other peaceful means of settlement and most notably to the negotiations which Iran has to date refused, equally does not prejudice the jurisdiction of this Court. As the Court held in the case of the *Aegean Sea Continental Shelf*:

> "Negotiation and judicial settlement are enumerated together in Article 33 of the Charter of the United Nations as means for the peaceful settlement of disputes. The jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement have been pursued *pari passu*... Consequently, 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*, p. 12.)

May I turn now from questions of mootness, and we submit that there are none, to other questions of the admissibility of the claims of the United States which conceivably might be raised.

THE STANDING OF THE UNITED STATES

It is clear on the face of the Application and from the compelling facts of this case that the United States has standing to maintain the claims against Iran which it maintains. Iran is alleged to have violated and to be in a state of continuing violation of treaty obligations which it owes directly to the United States. These violations are so grave, so fully engage obligations under multilateral treaties of a universal character and constitute such an unprecedented and sustained attack on the vitals of international diplomatic relations, that they have naturally and rightly aroused the concern and condemnation of the world. Other States in this situation in addition to the United States are in a position to protest, and have protested, the violation of obligations under treaties to which they are parties. But that fact does not detract from the fact that it is the United States that is most immediately and profoundly wronged by Iran's unlawful acts: that it is its diplomats, its citizens, its Embassy and Consulates which have been seized and held hostage in order to coerce the United States into complying with demands which Iran, or terrorists acting on its behalf, make upon the United States. The standing of the United States to maintain claims against Iran for its multiple violations of international obligations it owes the United States is manifest.

That standing embraces the right of the United States to maintain claims not only on its own behalf but on behalf of its nationals held hostage. Those persecuted persons were United States citizens at the time of their seizure and when the United States Application in these proceedings was filed, and remain United States citizens today.

INAPPLICABILITY OF LOCAL REMEDIES RULE

There can be no question of the failure of these nationals to exhaust local remedies in Iran before the United States exercised its right of diplomatic protection on their behalf. If there is any possibility of achieving the release of the hostages through what in the common law would be a writ of *habeas corpus*, that possibility has escaped us. But the world is aware of the notorious summary proceedings that have characterized revolutionary tribunals in Iran. It is difficult to believe that an American diplomat could obtain justice, even in a civil suit, under the circumstances prevailing in Iran.

There has hardly been a more compelling case for application of the rule that, where there are no effective local remedies to exhaust, local remedies need not be exhausted. Moreover, in a case such as this, it rests upon Iran to show that in fact a local remedy exists which the United States nationals in question have failed to exhaust (T. M. Meron, "The Incidence of the Role of Exhaustion of Local Remedies", 35 *British Year Book of International Law* (1959), pp. 83-84). This is a proposition which is supported by very recent authority in the United Nations Committee on Human Rights (34 UN, GA, *Official Records* Supp. 40, UN doc. A/34/40, at pp. 124-126 (1980) and the European Court of Human Rights *Deweet* case (Judgment of 27 February 1980), at p. 11).

Furthermore, it is well-established that the rule of exhaustion of local remedies does not apply to "cases primarily based on a direct breach of international law, causing immediate injury by one State to another". (T. Meron, *op. cit.*, at p. 84.) As a leading commentator has written, if one State

> "applies to the International Court of Justice complaining of a breach of certain treaty obligations by [another State] (as shown by its conduct towards the injured alien) ... this would appear to be a case of direct injury to which the rule of local remedies would not be applicable" (*ibid.*, at p. 86. See also the Award in the Franco-American Air Arbitration of 1978, 54

International Law Reports, p. 304, and A. Freeman, *The International Responsibility of States for Denial of Justice* (1938), pp. 404, 405).

Where the case is one of mixed injury, that is, injury both to the State and to its nationals, again the rule of exhaustion of local remedies does not apply. As the then Professor Ago, in his capacity of Special Rapporteur of the International Law Commission on State Responsibility, demonstrated, in such circumstances "it was generally the infringement of the rights of the State which took precedence". (1 *Yearbook of the International Law Commission* (1977), p. 265.)

Applying these principles to this case, it is clear that the rights of the United States have been directly infringed by Iran, under the four treaties on which the United States relies. Those treaties create inter-State rights and duties and their breach constitutes direct injury to the United States. To the extent that United States nationals have also sustained injury—as they have—the rights of the United States take precedence. For all these reasons, it is submitted, local remedies need not be exhausted.

Two further questions of the admissibility of the Court's proceeding with this case may be mentioned.

One is the contention advanced by the Islamic Republic of Iran in its letters to the Court of 9 December 1979 and 16 March 1980 "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. A case confined to what is called the question of the 'hostages in the American Embassy in Tehran'. For this question only represents a marginal and secondary aspect of an overall problem." It is indeed this contention which we believe is at the heart of the questions posed by Judge Gros in the third set of questions (see p. 268, *supra*) which he was good enough to ask yesterday and permit me now to endeavour to respond to those questions.

Judge Gros initially asked for an indication of the legal bases for the rejection by the United States of Iran's contentions that the dispute between Iran and the United States fundamentally concerns the attitude of the United States Government towards Iran prior to 4 November 1979 and only subsidiarily relates to post 4 November events. It is submitted that the answer to this question is to be found in paragraphs 23, 24 and 25 of the Court's Order of 15 December 1979. The Court there declared that

> "however important, and however connected with the present case, the iniquities attributed to the United States Government by the Government of Iran . . . may appear to be to the latter Government, the seizure of the United States Embassy and Consulates and the detention of internationally protected persons as hostages, cannot, in the view of the Court, be regarded as something 'secondary' or 'marginal', having regard to the importance of the principles involved . . ."

and the Court held that

> "moreover, if the Iranian Government considers 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 remains open to that Government . . . to present its own arguments to the Court regarding those activities, either by way of a defence in a counter-memorial or by way of a counter-claim . . . By not appearing in the present proceedings, the Government of Iran, by its own choice, deprives itself of the opportunity of developing its own arguments before the Court. 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."

Now if Iran had raised any claims or counterclaims, or a defence, the United States would have had the opportunity to challenge them on the merits or by way of preliminary objections. To invoke them instead as a bar to the admissibility of the United States claim would deprive the United States of that opportunity. Where, by its own choice, Iran has failed to make its own claims or counterclaims, or even offer a defence, and where, as here, the Applicant's case on the jurisdiction and the merits is overwhelming, it cannot be imagined that the Court will find any problem of jurisdiction or admissibility which the Respondent, Iran, if it had argued, could not itself have made out. The case of the United States, and the jurisdiction and propriety of this Court deciding it, cannot be prejudiced by Iran's inaction, especially in circumstances where its action could have produced so little.

Judge Gros further asks, may a State, to be called for purposes of simplicity State A, which seises the Court of a case, define its dispute with another State (State B) unilaterally when the latter defines the dispute differently in official communications. It is submitted that the answer is most decidedly, "Yes". That is to say, State A may define a dispute with State B as it sees that dispute, and may, where the Court has jurisdiction over a dispute in the terms in which State A views the dispute, bring the dispute to the Court for its judgment. It is for the Court to decide whether in fact State A has submitted to the Court a dispute with State B, and a dispute which, moreover, falls within the Court's jurisdiction. The Court should not fail to so decide however because State B sees the dispute differently and makes generalized allegations or offers sweeping motivations which it fails to substantiate. As the Court so pertinently held in the *Appeal Relating to the Jurisdiction of the ICAO Council*, jurisdiction does not vanish...

> "merely because considerations that are claimed to lie outside the treaties may be involved if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question . . . competence must depend on the character of the dispute submitted . . . and on the issues thus raised—not on those defences on the merits, or other considerations, which would become relevant only after the jurisdictional issues had been settled."

Finally it might be asked whether this case is ripe for judgment. That is a question which answers itself. It is hard to imagine a case in which the legal issues could be starker, the facts more compelling, the urgency of a judgment to which the Security Council might give effect, more imperative. For all these reasons it is submitted that the Court has jurisdiction to render judgment on the claims of the United States, and that no questions of admissibility, or other questions, pose any obstacle to its proceeding to judgment in this case.

ARGUMENT OF MR. OWEN

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

THE CLAIMS OF THE UNITED STATES

Mr. OWEN: Mr. President, distinguished Members of the Court. It is now my privilege to resume the argument on behalf of the Government of the United States, and I propose now, with the Court's permission, to discuss the United States claim on the merits as against the Islamic Republic of Iran. At the outset I would like to make one preliminary comment about the fact that the Government of Iran has deliberately decided not to participate in the proceedings before this Court. There are situations, of course, where it is not fair to infer anything substantive about the merits of the case from an absence of this kind, but for a series of reasons we think that it is very apparent that this is not such a situation. In the first place, there is absolutely no reason at all why Iran, if it had any defence to make in this proceeding, should not have appeared here to make it. In various countries of the world, including the United Kingdom, France and the United States, the intensely strained relations which arose as between Iran and the United States last November have given rise to a very high volume of civil litigation in which the Government of Iran appears as a litigant, both offensively and defensively. There are almost 200 such cases now pending in many different courts, and the Government of Iran has demonstrated its ability to litigate with vigour in any forum that it chooses. It has retained able counsel in several different countries and mustered all of the arguments that could possibly be presented in such cases. So far as we know, out of all the different courts involved, this is the only court in which Iran has failed to appear.

In such circumstances, I suggest, the reason for the Iranian absence is clear: if Iran had any possible defence to be presented on the merits, it would be here to present it, but it has none.

Indeed, I suggest that that conclusion is supported by the letters which the Government of Iran sent to the President of the Court on 9 December and 16 March. Those letters did not present disrespectful or casual comment. They set forth a most respectful and carefully thought-out position, and for that reason their silence on certain matters is as significant as their actual words. The fact that Iran made absolutely no attempt to argue that its conduct with respect to the hostages in the Embassy is legally defensible is a matter, I submit, of which the Court is entitled to take note.

Moreover, the indefensibility of Iran's conduct is corroborated by the truly unanimous reaction of the countries of the world. Obviously there are many countries in which the Iranian revolution is regarded with great sympathy and approval. There are many countries that will support Iranian positions on different issues, provided that there are grounds for doing so. So far as we know, however, there is not a single country in the world which has suggested in any way that the Iranian conduct in seizing the Embassy and the hostages was justified within the framework of international law. The absolutely unanimous view that Iran has broken the rules is reflected in the vote of the Security Council on 4 December, and in the outpouring of opinion from countries all over the world within the last four-and-a-half months. That opinion, I should emphasize, is shared by States representing every shade of political and economic, and even religious, persuasion. It is shared by the largest countries in the world and by the smallest. It is shared by the richest, the poorest, and by the East and West; by the aligned and non-aligned—in fact by everyone.

The Iranian Government would clearly prefer that this were not so. Seeking to mollify, to some degree at least, the world-wide criticism which has come raining down upon the Iranian Government since the seizure of the hostages, the Iranian Foreign Minister, Mr. Gotbzadeh, has suggested that the ordinary rules of diplomatic immunity are essentially irrelevant because, he has said, they were devised by, and for the benefit of, what he refers to as "the Big Powers". It is Mr. Gotbzadeh's theory that the purpose of the international legal principles involved is to prevent prosecution of "the crimes that the representatives of the big powers have committed in the small countries", a comment which is reflected at page 96, *supra*.

Along the same lines the grandson and adviser of the Ayatollah Khomeini has asserted, as indicated in our Memorial at page 218, *supra*, that the Embassy seizure has found favour in the Third World, that the seizure of diplomats as hostages is *not* regarded by third World populations as violating international law, and that "the poor and under-privileged despise the legal and meddlesome minds of the rich and powerful".

The actual reactions of such States demonstrate that this Iranian thesis is factually incorrect in every particular. The views of the smaller countries, including countries in the Third World, are reflected in the records of the United Nations Security Council debates during December and January. Just as one example, let me refer to the views expressed by the representative of Zaire, who explicitly called on the Government of Iran to bring itself into compliance with the principles of international law. He stated as follows:

> "We in the Third World who continue unswervingly to strive for the democratization of international relations, for a more just and equitable system of international relations, protected from fear, arbitrary actions and the rule of force, but guaranteed by the force of law, attach the utmost importance to this, bearing in mind the means available to us, because we are convinced that in a world without principles and laws we should be the losers." (UN doc. S/PV.2175, 1 Dec. 1979, at p. 58.)

The same theme was urged by the representative of Panama, appealing to the Iranian authorities to "cease their illegal and inhuman detention of persons protected by international law". He stated:

> "for a small country, existence as a nation is only possible in a world in which law and order prevail. The sole weapon, the only defence of a small nation lies precisely in the maintenance of the legal system that governs international relations." (UN doc. S/PV.2176, 2 Dec. 1979, at p. 47.)

Again, the representative of Gabon referred to the long-established principles of diplomatic immunity and made the following observation:

> "Respect for these diplomatic customs is even more fundamental for countries such as ours, which owe their very existence in the face of power politics and hegemony of all kinds to the recognition of this international law..." (UN doc.S/PV.2175, at p. 22.)

And finally the same position was summed up by the representative of Portugal in the following terms:

> "In any country the rule of law is the best defence of ordinary people against oppression and tyranny. Similarly, between States, international law is the only defence of the small, poor and weak countries against the rich and powerful." (*Ibid.*, at p. 12.)

It is simply inaccurate for the Government of Iran to suggest that there is an element of world opinion which regards their hostage-taking as lawful. There is not. The small and non-aligned countries, together with the major powers from

East and West, including such countries as the Soviet Union, the United Kingdom, Czechoslovakia and France, are totally agreed that the seizure of the American Embassy and the capturing of the American hostages in Tehran constitute flagrant and continuing violation of international law.

The principles of international law which this Court is being asked to vindicate are of deep concern to *all* States for they are indispensable to a civilized international order. Moreover, although I regret the need to make this observation, there is clear evidence that the world is entering upon a new era of terrorism in which the seizure of hostages, including particularly diplomatic hostages, is a political technique which is being used with increasing frequency. In most cases, it is true, diplomatic agents have been seized by terrorist groups who reflect at most a minority political position within the particular country involved, but it is nevertheless the fact that in the past decade diplomats from a great many different countries have been seized and detained for political purposes. Just in one recent episode the seizure of the Dominican Embassy in Colombia diplomats from no less than 14 different countries were taken captive, including diplomats from Austria, Brazil, Bolivia, Costa Rica, the Dominican Republic, Egypt, Guatemala, Haiti, Israel, Jamaica, Mexico, Paraguay, Peru, Switzerland, Uruguay, the United States, the Vatican and Venezuela.

Every one of these episodes of course reflects a terribly serious situation for the affected States. But the severity of the episode in Tehran far exceeds any of the other examples, both qualitatively and quantitatively. In Tehran the host Government itself participated from the outset, seizing a large number of hostages and maintaining their captivity for months on end in order to achieve its political purposes. From the point of view of the future of international relations and world peace, the events elaborated in the present record are truly frightening and ominous. Unless the world community takes every possible step toward condemning and discouraging such conduct, the rule of international law will be gravely imperilled.

Lack of Relevant Exceptions to Diplomatic Immunity

Before I begin my discussion of the particular substantive rules which Iran has violated since 4 November 1979, I should like to address myself to the second question (see p. 254, *supra*) put by the President of the Court yesterday. That is, "whether a State may have an inherent right in any extreme circumstances to override its obligations under the rules of diplomatic and consular law to respect the inviolability of diplomatic and consular personnel and premises, and if so, in what circumstances". As discussed in our Memorial at pages 160 and 164, *supra*, there have been suggestions that the general rule of inviolability is subject to a few extremely narrow exceptions. Arguably, the police agents of a State may apprehend a diplomatic agent who is actually in the act of committing a crime. Or briefly use force to restrain a diplomatic agent who is engaged, for example, in an actual assault upon another person. Even these limited exceptions, however, are controversial, particularly in regard to the inviolability of premises. In any event, we submit that by no stretch of the imagination can any of these possible exceptions have any application in the present case. The American Embassy and its personnel were not seized to avert an imminent peril of the kind envisaged in these possible exceptions to the rule of inviolability. Instead, as indicated by the statements of the Government of Iran, the apparent purpose of the seizure and of the prolonged detention of the hostages was and is to coerce the United States into complying with certain Iranian demands. Iran is under no obligation to maintain diplomatic relations with the United States or to permit the United States to maintain an Embassy in Iran, or even to tolerate the presence in Iran of some officials whom Iran may consider objectionable. But having established diplomatic relations with the United States, Iran is obligated

to respect the inviolability of the United States diplomatic mission and its personnel, an obligation which exists even in time of war (see, e.g., Articles 44 and 45 of the Vienna Convention on Diplomatic Relations).

In short, any exceptions to the rule of inviolability have no application in this case and this Court was absolutely correct when it stated in its Order of 15 December that the rule of inviolability is "unqualified".

Categories of United States Claims

Against that background, I should like now to turn to the specific claims asserted here by the United States. As we see it, there are five broad categories of unlawful conduct from which those claims arise. They are, first, the seizure and continuing detention of the American hostages in Tehran. Second, the harsh treatment and other conditions associated with that detention. Third, the interrogation and threatened trial of the hostages. Fourth, the invasion and occupation of the United States diplomatic and consular premises in Tehran. And fifth, the failure of the Iranian Government to bring the perpetrators of these crimes to justice.

Immunity of Embassy Personnel from Seizure

In setting forth the United States claims as they arise from the seizure and continuing detention of the American diplomatic agents and staff in Tehran, we are relying upon what is probably the oldest and most fundamental rule of diplomatic law. As I indicated yesterday, it has been established customary international law for centuries that every diplomatic agent enjoys diplomatic immunity and that under no circumstances may he be seized by the receiving State, either as a hostage or for any other purpose. The rule of personal inviolability was followed even in early civilizations, simply because a diplomat cannot perform his functions without such a rule. Many authorities view the principle of inviolability as the core or central principle from which all diplomatic privileges and immunities have been derived. It is a rule which has found such universal acceptance that according to one leading authority, as set forth in our Memorial at page 160, *supra*, from the 16th century down to the present time no receiving State has authorized or condoned a breach of a diplomat's personal violability. This is not to say that there have not been instances when a diplomatic agent has been unlawfully detained. The point is that although there have been such instances, the practice has been for the receiving State to recognize the seizure as a violation of international law and to make amends in one way or another. For example, in 1917 the American Minister to Guatemala was briefly detained by the Guatemalan police. In that case, however, the president of Guatemala immediately apologized and issued orders that the officers involved be punished. Similarly, in 1932 when the American Minister in Ethiopia was attacked by police officers, the Ethiopian Government brought about the prosecution of the officers and gave broad publicity to the resulting sentences.

I think it is truly safe to say that, with the possible exception of the present Government of Iran, there is not a single government in the world which would dissent from the fundamental proposition that every diplomat is entitled to absolute personal immunity from attack or seizure, except in exceptional circumstances which are not relevant here.

The universal acceptance of these principles of course led to their inclusion in the 1961 Vienna Convention on Diplomatic Relations and that Convention gives rise to the most important claims asserted by the United States in this proceeding. Specifically, Article 29 of the Convention provides in the most explicit terms that "the person of a diplomatic agent shall be inviolable", that he "shall not be liable to any form of arrest or detention, and that the receiving

State shall treat him with due respect" and "take all appropriate steps to prevent any attack on his person, freedom or dignity". All of these principles constitute simply a codification of previously existing law. In addition, the 1961 Convention added the principle that the same privileges and immunities should be enjoyed by the members of the administrative and technical staff of a diplomatic mission. The relevant provision of the 1961 Vienna Convention is Article 37.

With these fundamental principles in mind, it really requires no argumentation to demonstrate that on 4 November 1979 the Government of Iran embarked on a course of conduct which violated these principles in the most flagrant and indisputable way. At that time, with the assistance of the Government's revolutionary guards, the so-called student followers of the Ayatollah Khomeini physically captured some 63 United States nationals and a number of non-Americans as well. In addition, three United States diplomats have been physically confined within the premises of the Iranian Foreign Ministry bringing the total number of detained Americans up to 66 individuals. That total, of course, does not include the six additional Americans who were able to slip away from the Embassy at the time of the attack and achieve a safe refuge and eventual escape through the good offices of the Canadian Government. As to the 66 Americans who have actually been in captivity, all but two enjoyed diplomatic status either as agents or staff. The other two are an educator and a businessman who happen to have fallen into the hands of the student followers of the Ayatollah and as to those two individuals we claim no personal immunity as such. On the other hand, as indicated in our Memorial, those two individuals, being present in the Embassy, were entitled to the immunities arising from their presence there and as United States nationals within Iran they were separately entitled to receive "the most constant protection and security" under the Treaty of Amity between the United States and Iran.

Of the 64 persons who were and are entitled to diplomatic immunity 13 were released on 20 November pursuant to an order issued by the Ayatollah Khomeini. In that same order the Ayatollah commanded, in effect, that the remaining 51 diplomatic agents and staff be continued in confinement and their confinement continues to this day. As I mentioned earlier, three of them, one of whom is the American Chargé d'Affaires Mr. Bruce Laingen, are confined in the Iranian Foreign Ministry and the other 48 are held by the so-called militant students.

Direct Responsibility of Iranian Government

As I noted yesterday, we think it is really beyond dispute that since 4 November all of the confined Americans have been under the continuous authority of the Ayatollah, to whom the student captors have repeatedly pledged their allegiance. On 17 November, when the Ayatollah directed that 13 be released and that the remainder be detained, the students obeyed with precision. A few weeks ago, when the President and the Foreign Ministry sought to bring about the transfer of the hostages from the custody of the students to the custody of the government, the students quickly focussed on the question whether the transfer had been ordered by the Ayatollah. They made claim that if the Ayatollah issued such an order for a transfer they would obey, but when he declined to do so they retained the hostages in their custody. It may be that some officials of the Islamic Republic would prefer that the hostages be released, but it is the will of the Ayatollah that has controlled to this day.

Under the circumstances, I respectfully submit, the Court has no real alternative but to attribute the conduct of the students to the Government of Iran. Time and again since 4 November officials of the Iranian Government have acknowledged that the students are acting on behalf of the State (see, e.g., Memorial, pp. 88, 128-130, 197-200, *supra*, Supplemental Documents 3, 21, 65, 72, 79, 100, 115, 129, 130, 135, 139) and the facts have been publicly recognized

by nations throughout the world. We have reviewed the debates in the Security Council in December with respect to the responsibility of the Government of Iran in carrying out these violations of international law and those debates, as well as the resulting resolution, make clear that all of those who participated were agreed on the responsibility of the Iranian Government itself. (See, e.g., UN doc. S/PV.2175, at p. 11 (Norway), 12 (Portugal), 28-30 (Bolivia), 38 (Nigeria); S/PV.2176, at 22 (Federal Republic of Germany), 23-25 (Australia), 33-35 (Malawi), 42 (Panama), 53 (Spain); S/PV.2177 at p. 5 (Swaziland), 11 (Belgium); S/PV.2182, at p. 26 (Singapore).) As soon as the Ayatollah, the chief of State, decides that the hostages are to be released they will be, but so long as he adheres to the belief that the detention of the hostages serves his political purposes, they will presumably remain in captivity.

It should be noted that in a very real sense this conduct on the part of the Iranian Government constitutes a retreat from the standards which Iran itself has endorsed for many years. In 1924, for example, an Iranian mob attacked and killed one Major Robert Imbrie, an American Vice-Consul in Tehran, and the Persian Government immediately recognized that by failing to protect Major Imbrie it had violated an international legal obligation which it owed to the United States. At that time the Government acknowledged its responsibility, agreed to pay an indemnity to the Major's widow, and initiated action to apprehend and punish the offenders. More than 50 years ago the Government of Iran recognized its legal responsibilities, but it has refused to do so today.

At a much earlier point in my presentation, I made mention of the fact that the conduct of the Iranian Government towards the hostages represents compound violations of international law and the point I think is well illustrated by the Imbrie case to which I have just referred. Under the treaties upon which the United States relies, the Government of Iran has had a continuing obligation to protect United States nationals from seizure or other harm and to prevent such crimes from going forward and this duty of protection and prevention arises under Article 29 of the 1961 Vienna Convention on Diplomatic Relations, under Articles 2 and 4 of the New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents, and under Article II of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran. In other words, the conduct which we have described to the Court at such length has violated Iran's duties of protection and prevention under several different treaties, and yet, I submit, that it would be a vast understatement to suggest that the Government of Iran is guilty of nothing more than a failure to protect the Americans and prevent the crime. The most significant fact is that, far from merely failing to protect the individuals and prevent the crimes, the Iranian Government itself has participated in the seizure and in the commission of the crimes, thereby compounding the violations many times over. Where a policeman fails to prevent a kidnapping from taking place, he may be criticized at one level, but where he affirmatively participates in the kidnapping, he is engaged in a far more flagrant violation of the law.

At this point I would like to turn to a related, but somewhat different set of grievances stemming from the seizure of the hostages. It relates to the conditions under which these United States nationals have been held in captivity. It would be one thing if the Iranian Government had placed these individuals under house arrest and allowed them to continue to live in relatively humane conditions. Such conduct would, of course, have constituted a serious and totally unacceptable violation of international law, but it would not have been nearly as egregious as the conduct which has occurred in fact.

The Court adjourned from 11.20 to 11.40 a.m.

QUESTIONS BY JUDGES MOROZOV AND ODA

Judge MOROZOV: I would be grateful if the Agent of the United States of America would reply to the following seven questions.

1. I would recall that on 19 February 1980 the Deputy-Agent of the United States called on the President of the Court, at the latter's request, and told him that having regard to the delicate stage reached in negotiations, the United States Government would request the President and the Court to defer the fixing of the date for the opening of the oral proceedings for the time being; he added that he could not at that stage give the President any idea when a further statement might be forthcoming. On 27 February 1980, at the request of the President, the Deputy-Agent of the United States again called on him and said that the delicate stage reached in the negotiations regarding the establishment and objectives of the commission had led the United States Government to request that the hearings be not fixed to open in February. That Government's estimate of the situation led it to suggest that it would be convenient if the hearings could begin on 17 March. The Deputy-Agent added that it was possible that a consideration of the hostages' well-being might lead his Government to suggest a later date, although 17 March would continue to be the date which it envisaged.

In the light of this, my question is as follows:

If the establishment by the United Nations of a special commission, and the activity of that commission, does not relate specifically to the question of the release of the hostages, and if the Court should, according to the United States Government, consider the case as one of urgency, what was the reason why the United States Government has wasted approximately one month before pursuing the defence, with the assistance of the Court, of its diplomatic and consular staff detained in Tehran?

I should say that my reference to the statement to which I have just drawn attention, and my further references to what was said at yesterday's meeting, are based on my notes, and I therefore do not pretend to quote precisely. As a technical matter, I had no chance to refer in time to the record of yesterday's meeting, in spite of all efforts of our Registry to provide it.

2. At the hearing of 18 March 1980 the Agent of the United States said that the United States Government has followed a policy of restraint in its relations with the Islamic Republic of Iran, which is in accordance with the provisions of the United Nations Charter. In this connection, how would the United States Government explain such well-known acts on its part as the freezing of Iranian investments in the United States and abroad, which according to the press and broadcast reports amount to some 12 billion dollars? Is it possible to regard such acts, as well as threats to use other unilateral measures of coercion and threats to use force against the Islamic Republic of Iran, as in conformity with the United Nations Charter, and with paragraph 47 (B) of the Court's Order of 15 December 1979, which required the United States Government not "to take any action and should ensure that no action is taken which may aggravate the tension between the two countries or render the existing dispute more difficult of solution"?

3. As one of the sources of jurisdiction in this case the United States relies on Article 21, paragraph 2, of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran. Does the United States Government consider that the coercive actions mentioned in my

second question are in compliance with the basic provisions of that 1955 Treaty of Amity?

4. Could the United States Agent produce to the Court any letters, cables or other evidence that a formal and official written suggestion was made by the United States Government to the Government of the Islamic Republic of Iran specifically directed to bringing the dispute to arbitration as provided for in Article 21, paragraph 2, of the 1955 Treaty of Amity and, if so, at what date?

5. As a further source of jurisdiction in the case the United States has relied on Articles 2, 4 and 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973. Could the United States Agent produce to the Court any letters, cables or other evidence that a formal and official written suggestion was made by the United States Government to the Government of the Islamic Republic of Iran, specifically directed to bringing the dispute to arbitration as provided for by Article 13 of that Convention and, if so, at what date?

6. What provisions of international law are relied on by the United States in support of its submission mentioned in the Memorial for the extradition to the United States of America, for the purpose of prosecution, of those Iranian citizens who were allegedly responsible for the crimes committed against the personnel and premises of the United States Embassy and Consulates in Tehran (United States Memorial, para. *(b)* (v), p. 190, *supra*)?

7. With reference to that part of the statement by the United States Agent at the hearing of 18 March 1980 which related to the communication dated 16 March 1980 to the Court from the Iranian Minister for Foreign Affairs, to the effect that the dispute before the Court is only part of the dispute between the two countries and that part should be considered by the Court separately, as was said by the Agent of the United States; is it correct to interpret this part of the Agent's statement as a recognition of the existence of a manifold dispute between the United States and Iran and, if so, would the United States Agent be kind enough briefly to indicate to the Court the characteristics of that dispute as a whole?

Judge ODA: I would be grateful for the responses of the Agent of the United States to the following questions.

Firstly, in the declaration of Mr. Newsom of 6 December 1979 and in the response by the United States of 11 December 1979 to questions presented by the Court, as well as in the argument of the Agent this morning, it is stated that at least 28 members of the diplomatic staff and 20 members of the administrative and technical staff of the Embassy, and two United States nationals who are not qualified as diplomatic, administrative, technical, consular or service staff, have been held hostage in the Embassy. In addition, three members of the diplomatic staff have been held hostage in the Ministry of Foreign Affairs. Are there any personnel among the hostages to whom the Vienna Convention on Consular Relations alone applies? In this respect, in the Memorial of January 1980, Article 70 of the Vienna Convention on Consular Relations is not referred to. What significance does the United States attach to this Article, Article 70 of the Vienna Convention on Consular Relations?

Secondly, in the Memorial at page 171, *supra*, it is claimed that the Government of Iran has failed to respect and protect the United States consular premises in Tabriz and Shiraz. On the other hand, the Court has been informed in the response of 11 December 1979 only that:

> "The operations of the United States consular posts in Tabriz and Shiraz had been suspended since February of 1979, when our posts in several Iranian cities were attacked by demonstrators. Therefore, no American personnel were at these posts at the time the incident occurred. The premises were seized by demonstrators in early November and we have no current report on their status."

Would the Agent be good enough to supply any information as to what has happened to these consulates from February 1979 onward?

Thirdly, with regard to the consulates in Tabriz and Shiraz, only a breach of the obligation concerning protection of consular premises is expressly alleged in the Memorial. Is it the contention of the United States that Iran has the obligation, for instance, to accord full facilities for the operation of these consulates?

The PRESIDENT: Mr. Owen, you may of course reply to those questions either this morning or when you complete the submissions of your Government at the session of the Court tomorrow morning (see pp. 315-319, *infra*). I should add that there will be some further questions from Judge Gros (see pp. 312 and 515, *infra*) which will be made available to you in writing some time in the course of the day, which it will also be necessary for you, if you can, to reply to tomorrow morning.

ARGUMENT OF MR. OWEN (cont.)

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

CONDITIONS OF HOSTAGES CAPTIVITY

Mr. OWEN: Mr. President, when the Court adjourned I was about to enter upon a discussion of the conditions under which the American hostages have been held captive in Tehran. As I embark upon this aspect of the case, I should remind the Court that we do not, of course, have access to the 53 individuals who remain in captivity in Tehran today and therefore cannot furnish the Court with any very concrete information as to exactly the conditions under which these hostages have been existing for the past several months. On the other hand, the Court may also recall that on 20 November 13 of the hostages were released and those released hostages have provided the United States Government with detailed information as to the manner in which they were treated during the first two-and-a-half weeks of their captivity. Affidavits containing such information are available for the Court's *in camera* inspection, if they are desired. Although there appears to have been some variation as among the treatment of different hostages, it is fair to say that the conditions which existed during the first two-and-a-half weeks of incarceration were harsh. Without going into great detail I might simply give some examples of the kind of treatment meted out to these people in the early period of their confinement.

The female hostages were tied to straight chairs facing the wall and kept in that position for 16 hours a day. All windows were boarded up and inside electric lights kept burning 24 hours a day, thus inhibiting sleep. The hostages were frequently blindfolded, the punishment for attempting to speak to another hostage or for disagreeing with one of the guards was to be blindfolded for many hours at a time. Hands were kept either bound or handcuffed at night, thus inhibiting sleep. Some hostages were required to sleep on the cold bare floor with their hands tied, without blankets or other amenities. In some cases changes of clothing were not permitted and a bath or shower was permitted only rarely. Several hostages were repeatedly threatened with guns and other weapons. On one occasion a student who was interrogating a women hostage showed her his revolver to let her know that one of its several chambers was loaded and then proceeded to intimidate her by pointing the gun at her and repeatedly pulling the trigger. Happily, he stopped in time, but the experience must have been terrifying. The hostages have not been permitted to see newspapers or obtain news in any other fashion. We also know that on a number of occasions some of the hostages had been paraded blindfolded before hostile and chanting crowds. I submit that if one closes one's eyes and imagines the sort of terror that would necessarily be evoked by that treatment, one gets some inkling of what these people have been put through.

Despite repeated requests to allow contact between the hostages and their Government, all such contact has been absolutely prohibited. On a few isolated occasions an outside observer has been allowed to see some of the hostages, presumably because such visits have served the interests of their captors. But the Secretary-General of the United Nations was not allowed to see any of the hostages during his visit in late December and early January, and the United Nations commission was denied access to the hostages in the Embassy despite the prior assurances of the Iranian Government.

All of these actions, we submit, have constituted flagrant violations of the

international legal obligations which the Iranian Government owes to the United States and to the hostages themselves.

Under Article 26 of the Vienna Convention on Diplomatic Relations and Article 34 of the Vienna Convention on Consular Relations, all of the American diplomatic and consular officials have been continuously entitled to "freedom of movement and travel" within Iran and, under Articles 27 and 35 of the same Convention, they have been continuously entitled to free communication with their Government.

All of those fundamental rights, which are absolutely essential to the performance of diplomatic and consular functions, have been totally denied for four-and-a-half months. Instead of being left free to go about their diplomatic and consular duties, they have been confined like common criminals. As indicated during the Security Council's debate, particularly by the representative of Portugal, the Government of Iran has imposed upon these hostages, what that representative described as "an inexcusable form of cruel and inhuman treatment".

I think it is striking, incidentally, that at the beginning of the Second World War, when the Axis and Allied Powers went to war against one another, the practice of each Government was to politely escort the diplomatic agents of the enemy out of the country or intern them in comfortable quarters pending exchange, whereas here the Iranian Government, with which the United States is not at war, has subjected our people to harsh confinement.

Moreover, over and above the other severe aspects of this confinement, it is apparent that some or all of these individuals have been subjected to gruelling interrogation under conditions which by definition constitute coercion—as illustrated, for example, by the woman who was so alarmingly interrogated at the point of a loaded revolver.

Apparently, the Ayatollah Khomeini and his followers have been hoping to find evidence that some of these hostages are, to use their words, "spies", and have permitted coercive interrogation for that purpose. All of this has been done under the auspices of the Ayatollah who explicitly stated on 18 November, as indicated at pages 88-89, *supra*, that his student followers were properly carrying on these so-called investigations. The Ayatollah declared as follows: "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."

Needless to say, this treatment of the hostages constitutes an independent and gross violation of international law. Article 31 of the Vienna Convention on Diplomatic Relations provides in the most straight-forward terms that every diplomatic agent "shall enjoy immunity from the criminal jurisdiction of the receiving State" and that he shall not be "obliged to give evidence as a witness". If the clear terms of the Convention preclude interrogation of these Americans in an official courtroom of Iran, *a fortiori* the Convention precludes interrogation behind closed doors under hostile and coercive conditions as apparently endorsed by the Ayatollah Khomeini. Again, it is difficult to think of a more gross violation of international law than locking up diplomatic envoys and subjecting them to this kind of treatment. As the Court recognized in the provisional measures which it indicated on 15 December, it seems clear that for the past four-and-a-half months the Government of Iran has been subjecting the American hostages in Tehran to, what the Court described as, "privation, hardship, anguish, and even danger to life and health".

It should be noted that even if all of the 53 Americans still in captivity in Tehran were ordinary United States nationals, as contrasted with diplomatic agents and staff, the treatment which has been meted out to them by the Iranian Government would nonetheless be far below the minimum standard of treatment which is due to *all* aliens, particularly as viewed in the light of fundamental standards of human rights. Paragraph 4 of Article II of the 1955 Treaty of Amity

between the United States and Iran explicitly requires Iran to provide reasonable and humane treatment in every respect to United States nationals in Iranian custody, together with the most constant protection and security. The right to be free from arbitrary arrest and detention and interrogation, and the right to be treated in a humane and dignified fashion, are surely rights guaranteed to these individuals by fundamental concepts of international law. Indeed, nothing less is required by the Universal Declaration of Human Rights.

As I indicated a moment ago, at various times during the last four-and-a-half months the Iranian Government has attempted to justify its treatment of the American hostages by asserting that some of the hostages are spies who have violated the laws of Iran and who therefore may be treated as common criminals. Yesterday Judge Gros posed three questions about such allegations, and perhaps this is an appropriate point for me to provide the answers.

Responses to Questions

First, in Judge Gros' question 1 (B) (p. 268, *supra*) he asked whether, in any diplomatic exchanges prior to 4 November 1979, the Government of Iran voiced criticisms to the effect that the United States diplomatic and consular personnel in Iran had engaged in espionage or other unlawful actions against the Government of Iran. The answer is that on several occasions during that period representatives of the Iranian Government suggested to American officials in very general terms that the United States was somehow engaged in some sort of conspiracies or subversive actions against the new Iranian Government, but on each of those occasions the American representatives unequivocally denied the charges and asked the Government of Iran to produce any evidence that it might have to support its allegations. At no time did any Iranian official respond to these requests by presenting any evidence or other material bearing on any alleged conspiracy or acts of subversion attributable to the United States. Moreover, I should emphasize, that none of the generalized suggestions made by the Iranian officials related to any of the diplomatic or consular staff in Iran. At no time during the period involved did the Iranian Government raise any question about the propriety of any activities of the American Embassy in Tehran. In response to Judge Gros' question whether the Iranian authorities ever indicated an intention to declare any member of the United States diplomatic or consular staff *persona non grata* or "unacceptable", the answer is that they did not.

Next, in his question No. 2 (p. 268, *supra*), Judge Gros has referred to the repeated suggestion, as advanced by the Ayatollah Khomeini and others, that the American Embassy in Tehran was not really a proper diplomatic mission, but instead a "den of espionage". The response of the United States is that the charge is untrue; the United States Embassy in Tehran was a normal diplomatic mission operating as such missions normally do.

In response to Judge Gros' further question whether the United States was involved in sabotage operations in Kurdistan or Khuzestan, or had plans of intervention in Iran, the answer is no.

Apart from the answers which I have just given, I should also make clear that for at least two reasons, the Iranian allegations of spying which have been advanced in an effort to justify the seizure of the Embassy, cannot properly enter into this Court's decision-making process in any way at all. In the first place, those Iranians most closely associated with the spy charges apparently do not appreciate the fact that the collection and transmission of information about the host country is one of the most fundamental functions that diplomatic agents are expected to perform. I have no doubt that when the United States Embassy was operating in Tehran there was a flow of information about Iran from that Embassy to the State Department in Washington and that there is today a flow

of information about the United States from the Iranian Embassy in Washington to the Iranian Foreign Ministry in Tehran. Such activity obviously is normal and proper as confirmed by the fact that Article 3 of the Vienna Convention on Diplomatic Relations explicitly lists such activities as a normal part of diplomatic agents' functions. Second, and perhaps more importantly, even if there had been some so-called spying on the part of one or more of the hostages, proof to that effect would nevertheless be absolutely irrelevant to the present proceedings. Long-established principles of international law and long-established State practice make clear that if a diplomatic or consular agent engages in espionage or other unlawful conduct directed against the receiving State, that does not give the receiving State the right to arrest him or interrogate him or subject him to any other aspect of the criminal prosecution process. Under Article 31 of the diplomatic convention it is clear that every such agent enjoys complete immunity from the criminal jurisdiction of the receiving State, no matter how displeased that State may be with particular conduct. This is not to say, of course, that the receiving State is without a remedy. Obviously, it has the right at any time and for any reason to declare a diplomatic agent *persona non grata* and thus, in effect, bring about his expulsion from the country.

Exactly that remedy has been continuously available to the Government of Iran if it was dissatisfied in any way with the conduct of any of the United States diplomatic and consular personnel. But instead of invoking the only lawful remedy available to it, the Iranian Government chose instead the flagrantly unlawful alternative of seizing the diplomatic agents and confining them for months on end in harsh and inhumane conditions.

There is no possible way, I submit, that that conduct can be justified.

Before I leave the subject of the treatment of the hostages I should mention one additional problem which, though it has not actually come into existence as yet, constitutes a potential threat in the future. As the Court will recall from our earlier oral presentation and our Memorial, over the past four-and-a-half months, various different figures on the Iranian political scene have advanced the notion that at some point in the future some or all of the American hostages would be put on trial in the criminal courts of Iran. These suggestions have been advanced by Foreign Minister Gotbzadeh, by the students and, indeed, by the Ayatollah Khomeini himself.

Moreover, different types of penalties have been threatened as appropriate sentences following such criminal trials. One Iranian magistrate, as indicated in our Memorial on page 207, *supra*, has suggested that the hostages should be remitted into slavery, but the more frequent suggestion has been that once the hostages have been tried and convicted, they should be brought before a firing squad, as indicated for example, in our Memorial at page 203, *supra*. Although it is difficult to tell how seriously these suggestions have been advanced, they take on an ominous significance when it is recalled that in recent months over 600 Iranian nationals have been tried in peremptory fashion before revolutionary courts and then put to death.

Needless to say, any kind of criminal prosecution of any of these hostages would constitute fresh violations of the express prohibition set forth in Article 31 of the Vienna Convention on Diplomatic Relations. I will not labour the point at this time, however, because although threats of criminal prosecution were heard with great frequency at an earlier stage of the crisis, there have been relatively fewer such suggestions since early December, perhaps because on 15 December this Court expressly called upon the Government of Iran to provide to all American diplomatic and consular agents immunity from criminal prosecution. Nevertheless, the supplemental documents which we have been submitting to the Court demonstrate that occasional threats of criminal trials are still being made (Supplemental Documents 20, 37, 40, 117 and 138, pp. 343, 356-363, 422-423, 435, *infra*), and for that reason, as I shall indicate later in my

submission, we have included an appropriate provision on the subject in our prayer for relief.

That concludes my discussion of the treatment of the hostages and at this point I would like to turn to a different subject, namely the legal violations affecting the physical properties of the United States in Tehran. By physical properties I refer both to the real estate—the Embassy in Tehran and the Consulates in Tabriz and Shiraz—and also to another important category of property, namely the files, records and equipment located within these buildings. All of these properties, of course, were seized in the early days of November 1979.

As to the seizure of these properties I will not dwell on the facts. The Court will recall that on 4 November the students assaulted the compound, cut chains, removed window bars, attempted to set fire to the Chancery, burned through steel doors with torches and by these methods gained possession of all of the buildings in the compound—possession which was then confirmed by the presence of the Revolutionary Guards. Some hours after the seizure of the Embassy, similar seizures were made of the United States Consulates in Tabriz and Shiraz, again with the co-operation of the Revolutionary Guards. Obviously, the Embassy compound remains in the control of the militant students, but the United States Government has no reliable information as to the current status of the two consular properties.

Once again, there can be no possible dispute as to whether the physical invasion of the diplomatic and consular premises of the United States was lawful. Article 22 of the Vienna Convention on Diplomatic Relations is as explicit as it can be on that point. Similarly, Article 27 of the Vienna Convention on Consular Relations explicitly provides that the receiving States shall respect and protect the consulate premises. The importance of such respect and protection is emphasized by the fact that under Article 27 the consular premises are to be protected even where consular relations have been severed or where a consular post has been closed.

At an earlier point in my argument I commented on how striking it is that the legal principles on which we rely in this case are so uniformly regarded as valid and the principle of the inviolability of the premises of a diplomatic or consular mission is no exception. Over the years, of course, there have been relatively rare occasions when a mission has been attacked, but this appears to be the first case in many centuries in which a receiving State itself has participated in the attack and then retained possession of the premises and attempted to use that unlawful possession to political advantage.

At this point it may be appropriate for me to remind the Court of the marked inconsistencies that have occurred as between different actions taken by the Iranian Government. Yesterday I mentioned that both before 4 November and after that date, threats of attack were made as against the Embassies of the United States and the Soviet Union, and on those other occasions the Iranian Government acknowledged in a straightforward fashion that it had an obligation to protect the Missions involved. On those occasions it deliberately obeyed the rules of international law, but on 4 November and thereafter the Iranian Government has deliberately disobeyed those rules. In so doing I respectfully submit it has indisputably subjected itself to liability to the Government of the United States.

With respect to physical properties, I should also refer, at least briefly, to the fact that as widely reported in the press the militant students who have occupied the Embassy premises for the past four-and-a-half months, appear to have thoroughly ransacked all of the diplomatic and consular archives and documents upon which they could lay their hands. Indeed, there have been recent press reports to the effect that when the students discovered that some private documents had been shredded, that is torn up, in order to preserve their privacy,

they painstakingly pieced the shreds together in order further to invade the privacy of the Embassy records.

Moreover, the occupiers of the Embassy have not refrained from using these private records in public from time to time; to use their own words, they have "exposed" groups of Embassy documents, claiming that they prove this or that with respect to alleged American espionage, and I think it is remarkable how little sympathy these supposedly dramatic exposures have elicited in other countries of the world. The fact is, of course, that there is the universal recognition that it is totally illegitimate to seize the archives and documents of a diplomatic or consular mission. Under the express terms of Article 24 of the Diplomatic Convention and Article 33 of the Consular Convention, all such archives and documents are to be inviolable at all times and wherever they may be.

It seems particularly shocking that these fundamental principles of diplomatic law should be tossed aside so casually, not only by the militant students, and not only by the Iranian Government at large, but even by the Iranian Foreign Minister, the chief of the Iranian diplomatic service. In an interview, which is reprinted in our Memorial at pages 208-210, *supra*, the Foreign Minister proudly announced that the Government had taken possession of the United States Embassy's documents and plans to make such use of them as might be directed by the Ayatollah Khomeini. I think that any one of us would be hard pressed to think of a more outrageous violation of international legal principles applicable to the inviolability of the premises and archives of diplomatic missions.

If the Court please, in so far as the substantive claims of the United States are concerned, I want to make one more major final point. Judging by the outpouring of criticism that has rained down upon the Government of Iran as a direct result of the course of conduct which commenced on 4 November, virtually every country in the world is saying to itself, "there but for the grace of God go I". Countries throughout the world recognize that if this can happen to American diplomats in Tehran, it can happen to other diplomats wherever any diplomatic mission is located.

It is quite obvious to the Court, I am sure, that one of the principal reasons for our bringing this case here and one of the principal reasons why our bringing of the case has received such wide acclaim, is the widely shared concern that a way must be found to deter similar seizures in the future. The need to create a deterrent, I submit, is an overwhelming important factor in the present proceedings.

In this respect it seems to us vitally important to look to the provisions of the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents. That Convention, to which both the United States and Iran are party, defines certain crimes which are plainly involved in this case, and it then tacitly recognizes that if such crimes are to be prevented in the future a strong element of deterrence is required. Not surprisingly, the element of deterrence contemplated by the Convention is prosecution on the conventional theory that if an offender is forcefully prosecuted, similar offences are less likely to occur in the years ahead. Specifically, Article 7 of the Convention explicitly provides that when a crime of this kind is committed within a specific State that State shall have a duty, if it does not extradite the offender, to submit his case "without exception whatsoever and without undue delay" to the appropriate prosecuting authorities for the purpose of prosecution.

On the facts before the Court in this case, therefore, the Government of Iran has had a continuing duty ever since 4 November to submit to the appropriate prosecuting authority the case or cases against those who have been responsible for the commission of crimes against the United States Embassy and its personnel in Tehran.

Mr. President, this is the appropriate point I think for me to respond to the third question which you addressed to me yesterday (p. 254, *supra*). Having in mind the evidence indicating the complicity of senior Iranian officials in the seizure of the Embassy and the hostages, you have asked for our views as to the implications for the purpose of this case of our suggestion that there is a duty on the part of the Iranian authorities to set the prosecutorial machinery in motion. Our answer, Mr. President, is that Iran's obligation under international law to submit alleged offenders to its competent authorities for prosecution, if it does not extradite them, is in no way affected by the circumstances that some of the accomplices in the crimes may have been official personnel. Neither the New York Convention nor customary international law recognizes any exception to the obligation for alleged offenders who occupy governmental office. States have, in practice, prosecuted governmental officials for acts that violated diplomatic immunity, as witness the Guatemalan and Ethiopian episodes which I mentioned earlier this morning.

The Court may be concerned that a declaration that Iran is required to submit alleged offenders to its competent authority for prosecution could not be effectively implemented where high governmental officers are implicated in the crimes, or where the government, as a matter of policy, has encouraged or acquiesced in the commission of the crimes. I submit, however, that political or practical difficulties in the implementation of the Court's judgment do not detract from the entitlement of the United States to such a judgment. Moreover, the Court should render an affirmative declaration as to the duty to submit for prosecution in order to provide the maximum deterrent against future crimes of this kind. It is important, we submit, that the Court declare to the world that the duty to prosecute and to submit for prosecution exists in such circumstances. Even if the Government of Iran persists in its role as an outlaw the vast majority of States will obey the rules declared by this Court, and the probability of such obedience will be an important deterrent against future violations of the rules of diplomatic relations. It is for this reason that the United States is persisting in seeking a declaration that the Government of Iran has a duty to submit for prosecution those who have committed these offences.

On this question of providing deterrents against future violations of such laws I should add that our claim in this respect does not solely depend on the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. On the contrary, even if that Convention had never come into existence our claim would find, we think, ample support in customary international law.

For example, an effort was made to codify customary international law on this subject in the 1961 Harvard Draft Convention on the international responsibility of States for injuries to aliens, and Article 13 of that draft convention provides as follows:

> "Failure to exercise due diligence to afford protection to an alien by way of preventive or deterrent measures is wrongful if the act is generally recognized as criminal by the principal legal systems of the world."

In other words, where a State owes a duty to protect an alien that duty encompasses a duty to deter future attacks, and I have previously referred to the fact that under the 1955 Treaty of Amity between the United States and Iran the Government of Iran has had a continuing duty to provide all United States nationals with the most constant protection and security. Similarly, as I have also noted, under Article 29 of the Vienna Convention on Diplomatic Relations Iran had a special duty to take all appropriate steps to prevent attacks upon our diplomatic personnel, and I submit that that duty also encompasses a duty to submit the cases of offenders for prosecution and thereby deter future attack.

The existence of such a duty has been recognized by international tribunals.

An example is a case entitled *The Claim of Walter M. Dexter*, which was decided in the 1940s by the United States Mexican Claims Commission. The offence in that case was murder, and the claim under international law was that the Mexican Government had failed not only to prevent the murder, but also to apprehend and punish the offender. The holding of the tribunal on this point was as follows:

> "The authorities of the Mexican Government were under an obligation to take appropriate measures for the apprehension and punishment of those participating in the murder of Dexter and failure to do so establishes Mexican liability under international law."

By the same token, we respectfully submit that the failure of the Iranian Government to prosecute the perpetrators of the crimes involved in this case establishes Iranian liability to the United States and its affected nationals.

This brings me to the conclusion of the argument with respect to the substantive claims which we are asserting in this case. As I have indicated, the case does not involve one, or two, or three isolated acts in violation of international law. On the contrary, commencing on 4 November, the Government of Iran has brought about a steady stream of offensive actions which have been continuing minute by minute, and hour by hour, and day by day, for four-and-a-half months. When one considers the entire breadth of the case, literally hundreds of different offences have been committed. But for present purposes, as I have said, it is useful to break these hundreds of different actions down into five major categories: the seizure and continuing detention of the hostages; the harsh and inhumane treatment imposed upon them; the totally unlawful interrogation to which they have been subjected; the seizure and continued holding of the diplomatic and consular facilities of the United States in Iran, including the ransacking and defilement of the archives and documents; and the failure on the part of the Government of Iran to prosecute those who have in fact been carrying out the Government's orders.

During my description of these activities I have not attempted to identify for the Court every single treaty provision which has been violated by each separate action. I have focussed instead upon the fundamental treaty provisions and principles for the sake of clarity. In our Memorial, however, we have identified a series of additional treaty provisions which have been violated by the same courses of conduct which I have been describing during my presentation.

Having summarized, and I hope clarified, the substantive claims of the United States I want to pause briefly to consider again the question whether the Islamic Republic of Iran has any possible defence against those claims. As I noted earlier in my argument, although the Government of Iran has been given every encouragement by this Court to appear and present defences, and although the Iranian Government has demonstrated its continuing ability to litigate effectively and vigorously in other courts, it has deliberately chosen not to present any substantive defence to the present claims.

We are left then with the narrow question of whether the letter of 9 December, which was presented to the Court in the name of the Foreign Minister of Iran just before this Court's prior hearing, or its virtually verbatim copy—the letter received just two days ago—contains any factual or legal argumentation which should be taken into account by the Court in reaching its decision on the Merits.

On that score I have nothing to add to what the Court itself said in this subject in its Order of 15 December. Although I hesitate to characterize the Court's own words I think it is fair to summarize the Court's comments on the Iranian position in these terms:

Firstly, although the Government of Iran has suggested that its hostage-taking should be regarded merely as a secondary or marginal aspect of a larger dispute, that suggestion is laid to rest by the contrary view of the Secretary-

General and the Security Council of the United Nations, both of whom regard the hostage-taking in and of itself as a serious threat to international peace.

Secondly, if the Government of Iran really believes that its own conduct should be considered together with, and as justified by allegedly grave misdeeds on the part of the United States, it could have responded accordingly by presenting such alleged offences in a Counter-Memorial, but having failed to act Iran is scarcely in a position to argue that its own inaction should preclude the Court from considering the legitimate claims of the United States. As the Court observed on 15 December, there is no reason why the Court should decline to take cognizance of one aspect of the dispute on the basis of an assertion that the dispute has other aspects which have not been brought before it.

In short, on 15 December, the Court could perceive no obstacle to its consideration of the present claims of the United States, and those claims continue today to be both unanswered and, I submit, unanswerable.

Since Iran here has failed to defend, within the meaning of Article 53 of the Court's Statute, we must enable the Court to satisfy itself both that it has jurisdiction of the case and that the claims are well founded in fact and law. With all due respect, I submit that since neither the facts nor the law are subject to serious dispute, the requirements of Article 53 have been fully met and that the United States is therefore entitled to judgment on the merits of our claims.

In the course of our presentation I believe that we have given complete answers to a number of the questions which were posed by three Members of the Court yesterday. But according to my reckoning there are two questions to which we have not yet responded. That is, two questions posed yesterday. One posed by Judge Gros and one by Judge Tarazi. In order to fulfil our obligations to the Court I would like now, with the Court's permission, to state each of the two questions and the answer of the Government of the United States.

First, Judge Gros pointed out (p. 268, *supra*) that the Memorial of the United States refers to three undertakings which were given by the Government of Iran to the Government of the United States with respect to the protection of the Embassy, and Judge Gros has asked that we communicate these undertakings to the Court. The answer of the United States is as follows: on Sunday, 21 October, there was a meeting between the Iranian Prime Minister, the Iranian Foreign Minister, the Iranian Ambassador to Sweden, the American Chargé d'Affaires, and the visiting Director of Iranian Affairs from the United States Department of State. The American Chargé d'Affaires informed the Iranians of plans for the former Shah to come to the United States and he explained our concern about the possible public reaction in Tehran. He requested assurances that the Embassy and its personnel would be adequately protected. The Foreign Minister gave those assurances without hesitation. On the following day, 22 October, the American Chargé d'Affaires and the visiting Director of Iranian Affairs again met with the Foreign Minister. The Chargé, in a discussion of the Shah's travel to the United States, again requested assurances that the American Embassy and its personnel would be protected. The Foreign Minister renewed his assurances that protection would be provided. The Shah, incidentally, arrived in the United States the next day, 23 October. On 31 October, the Embassy security officer met with the Commander of the Iranian National Police at the American Embassy. The Police Commander told the security officer that the police had been told to provide full protection for the American personnel. This is our answer to Judge Gros' question.

As I noted yesterday, the following day, 1 November, there was a demonstration of 5,000 people around the Embassy and complete security was provided. Three days later, however, the assurances were breached and the Embassy was sacked under the protection of the Government of Iran.

Judge Tarazi has asked (p. 268, *supra*) whether responsible United States authorities were aware of the fact that granting of authorization to the former

Shah to visit the United States in order to obtain medical treatment for cancer, might possibly lead to the occupation of the Embassy and the seizure of the hostages. The answer is that such officials were aware that the admission of the Shah might result in some sort of violence against the Embassy, and it was precisely for this reason that the United States requested assurances from the Iranian Government that adequate protection for the Embassy would be provided following the arrival of the Shah in the United States. As I have just indicated, clear and firm assurances were provided on three occasions during the last days of October, and on 1 November, at which point the Shah had been in the United States for more than a week, the Government of Iran honoured its assurances in full. The breach of those assurances occurred three days later, giving rise to the tragedy with which we are concerned in this case.

Finally I should like to turn to the question of the relief which we seek in the Court's final judgment. In such a judgment we are seeking three quite separate types of relief. To over-simplify, we seek first declarations to the effect that various actions attributable to the Government of Iran have violated various legal principles, embodied not only in customary international law, but in the four specific treaties on which we rely. Secondly, we seek a judgment that in order to bring the foregoing violations to an end the Government of Iran shall take certain specific corrective steps. And third, since grave injury has been done both to the United States and to its nationals in Tehran, we seek a decision by the Court that the United States and its affected nationals are entitled to recover financial reparations in an amount which cannot yet be determined, but which can and should be determined in a subsequent proceeding to be conducted when Iran's unlawful conduct has been terminated.

I shall now briefly discuss these separate forms of relief. First, I think that there is and can be no question whatever but that the United States is entitled to a declaration that in the ways specified in detail in our Memorial, the Government of Iran has violated and is continuing to violate its international legal obligations to the United States and its nationals. It has long been a part of the jurisprudence of this Court, that such declarations serve the vital function of establishing the legal situation between the parties with binding force so that the legal position thus established cannot again be called into question in so far as the legal effects ensuing therefrom are concerned. For that proposition I would refer the Court to the decision in the case of the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, at page 20. In reliance upon that well-established principle, the Government of the United States is respectfully requesting that the Court adjudge and declare that the Government of the Islamic Republic of Iran, through the conduct described in our Memorial, has violated its international legal obligations to the United States, as provided by Articles 22, 24 through 27, 29, 31, 37, 44 and 47 of the Vienna Convention on Diplomatic Relations, Articles 5, 27, 28, 31, 33 through 36, 40 and 72 of the Vienna Convention on Consular Relations, Articles 2, 13, 18 and 19 of the 1955 Treaty of Amity between the United States and Iran, and Articles 2, 4 and 7 of the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents.

With all due respect to the Court, the clarity of the facts and the legal principles is such that we consider our right to the specified declarations to be beyond dispute. This brings me to the question of whether the Court should now direct the Government of Iran to take specific action to terminate its continuing unlawful conduct. In suggesting an affirmative answer to that question, I am keenly aware of the fact that at an earlier stage in this case we asked the Court for somewhat similar relief in the form of provisional measures and that Iran's subsequent refusal to comply with the resulting provisional measures has surely created doubts as to whether it will comply with the final judgment of this Court.

In response, I will simply draw an obvious legal distinction. Within the community of international legal scholars there is at least some doubt as to whether an indication of provisional measures under Article 41 of the Court's Statute is binding and enforceable, but there can be no equivalent doubt about a judgment of the Court on the merits. Conceivably the authorities in Iran have felt that they were not legally bound by the provisional measures indicated by the Court on 15 December. But Article 94 of the Charter of the United Nations specifically requires obedience to the final judgment on the merits and provides for its enforcement.

In these circumstances, I submit, the only proper assumption that can now be made is that if the Court now incorporates in its final judgment appropriate directions for the termination of Iran's continuing unlawful conduct, the Government of Iran will bow to the Charter of the United Nations and obey. As to the right of the United States to such relief, we think the law is clear. In the Court's 1971 Advisory Opinion in the *Namibia* case, it was very clearly held that once the Court has made a binding determination that an unlawful situation is in existence, and I will now quote the Court's language:

> "It would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon the members of the United Nations, to bring that situation to an end."

That language appears at *I.C.J. Reports 1971*, at page 82.

The present unlawful situation in Tehran can be terminated, if not completely remedied, by obedience to the provisions which we have requested in our Memorial.

Mr. President, ordinarily I would be prepared at this time to conclude the presentation on behalf of the United States, but in view of the fact that the Court has this morning propounded a series of new questions which require substantial answers, I would ask leave of the Court to suspend our presentation at this point and if it is the Court's pleasure, to resume our presentation tomorrow morning at which time we would propose to answer the pending questions and to complete our presentation.

The PRESIDENT: Mr. Owen, the Court will continue the hearings tomorrow morning at 10 a.m. when you will have an opportunity to deal with the questions that have been put to you this morning. As I indicated, there may be some further questions which will be communicated to you.

The Court rose at 12.55 p.m.

FIFTH PUBLIC SITTING (20 III 80, 10 a.m.)

Present: [See sitting of 18 III 80.]

QUESTIONS BY THE PRESIDENT AND JUDGE GROS

The PRESIDENT: Before I call on the Agent of the United States of America I have a question which I wish to put to him in connection with the second question I previously put to him at the first session, and Judge Gros also has a question to put to him. My question is as follows: I thank the Agent for his observations on my second (p. 294, *supra*) question but I should like some further clarification of his views on the general principle of international law which it raised. I shall therefore reframe the question in a more concrete manner: If a State should have the conviction that a diplomatic mission or other services of a foreign State is or are engaged in unlawful activities on its territory, does that fact ever give rise to a right to depart from the obligations normally incumbent upon it with respect to diplomatic and consular relations? In other words, can recourse to the notions of sanction, necessity or self-defence ever give rise to such an exceptional right of counter-action which would otherwise be illegal?

M. GROS: Je voudrais poser une question relative au mandat de la commission d'enquête dont M. l'agent des Etats-Unis a parlé au cours de la première audience (ci-dessus p. 269-272) et la question est la suivante: En ce qui concerne le mandat de la commission d'enquête sur les faits en Iran pour entendre les griefs de l'Iran, selon le Gouvernement des Etats-Unis, quels sont les griefs que l'Iran avance à l'égard des Etats-Unis et qui sont susceptibles d'être présentés à la commission?

ARGUMENT OF MR. OWEN (cont.)

AGENT OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. OWEN: At the conclusion of yesterday's proceedings I was discussing the relief which we seek to have included within the Court's final judgment and I had stated our view, with appropriate citation to authority, that we are entitled to have included within the judgment certain mandatory commands designed to bring an end to the unlawful situation now existing in Iran. This morning I propose to continue my discussion of the relief which we seek in the final judgment, and thereafter, with the Court's permission, I will provide the answers of the Government of the United States to the several questions posed yesterday by various Members of the Court.

In order to terminate the unlawful situation in Iran, the United States respectfully requests that the Court include within its final judgment the following five provisions:

1. The Government of the Islamic Republic of Iran shall immediately ensure that the premises of 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.

2. 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.

3. 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.

4. 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, in 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.

Before I move on to the fifth paragraph in this series of affirmative steps to terminate the Iranian violations, I should note, with respect to the fourth paragraph, that it will have no effect on the United Nations commission assembled by the Secretary-General, if indeed that commission ever resumes its functions. The fourth paragraph, which I read to the Court a moment ago, would prohibit any of the hostages from being obliged to give evidence before any sort of commission, but it has never been contemplated that the Secretary-General's commission would take testimony or evidence from the hostages. It is true that it was contemplated that the commission would visit the hostages and speak to them, primarily for the purpose of assessing their health, welfare and

general status, but the commission has no authority to interrogate the hostages in any substantive sense and will not do so. Accordingly, the fourth paragraph, which is squarely based upon Article 31 of the Vienna Convention on Diplomatic Relations, will not interfere with any legitimate international efforts to resolve the crisis.

This brings me to the fifth and last of the declarations which we are requesting in order to bring an end to the Iranian violations of international law. This last declaration would read as follows:

5. 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.

As I have previously stated, we regard such a declaration of the utmost importance, in order to maximize the possibility that persons who engage in hostage-taking, and particularly in taking of diplomatic hostages, will be properly punished, thus creating a deterrent against such future violations of the fundamental rules of diplomatic law.

Finally, we seek financial reparations from Iran, and we think that there can be no doubt whatever as to our entitlement to such a remedy. As demonstrated in our Memorial at page 188, *supra*, this Court has repeatedly held that where, as here, a State has committed a breach of its international legal obligations, it must pay reparations in order to wipe out as far as possible all of the consequences of its illegal acts so as to re-establish the situation which would in all probability have existed if such acts had not been committed. In short, when the damage has been done, the United States and its nationals must be made whole in so far as possible.

At the present time, of course, it is not possible to measure the damage, in part because the political situation in Iran precludes us from obtaining essential information, and in part because the damage is actually continuing day by day. For example, we know that there has been substantial physical damage to the buildings included within the Embassy compound, but it would take an extensive technical evaluation of the damage in order to put a financial value on it, and there is no way that such an evaluation can be made now. Again, we know that individual hostages have been subjected to severe psychological stress and may have sustained physical injury as well, but by definition we cannot have access now for the purpose of determining an appropriate reparation figure. When the hostages have returned home and the United States premises have been returned to our control, it will be possible to make the necessary evaluations, but not before.

Despite the impossibility of determining the amount of reparations at this stage, we believe that we are clearly entitled now to an immediate declaration which will make clear to the world, including the Government of Iran, that reparations in some amount will eventually be due. The issue of our entitlement to some amount of reparations is ripe for judicial decision; given the nature of the Iranian conduct and the clarity of the Iranian violations, I can think of no conceivable reason why our right to reparations should not now be declared in principle, thus narrowing the remaining issues between the parties; and we think it likely that such a declaration will accelerate the final resolution of the dispute. As pointed out in our Memorial at page 189, *supra*, the Court's 1974 opinion in the *Fisheries Jurisdiction* case makes plain that it is entirely proper for the Court to make a general declaration establishing the principle that compensation is due, even though a further proceeding may be necessary in order to receive evidence and establish the amount. As I conclude my argument with respect to the terms of the judgment, Mr. President, I wish to formally confirm to the Court that the final submissions of the Government of the United States are as stated in its Memorial at pages 190 and 191, *supra*.

RESPONSES TO QUESTIONS

With the Court's permission I shall now address myself to the several questions which were posed yesterday and this morning by a number of different judges of the Court. Judge Morozov put seven questions; Judge Oda put three questions; you, Mr. President, put one new question; and Judge Gros put one new question. With the Court's permission I propose to answer them in that order.

JUDGE MOROZOV'S QUESTION NO. 1 (p. 298, *supra*)

Judge Morozov's first question recalls that on 19 February—which happens to have been one day prior to the announcement by the Secretary-General of the formation of the United Nations commission—the Government of the United States requested the President of the Court to defer oral proceedings in this case for the time being—with the result that the present hearings have taken place some three weeks later than they otherwise would. Judge Morozov's first question correctly suggests that there was a relationship between the proposed work of the proposed United Nations commission and the United States request for a brief postponement. Against that background Judge Morozov has asked the following question:

> "If the establishment by the United Nations of a special commission, and the activity of that commission, does not relate specifically to the question of the release of the hostages, and if the Court should, according to the United States Government, consider the case as one of urgency, what was the reason why the United States Government has wasted approximately one month before pursuing the defence, with the assistance of the Court, of its diplomatic and consular staff detained in Tehran?"

In order to understand the reason for our request on 19 February, it is important to understand that there is a distinction between what the United Nations commission was directed to do, in terms of actual work, and the side-effects which might be expected to result from that work. As we have previously explained, the commission was sent to Iran in order to give Iran a chance to air its grievances. The commission was to hear *Iran's* grievances and make a report with respect thereto—but it was not part of the commission's function to hear the United States grievances with respect to the seizure of the United States Embassy. On the other hand, it was the hope of the Secretary-General and the United States Government that, once Iran had been given an opportunity to air its grievances before the commission, this would in fact lead the Government of Iran to release the hostages.

Against that factual background I would answer Judge Morozov's question in this fashion. We knew that any oral hearings before this Court on the Merits would involve strong charges against Iran, and we thought that those charges might be an irritant which might cause the Iranian authorities to continue the captivity of the hostages, whether Iran's grievances had been heard by the United Nations commission or not. We wanted to do nothing which might unfavourably affect the hostages. That was the reason for our request for the relatively brief three-week postponement, but as I shall subsequently explain, the situation is different today. Today, with the captivity of the hostages continuing, we urgently need the Court's assistance in resolving the hostage dispute, and at the conclusion of my presentation I will ask the Court, with respect, to render its decision as rapidly as possible.

JUDGE MOROZOV'S QUESTION NO. 2 (p. 298, *supra*)

Now let me turn to Judge Morozov's second question. As he has correctly noted, during the presentation on behalf of the United States we have called

attention to the policy of restraint which the United States has followed in its relations with Iran during the hostage crisis. In this connection Judge Morozov has asked the following question:

> "How would the United States Government explain such well-known acts on its part as the freezing of Iranian investments in the USA and abroad which, according to the press and broadcast reports, amount to some 12 billion dollars?"

The facts are that for many years the Iranian Government has maintained very large deposits in United States banks both in the United States and abroad. In the early days of November, shortly after the seizure of the American Embassy, Iranian government officials threatened suddenly to withdraw all Iranian funds from United States banks, to refuse to accept payment in dollars for oil, and to repudiate obligations owed to the United States and to United States nationals. Given the enormous sums of money involved, those threatened actions by the Government of Iran constituted nothing less than an attack on the stability of the world economy and the international monetary system. Moreover, the threat by the Iranian Government to repudiate all of the loans made by United States banks and other institutions constituted a totally unlawful threat and placed in jeopardy billions of dollars of United States claims against the Government of Iran.

For these reasons the United States came forward with a peaceful response which we considered totally appropriate under accepted principles of international law and comity among nations. In response to Iran's efforts to harm the United States economy and the dollar, and having in mind Iran's unlawful detention of American hostages, the President of the United States simply froze all Iranian assets in United States control for the time being, in part simply to make it possible for United States claimants to be made whole if the Government of Iran carried through with its threats to repudiate all of its obligations to such claimants. At the same time the Government of the United States has made it clear that once the hostages have been released the United States will be willing to open negotiations looking toward a mutual settlement of claims, which in turn will lead to the lifting of the freeze. In the meantime, the United States regards the freeze of Iranian assets as a justified, prudent and proportional measure of restraint in the circumstances.

In his second question Judge Morozov has also asked the following:

> "Is it possible to regard such acts [that is, I take it, the freeze] as well as threats to use other unilateral measures of coercion, and threats to use force against the Islamic Republic of Iran, as in conformity with the United Nations Charter and with paragraph 47 (B) of the Court's Order of 15 December 1979, which required the United States Government not to take any action, and to ensure that no action is taken, which may aggravate the tension between the two countries or render the existing dispute more difficult of solution?"

In responding to that question I should note at the outset that the freezing of the assets occurred more than a month before the entry of the Court's Order of 15 December, and we are quite confident that it was not the Court's intention, when it entered that Order, to call upon the United States to lift the existing assets freeze. Moreover, as we pointed out in the course of the hearings which took place on 10 December, under the jurisprudence of this Court and accepted principles of international law, obedience to a provision of the kind cited by Judge Morozov is required only on a reciprocal basis—which means that the United States would be obliged to obey the Order only if Iran did so as well. In fact the United States has complied with the Order, but Iran obviously has not.

As to the suggestion in Judge Morozov's question that the United States may

have threatened to use force against Iran, there have been no such threats in fact, although the United States has drawn attention both to the rights of the United States under international law and to the use of force and coercion by Iran in violation of Iran's obligations under paragraphs 3 and 4 of Article 2 of the United Nations Charter. As the Court is aware, every effort which has been made by the United States in seeking a solution to the present crisis has been peaceful.

JUDGE MOROZOV'S QUESTION NO. 3 (pp. 298-299, *supra*)

Judge Morozov's third question asks whether the actions to which he referred in his second question—meaning particularly, again, the United States freeze of Iranian assets—are in compliance with the provisions of the 1955 Treaty of Amity between the United States and Iran.

The answer is that the assets freeze—which constituted a peaceful response to the hostile actions previously taken by the Government of Iran—did not violate the Treaty of Amity. As we have previously explained in detail, on 4 November 1979, the Government of Iran began to engage in sustained violations of several articles of the Treaty of Amity, including Article 2, paragraph 4, Article 13, Article 18 and Article 19. Accordingly, under accepted principles of treaty law, as codified in the Vienna Convention on the Law of Treaties, the United States was under no obligation, after 4 November, to extend to Iran the treaty benefits to which Iran would have been entitled if it had itself complied with the Treaty of Amity. There has been no violation of that Treaty by the United States.

JUDGE MOROZOV'S QUESTION NO. 4 (p. 299, *supra*)

In his fourth question Judge Morozov has asked whether the United States ever made a written suggestion to the Government of Iran directed to bringing the present dispute to arbitration as provided for in Article XXI, paragraph 2, of the 1955 Treaty of Amity. The answer is that the United States made no such suggestion—and in that connection I would make two brief observations. First, as we read Article XXI, paragraph 2, of the 1955 Treaty of Amity, it simply does not provide for arbitration; indeed, it makes no mention of arbitration. That provision does contemplate the possibility that disputes between the parties may be "satisfactorily adjusted by diplomacy", but I would remind the Court that on 7 November the Ayatollah Khomeini flatly forbade any diplomatic negotiations between the two Governments. I might add that this prohibition was in clear violation, in our view, of Iran's obligation under paragraph 1 of Article XXI of the Treaty of Amity, which in effect required Iran to provide an opportunity for consultations. I respectfully submit that there is absolutely no basis for a suggestion that the United States has failed to live up to any of its obligations under Article XXI or to satisfy any of the preconditions to filing suit in this Court under that Article.

JUDGE MOROZOV'S QUESTION NO. 5 (p. 299, *supra*)

In his fifth question Judge Morozov has similarly enquired whether the United States, through a written suggestion to Iran, sought to bring the dispute to arbitration as provided for by Article 13 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

With respect, I believe that the United States has addressed that question in its Memorial, at pages 154 and 155, *supra*, and also, if I may say so, in the presentation made here by Mr. Schwebel. We have urged, and continue to urge, that Article 13's provision for arbitration assumes a respondent State party which recognizes its obligation to settle its disputes by peaceful means—includ-

ing negotiation and arbitration. From the very outset of the crisis on 4 November, however, the Government of Iran has been committed to a course of coercion and has flatly refused to have direct contact with United States officials. The answer to the question, therefore, is that the United States did not make a suggestion of arbitration to Iran for the simple reason that, in our judgment, such a suggestion would have been completely futile. Indeed, we believe that Iran's refusal to allow such discussions has estopped Iran from asserting that the United States application was premature or should have been preceded by a formal suggestion that the dispute be arbitrated.

Conversely, ever since the time when Mr. Ramsey Clark made his aborted effort to open negotiations, the United States has maintained and declared its willingness to seek a peaceful solution, and has pursued a number of avenues to that end.

JUDGE MOROZOV'S QUESTION NO. 6 (p. 299, *supra*)

Turning to Judge Morozov's sixth question, he has enquired as to the basis for the submission in the United States Memorial that the Government of Iran has an obligation either to submit to its competent authorities for the purpose of prosecution, or to 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. As Judge Morozov has noted, that submission appears in the Memorial at page 190, *supra*.

The basis for the submission is Article 7 of the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Under that Article Iran has a duty either to take steps towards prosecution of the offenders or to extradite them, and under the Treaty the choice is Iran's. The Treaty does not require extradition, but it permits it as an alternative to submission for prosecution.

The fact is that there is no extradition treaty between the United States and Iran, and under international law, absent such a treaty, there is generally no obligation to extradite, but, at the same time, international law does not prohibit extradition without a treaty. Consistent with this last principle, Article 8 of the New York Convention provides in paragraph 2 that a State which makes extradition conditional on an extradition treaty *may* consider the New York Convention as a legal basis for extradition for crimes covered by it.

JUDGE MOROZOV'S QUESTION NO. 7 (p. 299, *supra*)

Finally, as his seventh question, Judge Morozov has referred to the Iranian assertion that the dispute before the Court is only part of a larger dispute between the two countries, and, in that connection, Judge Morozov has enquired whether the United States recognizes the existence of such a larger dispute between the United States and Iran.

I can answer the question only in this fashion. At various times in recent months, as I indicated yesterday, various officials of the Iranian Government have voiced generalized allegations of misconduct as against the United States, and of course the Government of the United States recognizes that such allegations have been made. On the other hand, the Government of Iran has never brought forward any specific dispute for peaceful resolution, and the Government of the United States is therefore not in a position to describe the characteristics of the dispute, if any, which the Iranian authorities believe to exist. It may be that, during its visit to Tehran, the United Nations commission heard specific allegations of a concrete nature, but the proceedings of the commission were not public, and the United States does not know what grievances, if any, were presented to the commission before it departed from Tehran.

That concludes my answers to the questions of Judge Morozov, and I should now, with the Court's permission, like to turn to Judge Oda's questions.

JUDGE ODA'S QUESTION NO. 1 (p. 299, *supra*)

The first of Judge Oda's three questions is divided into two parts. First, Judge Oda has asked whether there are any personnel among the hostages to whom the Vienna Convention on Consular Relations alone applies? Our answer is that all of the United States consular personnel involved were serving in a diplomatic mission on 4 November, with the result that under Article 70 of the Vienna Convention on Consular Relations (to which Judge Oda has referred), all such consular personnel were and are entitled to exactly the same privileges and immunities as are enjoyed by diplomatic agents under the Vienna Convention on Diplomatic Relations. In short, there are no personnel among the hostages to whom the Vienna Convention on Consular Relations alone applies.

Judge Oda's first question also enquired as to the significance which the United States attaches to Article 70 of the consular convention. The significance is exactly that implied by Judge Oda—that all of the diplomatic and consular agents held captive in Tehran are entitled to the same privileges and immunities—namely the privileges and immunities conferred by the Vienna Convention on Diplomatic Relations.

JUDGE ODA'S QUESTION NO. 2 (pp. 299-300, *supra*)

In his second question Judge Oda has pointed out that in the United States Memorial at page 171, *supra*, we set forth our then current knowledge of the status of the United States Consulates in Tabriz and Shiraz, whose operations were suspended in February of 1979. Judge Oda has asked the United States to supply any available information as to what has happened to these Consulates from February 1979 onwards, and I am afraid that we are not in a position to add very much to the facts which were set forth in the Memorial. All that I can add is to say that from February 1979 until the seizure of these Consulates in November 1979, the premises were under the custodial care of local employees. In November, of course, both of the Consulates were seized and the United States has no information as to the status of the properties since that time.

JUDGE ODA'S QUESTION NO. 3 (p. 300, *supra*)

As his third and final question Judge Oda has enquired whether it is the contention of the United States, in so far as the Tabriz and Shiraz Consulates are concerned, that Iran has an obligation to do anything more than protect the consular premises. As an example, Judge Oda has asked whether we contend that Iran has an obligation to accord full facilities for the operation of these two consulates.

In response I should point out that up until the present time, at any rate, Iran has evidently desired to maintain consular relations with the United States. Iran currently operates four consulates in the United States, located in Houston, Texas, San Francisco, California, Chicago, Illinois and New York City. To the extent that Iran wishes to continue such relations, it has an obligation to afford the United States full facilities, on a reciprocal basis, for the operation of our corresponding consular posts in Iran. In these proceedings we are not contending that Iran has an obligation to maintain consular relations between the two countries, but, so long as consular relations exist, Iran must accord us full consular facilities and the immunities that follow therefrom.

THE PRESIDENT'S QUESTION

Mr. President, turning to your own question (p. 312, *supra*), I shall be pleased to attempt the further clarification you have requested of our views concerning exceptions to the obligations normally owed a diplomatic mission. You have asked specifically if the receiving State, convinced of unlawful activity on its territory by the sending State's diplomatic mission or other services, may, by reason of sanction, necessity or self-defence, depart from the obligations normally incumbent upon it with respect to diplomatic and consular relations.

First let me say that such exceptions to the general rule of inviolability as have been discussed in the International Law Commission and elsewhere relate to the right of an individual—such as an individual police officer—to defend himself against an actual assault or similar action by a diplomatic agent. As I said in my answer to your earlier question, even such very limited exceptions are controversial and, of course, can have no conceivable application to the present case.

On the other hand, Mr. President, your question may refer to self-defence in a different sense—that is, the State's inherent right to self-defence, as confirmed in Article 51 of the United Nations Charter. I would observe that the right of self-defence is emphatically not a right to act lawlessly. The State, when it acts in the exercise of its right of self-defence or on the basis of the ultimate necessities of national existence, does not operate in a realm beyond the reach of international law. The law of armed conflict—with which, of course, the Court is familiar—embodies a whole host of restraints upon State conduct, even in the most compelling of circumstances. We think it most significant that the taking of hostages is absolutely proscribed, even in armed conflict. Moreover, authorities from Grotius to Lauterpacht agree that if a State like Iran feels itself injured by another, some form of reprisals may be appropriate, but reprisals against the diplomats of the offending State, either as individuals or as a mission, are absolutely prohibited. The necessity for continuing respect for diplomatic inviolability, even in time of war, is crystallized in Article 44 of the Vienna Convention, which obligates a receiving State to permit and facilitate the departure of diplomats representing a country with which that State is at war. Indeed, if Iran were now at war with the United States, it would have a clear obligation, under Article 45 of the Convention, to "respect and protect the United States Embassy".

Finally I should note that if Iran at any time had felt that its supreme security interests so required, it could of course have compelled all United States diplomatic personnel to depart from Iran on a wholesale basis, but I submit that there can be no possible legal justification for what it did in fact on 4 November 1979.

JUDGE GROS' QUESTION (p. 312, *supra*)

Finally Judge Gros has enquired as to the grievances which, according to the understanding of the Government of the United States, Iran may bring before the United Nations commission.

First I would point out that the commission has suspended its operations for the time being. Assuming, however, that the commission resumes its work, the Secretary-General has declared that the commission's function will be to hear whatever grievances Iran may wish to bring before it. That is to say, the commission would receive whatever lawfully obtained information the Iranians wanted to present to the commission and thereafter the commission would report on the basis of that information. I should emphasize, however, that the commission is not to be a tribunal which would reach conclusions which would be binding either on Iran or on the United States.

That is our answer to Judge Gros' question, but I wish to make one further observation on the subject if I may. In this case the United States has advanced

very specific claims against Iran and this Court, I submit, has a duty to decide whether those claims are valid. If Iran harbours any alleged grievances which it considers to constitute some sort of defence against the claims of the United States, it has been afforded every opportunity to bring those defences before this Court. The fact is that Iran has presented no defences or counter-claims here and for that reason I respectfully submit that the Court cannot properly concern itself with any grievances or allegations which may have been voiced by Iran elsewhere.

In concluding my observations on Judge Gros' question I should like again to refer the Court to Judge Lachs' opinion in the *Aegean Sea Continental Shelf* case, and to the Court's Opinion in the *ICAO Council* case. Judge Lachs, quite properly in our view, pointed out that "notwithstanding the interdependence of issues some may be isolated, given priority and their solution sought in a separate form". While Iran contends that its grievances, whatever they may be, are interconnected with the claims of the United States before this Court, a contention that the United States has not accepted, Iran has chosen to use Judge Lachs' phrase to isolate those grievances from these proceedings and to air them before a separate body, namely the United Nations commission. But that choice—Iran's choice—not to utilize the process of this Court, cannot constitute an obstacle to the Court's consideration of the claims of the United States over which the Court assuredly has jurisdiction. It would be extraordinary, to say the least, to adopt a rule which permits a respondent State to frustrate resort to this Court merely by referring to generalized and entirely hypothetical defences or counter-claims which it refuses to present as such to the Court and which it intends to handle instead through an entirely non-judicial hearing before some other forum. To quote the Court in the *ICAO Council* case:

> "The competence of the Court must depend on the character of the dispute submitted to it and on the issues thus raised, not on those defences on the merits or other considerations which become relevant only after the jurisdictional issues have been settled."

This rule, we submit, applies *a fortiori* when the Respondent has not even appeared in order to present such potential defences or other considerations for which it is openly seeking consideration elsewhere.

Conclusions

On behalf of the Government of the United States I believe that I have now submitted an answer to every question which has been propounded by the Court and with the Court's permission I would propose now to conclude the presentation of the Government of the United States.

In doing so I would hark back to 10 December, at which time the Court was considering the United States request for an indication of provisional measures and I took the liberty of urging the Court to act on that request with the maximum possible expedition. I emphasized that at that time more than 50 American lives were in imminent peril and that it was critically important to those individuals, as well as the world community and the rule of law that the judicial function be performed as quickly as possible. The Government of the United States is grateful to the Court for its action in responding to that appeal and granting the requested relief just five days after the request was heard.

I hope that the Court will recall also that in the days immediately following the Court's Order of 15 December the United States pressed forward with this case as rapidly as possible. We filed our Memorial on 15 January, well ahead of the schedule that would be followed in a normal case. Moreover, it was our hope at that time that the Iranian Government would file a Counter-Memorial on 18 February, in accordance with the Orders of the Court, in order that the Parties

could come to grips with the dispute between them. In mid-February of this year we were still anxious to proceed with this case as rapidly as possible.

In one of his questions, Judge Morozov has pointed out that on 19 February we found it necessary to ask this Court for a brief postponement of any further oral hearings. The reason, as I have explained, was that the Secretary-General's appointment of the United Nations commission had raised the hope that when the commission had heard Iran's grievances the Government of Iran would decide to release the hostages and we were concerned that if we appeared before the Court and made strong charges against Iran, as we have in these past three days, the confinement of the hostages might be unnecessarily continued. I want to assure the Court, however, that throughout the entire period the United States has been determined to press the case forward just as rapidly as it could, consistent with the welfare of the Americans who are in captivity in Tehran.

Mr. President, as you know, our tenuous hopes for a quick release of the hostages in February were shattered in early March when the United Nations commission found itself unable to pursue its mission. In short, the situation today is very different than it was when we asked for the brief delay in the hearings. The signals, if I may use that term, that are coming out of Iran suggest that the detention of the hostages may continue indefinitely and no one in this courtroom has any way of knowing how long the Government of Iran will continue to hold the hostages. Since the Government of the United States continues to view this Court as the most promising hope for bringing about the ultimate release of the hostages through the entry of a binding and enforceable final judgment, the United States wishes at this time to press forward to judgment as rapidly as possible.

Given the fact that I once urged expedition upon the Court and then urged a brief delay, I am reluctant to presume upon the Court by requesting expeditious action now, and yet I feel duty bound to do so. In making this request the primary focus of my Government's interest is upon the well-being of the 53 Americans still held in captivity, but my Government is motivated by broader concerns as well. As I stated in my opening remarks two days ago, if it becomes clear that a country like Iran can seize diplomatic agents and hold them hostage for indefinite periods of time in order to coerce desired political action, it can only lead to a complete unravelling of the fabric of peaceful international relations. For these reasons our call for judgment is urgent. Since the dispute before the Court continues to imperil international peace, I submit that the high responsibilities imposed upon the Court by the Charter of the United Nations call for the entry of the final judgment requested in this case as rapidly as possible.

On behalf of the Government of the United States of America I respectfully request that the Court enter judgment in favour of the United States and against the Islamic Republic of Iran.

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT: Mr. Owen, I understand you have already deposited your final submissions[1] with the Registrar. I thank the Agent and Counsel of the United States for the assistance which they have given the Court. Before closing the hearings I would ask the Agent of the United States whether his Government is now in a position to supply the Court with details of the names and official functions of the persons who are held as hostages in Tehran. The reply to this request, in accordance with Article 61, paragraph 4, of the Rules, may be made in writing and I would ask that the reply be made not later than Monday next, 24 March [2]. The hearings are thus concluded. The Agent of the United States is, however, asked to remain at the disposal of the Court to provide any further information which it may require, and with that proviso I declare the oral proceedings in the case concerning *United States Diplomatic and Consular Staff in Tehran* closed.

The Court rose at 11 a.m.

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[1] See pp. 514-515, *infra*.
[2] See p. 463, *supra*.

SIXTH PUBLIC SITTING (24 V 80, 10 a.m.)

Present: [See sitting of 18 III 80, Judge Baxter absent.]

READING OF THE JUDGMENT

The Court meets today to read in open court, pursuant to Article 58 of the Statute of the Court, its Judgment in the case concerning *United States Diplomatic and Consular Staff in Tehran*, brought by the United States of America against the Islamic Republic of Iran. Due notice of the present sitting has been given to the parties, and I note the presence in court of the Deputy Agents and Counsel of the United States.

Much to the regret of his colleagues, Judge Baxter is unable to be present today. Having participated fully in the case up to an advanced stage in the deliberations, he had unfortunately then to enter hospital, and subsequently had to return to his own country for medical treatment.

Having participated in the public hearings and the greater part of the deliberations in the case, Judge Baxter was entitled to participate in the final vote on the Judgment.

The relevant provisions of the Court's Resolution concerning its Internal Judicial Practice prescribe that a Judge who, by reason of his participation in the public and internal proceedings of the case is qualified to participate in the final vote but who is unable to attend in person on the occasion of the Court's final adoption of its judgment or opinion, may nevertheless record his vote in such manner as the Court may decide to be compatible with its Statute, any doubt being settled by the Court itself.

In accordance with this provision, appropriate arrangements were made for Judge Baxter to participate in the vote, and the Judgment delivered today is accordingly the Judgment of the full Court.

I shall now read the text of the Judgment, omitting—as is customary—the opening formal recitals.

[The President reads paragraphs 10 to 95 of the Judgment[1].]

I now call upon the Registrar to read the operative clause of the Judgment in French.

[The Registrar reads operative clause in French[2].]

In accordance with Article 95, paragraph 1, of the revised Rules of Court adopted in 1978, the Judgment includes the names of the judges constituting the majority on each vote; these details are also given in the Press Communiqué issued today.

Judge Lachs appends a separate opinion to the Judgment; Judges Morozov and Tarazi append dissenting opinions to the Judgment

In addition to the copies of the Judgment for the parties, a limited number of

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[1] *I.C.J. Reports 1980*, pp. 8-45.
[2] *Ibid.*, pp. 44-45.

copies of the stencilled text of the Judgment and opinions is available for the public; the usual printed edition will be available in approximately two weeks' time.

(Signed) Humphrey WALDOCK,
President

(Signed) S. AQUARONE,
Registrar.