

May 2020

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Recommended Citation

Philip C. Jessup, Revisions of the International Legal Order, 10 Denv. J. Int'l L. & Pol'y 1 (1980).

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FACULTY COMMENT

Revisions of the International Legal Order

PHILIP C. JESSUP

Thirty-five years ago, I attempted "to explore some of the possible bases for a modern law of nations."¹ In particular, two points were singled out as keystones of a revised international legal order.

The first is the point that international law, like national law, must be directly applicable to the individual. It must not continue to be remote from him, as is the traditional international law, which is considered to be applicable to states alone and not to individuals. The second point is that there must be basic recognition of the interest which the whole international society has in the observance of its law. Breaches of the law must no longer be considered the concern of only the state directly and primarily affected. There must be something equivalent to the national concept of criminal law, in which the community as such brings its combined power to bear upon the violator of those parts of the law which are necessary to the preservation of the public peace.²

It was a time for the burgeoning of a new international legal order. The Charter of the United Nations had just been signed at San Francisco. The Charter provided for a reconstituted International Court of Justice. It charged the General Assembly of the United Nations with the duty of "encouraging the progressive development of international law and its

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In this Comment, the discussion of the role of the International Court of Justice in developing international law is based in part on the writer's Foreword to Dr. Jerome B. Elkind's forthcoming book, *A Functional Approach to Interim Protection*, to be published by Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands. The writer acknowledges with thanks the publisher's permission to use this material.

1. P. JESSUP, *A MODERN LAW OF NATIONS* 2 (1946).
2. *Id.*

codification.”³ In 1947 the General Assembly discharged this obligation by creating a commission which drafted a statute for the International Law Commission that has functioned admirably. The world-wide interest in that development of international law has led to publication of translations of my little book into German, Korean, Japanese, and Thai. Many national societies of international law now flourish. More than a hundred law schools in more than twenty countries participate annually in an international law moot court competition under the auspices of the American Society of International Law. Important new journals of international law like this Denver Journal are now being published.

All of this ferment has not yet saved us “from the scourge of war” but it has borne fruit. I suggest simply two examples, one from the international and one from the national arena.

When the American diplomatic and consular personnel in the United States Embassy in Teheran were taken hostage by a group of Iranian militants with the approval of one who claimed to be their spiritual and political leader, the outrage was not “the concern of only the state directly and primarily affected”; it was denounced by the entire international community whose members felt and recorded the conviction that all were threatened by this breach of the time-honored rules of international law. Although it has sometimes been argued that customary international law is the creature and weapon of the “imperialist” states, all states felt injured by the illegal acts in Iran.

Look at the record:

The hostages were seized on November 4, 1979.

On November 20, the President of the United Nations General Assembly, Salim A. Salim of Tanzania, issued a statement which called for the release of the hostages and said:

The President is convinced that the call for the release of the hostages represents the collective concern of the international community who clearly feel strongly that the sanctity of diplomatic premises and diplomatic personnel must be respected, without any exceptions, at all times It is crucial that international law and practice governing the treatment of diplomatic missions and their agencies be scrupulously observed.⁴

On November 27, Sergio Palacios de Vizzio of Bolivia, the President of the United Nations Security Council, said: “I must emphasize that the principle of the inviolability of diplomatic personnel and establishments be respected in all cases in accordance with internationally accepted norms.”⁵

On December 4, 1979, the Security Council *unanimously* adopted a

3. U.N. CHARTER art. 13(1)(a).

4. 34 U.N. GAOR, U.N. Doc. A/6096 (1979).

5. 34 U.N. SCOR (2172d mtg.), U.N. Doc. S/13616 (1979).

Resolution reaffirming "the solemn obligation of all States parties to both the Vienna Convention on Diplomatic Relations of 1961⁶ and the Vienna Convention on Consular Relations of 1963⁷ to respect the inviolability of diplomatic personnel and the premises of their missions," and calling upon "the Government of Iran to release immediately the personnel of the Embassy of the United States of America being held in Teheran, to provide them protection and to allow them to leave the country."⁸ It is important to note the composition of the Security Council which acted unanimously since here indeed was a cross-section of the international community. The states represented were Bolivia, Bangladesh, China, Czechoslovakia, France, Gabon, Jamaica, Kuwait, Nigeria, Norway, Portugal, Soviet Union, United Kingdom, United States, and Zambia.

It is true that the international community as such did not bring "its combined power to bear upon the violator."⁹ On January 13, 1980, when the Security Council voted on a resolution which would have imposed sanctions on Iran, the resolution was vetoed by the Soviet Union and lacked the approval also of four other states.¹⁰ But none of these retreated from the earlier affirmation of international law and the call on Iran to release the hostages.

My second example has to do with the status of the individual in international law. The case shows that it is now recognized that states owe duties not only to other states but also directly to individuals.

In an action which may well be considered to have come before its time, the Congress of the United States in 1789 enacted a law which provided that the federal courts would have jurisdiction where an alien sues for "a tort only, committed in violation of the law of nations or a treaty of the United States."¹¹ In a recent case, Paraguayan citizens brought an action in a district court alleging that "defendant, acting under color of his authority as a Paraguayan official, tortured and killed Joel Filartiga, a Paraguayan national, and that this conduct was a tort in violation of the law of nations."¹²

6. Vienna Convention on Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

7. Vienna Convention on Consular Relations, *done* Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261.

8. S.C. Res. 457, 34 U.N. SCOR (2178th mtg.), U.N. Doc. S/OR/34 (1979).

9. For a discussion of the possible responses under international law of the world community to the actions of an outlaw nation such as Iran, see chapter 7, *The Legal Regulation of the Use of Force*, in JESSUP, note 1 *supra*.

10. U.N. Doc. S/13735 (1980).

11. 28 U.S.C. § 1350 (1976).

12. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). This quotation and others to follow are taken from the magnificent Memorandum for the United States as Amicus Curiae in this case. (Memorandum *reprinted* in 19 INT'L LEGAL MAT. 585 (1980)). The Memorandum was prepared in the Office of the Legal Adviser of the Department of State with the concurrence of the Department of Justice. Only those aspects of the case which deal with the definition of international law are treated here.

According to the *amicus curiae* memorandum of the Department of State which was solicited by the court of appeals after the district court held it had no jurisdiction:

The district court dismissed the complaint because it believed that the torture of a foreign citizen by an official of the same country does not violate the law of nations as that term is used in 28 U.S.C. 1350. If Section 1350 reached only those practices that historically have been viewed as violations of international law, the court's decision would very likely be correct. Before the turn of the century and even after, it was generally thought that a nation's treatment of its own citizens was beyond the purview of international law. But as we demonstrate below, Section 1350 encompasses international law as it has evolved over time. And whatever may have been true before the turn of the century, today a nation has an obligation under international law to respect the right of its citizens to be free of official torture [C]ustomary international law evolves with the changing customs and standards of behavior in the international community. . . . This evolutionary process has produced wide recognition that certain fundamental human rights are now guaranteed to individuals as a matter of customary international law.¹³

This official position of the United States will go down in the history of international law as an epochal event. It is the realization of the first keystone of a revised international legal order which I envisioned thirty-five years ago. From the point of view of the proof of international law, the assertion by the State Department is even more important than the fact that the United States Court of Appeals for the Second Circuit agreed with the State Department, holding that "deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties."¹⁴

No attempt is made in this Comment to discuss or outline all the various ways in which international law is developed. The literature on that subject is extensive. The attempt is made here to stress the importance of the International Court of Justice as a developer or clarifier of rules of international law whether the rules be found in international conventions or in the more elusive customary law. The influence of the Court in this role is great and can be recognized without asserting that the judgments of the Court constitute "sources" or "evidence" of international law. That problem, which at times seems to be involved in semantic distinctions, has recently been well explored by Professor Nawaz.¹⁵

Because the Court is playing an important role, as particularly exem-

13. 19 INT'L LEGAL MAT. 585, 587-89 (1980).

14. 630 F.2d at 878. For those who wish to follow in detail the evolution of the law of human rights, there is now available the magisterial volume by Messrs. Myres McDougal, Harold Lasswell, and Lung-chu Chen, HUMAN RIGHTS AND WORLD PUBLIC ORDER (1980).

15. Nawaz, *Other Sources of International Law: Are Judicial Decrees of the International Court of Justice a Source of International Law?*, 19 INDIAN J. INT'L L. 526 (1979).

plified in the *North Sea Continental Shelf Cases*¹⁶ where it had to interpret the 1958 Convention on the Continental Shelf,¹⁷ it is regrettable that some States have sought to evade their proper part in arguing cases before the Court. The case of the *Hostages*,¹⁸ aspects of which are discussed above, is the latest example of a state's failure to do its duty by appearing in Court, especially in a case where there is a request for provisional measures of interim protection. One regrets especially that France, which with the United Kingdom had been perhaps the most important supporter of the Hague Courts, abandoned that role when made a defendant in the *Nuclear Tests* cases¹⁹ which will be mentioned later.

The International Court of Justice, like its predecessor, the Permanent Court of International Justice, is authorized by Article 41(1) of its Statute to "indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party." This is potentially one of the most important and actually one of the most controversial functions of the Court. It is thoroughly analyzed in a forthcoming book by Dr. Jerome B. Elkind of the Faculty of Law of the University of Auckland, New Zealand.²⁰ Orders for interim protection, as they are commonly called, may take the form of simple exhortations to "ensure that no step of any kind is taken capable of prejudicing the rights claimed . . . or of aggravating or extending the dispute submitted to the Court."²¹ This was the type of the Permanent Court's order in the dispute between Belgium and Bulgaria.²² Or the order may involve an elaborate plan for regulating the situation pending final judgment as was the case in the action of the International Court of Justice in the *Anglo-Iranian Oil* dispute.²³

Orders for interim protection have been sought from the Permanent Court of International Justice in six cases and from the International Court of Justice in seven cases. The request for such an order was denied by the Permanent Court in four cases and by the International Court in three cases.²⁴ The issue which is still the subject of differing opinions is

16. (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), [1969] I.C.J. 3.

17. Convention on the Continental Shelf, done at Geneva, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

18. Case Concerning United States Diplomatic and Consular Staff in Teheran (United States v. Iran), 35 U.N. SCOR, U.N. Doc. S/13989 (1980); Communiqué No. 815, May 24, 1980. The action was commenced by the United States on Nov. 29, 1979. On Dec. 16, the Court ordered Iran to release the American hostages being held in the U.S. Embassy in Teheran. The Court's final judgment was delivered on May 24, 1980.

19. Nuclear Tests Cases (Australia v. France), [1974] I.C.J. 253; (New Zealand v. France), [1974] I.C.J. 457.

20. J. ELKIND, A FUNCTIONAL APPROACH TO INTERIM PROTECTION (forthcoming).

21. *Id.*

22. The Electricity Company of Sofia and Bulgaria Case (Belgium v. Bulgaria), [1939] P.C.I.J., ser. A/B, No. 79, at 194, 199.

23. Anglo-Iranian Oil Co. Case (United Kingdom v. Iran), [1951] I.C.J. 89.

24. For a discussion of the power of the I.C.J. and the P.C.I.J. to grant or deny interim

whether any such orders are "binding" in the sense that judgments are binding under Article 60 of the Statute and Article 94 of the Charter. In chapter six of his valuable study, Dr. Elkind weighs the pros and cons and soundly concludes that such orders are binding.

In only one of the seven cases in the International Court of Justice did the party named as respondent appear and argue its position; this was the *Interhandel Case*,²⁵ in which the United States defended its objection against an appeal by Switzerland. In other cases, the respondent has communicated to the Court its objection to the jurisdiction through letters or telegrams. Compliance with Article 38 of the Rules of Court would have required the respondents to appear and file a preliminary objection to the jurisdiction as has been done in many other cases. There have been arguments concerning the finality with which the Court must determine its jurisdiction before proceeding to issue an order. The refusal to appear in court or to appoint an agent as required by the Rules may be due to fears that the Court might extend its use of the doctrine of *forum prorogatum* and hold that the respondent, by appearing, had consented to the jurisdiction. Such an overly cautious attitude had been traced to the language used by the Permanent Court of International Justice in the *Rights of Minorities in Upper Silesia (Minority Schools) Case*:

And there seems to be no doubt that the consent of a State to the submission of a dispute to the Court may not only result from an express declaration, but may also be inferred from acts conclusively establishing it. It seems hard to deny that the submission of arguments on the merits, without making reservations in regard to the question of jurisdiction, must be regarded as an unequivocal indication of the desire of a State to obtain a decision on the merits of the suit. . . .²⁶

One would suppose that the clause "without making reservations in regard to the question of jurisdiction" was sufficient safeguard, but Legal Advisers are cautious and the subject has been debated.²⁷ It is particularly in cases where interim measures of protection are being considered that states (or their Legal Advisers) are reluctant to do anything which may subject them, almost immediately, to adverse judicial process; where it is a matter of judgment on the merits, months and months often elapse before all pleadings are filed and oral hearings held and judgment delivered after the Court's deliberations. But the telegraphic or postal substitute for a memorial has frequently contained arguments of a substantive nature.²⁸ In this writer's opinion, the Court should not, as it has, refer to

protection, see J. ELKIND, note 20 *supra*, and E. McWHINNEY, *THE WORLD COURT AND THE CONTEMPORARY INTERNATIONAL LAW-MAKING PROCESS* 98-103 (1979).

25. (Switzerland v. United States), [1959] I.C.J. 6.

26. (Germany v. Poland), [1928] P.C.I.J., ser. A, No. 12, at 4, 24.

27. See C. JENKS, *THE PROSPECTS OF INTERNATIONAL ADJUDICATION* 135-35 (1964); 1 S. ROSENNE, *THE LAW AND PRACTICE OF THE INTERNATIONAL COURT* 344-46 (1965).

28. See, e.g., Letter from the Republic of France, May 16, 1973, 2 Nuclear Tests Cases, [1978] I.C.J. Pleadings 347-48; Letters from India, May 23, 1973 & June 4, 1973, Trial of Pakistani Prisoners of War, [1976] I.C.J. Pleadings 117-18, 139 (while refusing to appoint an

or answer such evasive pleadings. However, the Court traditionally, and not without some justification, has been mindful of the fact that the parties involved are sovereign states and entitled to some latitude in procedural matters.

Article 40(2) of the 1978 Rules of Court provides that “[w]hen proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Court of the name of its agent.”²⁹ Before the Court adopted the 1978 Rules, it was suggested to the Court that to avoid fears of *forum prorogatum*, Article 67 of the 1972 Rules, dealing with Preliminary Objections to the jurisdiction, might well include a provision to the effect that a preliminary objection limited to the question of the jurisdiction of the Court will not be considered as an acceptance or recognition of the jurisdiction within the meaning of Article 36 of the Statute.³⁰ Such a provision

agent or to appear, India in fact kept up a stream of correspondence with the Court, answering Pakistan’s arguments as they were made); Letter from Iran, Dec. 9, 1979, Case Concerning United States Diplomatic and Consular Staff in Teheran, [1979] I.C.J. Pleadings, C.R. 79/1, Public Sitting, Dec. 10, 1979, at 10-11.

By a telegram dated August 25, 1976, the Secretary-General of the Ministry of Foreign Affairs of Turkey transmitted “the observations of the Turkish Government on the Request of the Government of Greece for provisional measures” to the Registrar of the International Court of Justice. The Secretary-General noted therein that:

[o]n the assurance which was given by the President of the International Court of Justice to the Turkish Ambassador at The Hague during their informal conversation on 18 August 1976, it is understood that the presentation of the attached observations to the International Court of Justice shall not imply any commitment by the Turkish Government as to the jurisdiction of the Court.

Aegean Sea Continental Shelf Case (Greece v. Turkey), [1976] I.C.J. Pleadings 576. On August 30, 1976, the Registrar replied, stating that “due note has been taken of the statement” regarding the assurance of the President of the Court. *Id.* at 579.

29. Rules of Court, art. 40(2), adopted Apr. 14, 1978, reprinted in DOCUMENTS ON THE INTERNATIONAL COURT OF JUSTICE 233 (2d ed. S. Rosenne 1979). Article 40(2) amended article 38(3) of the original Rules of Court, adopted on May 6, 1946. Article 38(3) read: “The party against whom the application is made and to whom it is notified shall, when acknowledging receipt of the notification, or failing this, as soon as possible, inform the Court of the name of its agent.”

30. Article 36 of the I.C.J. Statute reads:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

would have been comparable to the treatment of the like problems arising in suits against foreign states in national courts. When that question was studied by the Harvard Research Project on the Competence of Courts in Regard to Foreign States, it was stated that "a specific appearance for the purpose of pleading immunity as a State will not be a basis for making a State a respondent."³¹ The problem has also been met in the United States Foreign Sovereign Immunities Act of 1976.³²

Attention should be paid to the type of situation for which interim protection has or will be asked. It is not only the Great Powers which have sought interim protection against the small. In the Permanent Court of International Justice, Belgium sought protection against China and Bulgaria, and Norway asked for protection against Denmark.³³ In the International Court of Justice such help has been sought by Switzerland, Australia, New Zealand, Pakistan, and Greece.³⁴ The first case in which the International Court of Justice gave an order for interim protection raised the issue of alleged damage to the interests of a foreign enterprise by nationalization of its properties in the host state. Since the *Barcelona Traction Case*³⁵ was decided by the Court in 1970, doubts have been raised about the validity of the established international law of state re-

Article 67 of the 1972 Rules, renumbered article 79 in 1978, was not changed in the 1978 amendments.

31. Harvard Research Project, *Competence of Courts in Regard to Foreign States*, 26 AM. J. INT'L L. 455, 543 (Supp. 1932).

32. The Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(1) (1976), has merged the immunity and jurisdictional issues in actions against foreign states. United States law recognizes a right of special appearance to contest jurisdiction, provided the specially appearing party does not argue the merits of the complaint. See *Baker v. Götz*, 408 F. Supp. 238 (D. Del. 1976); *Regents of the Univ. of New Mexico v. Superior Court of Los Angeles*, 52 Cal. App.3d 964, 125 Cal. Rptr. 413 (1975); *Boye v. Mellerup*, 229 N.W.2d 719 (Iowa 1975); *Maner v. Maner*, 279 Ala. 652, 189 So.2d 336 (1966).

Thus, a foreign state may appear specially to raise the claim of sovereign immunity. It would only waive that claim implicitly by filing a responsive pleading without raising the defense of sovereign immunity. See *Kahale & Vega, Immunity and Jurisdiction: Toward a Uniform Body of Law in Actions Against Foreign States*, 18 COLUM. J. TRANSNAT'L L. 211, 232-33 (1979).

33. See, e.g., Order of Jan. 8, 1927, Denunciation of the Treaty of November 2nd, 1865, Between China and Belgium (*Belgium v. China*), [1927] P.C.I.J., ser. A, No. 8, at 6-8 (see also Order of Feb. 15, 1927, making previous order inoperative, [1927] P.C.I.J., ser. A, No. 8, at 9-11); Order of Dec. 5, 1939, *The Electricity Company of Sofia and Bulgaria* (*Belgium v. Bulgaria*), [1939] P.C.I.J., ser. A/B, No. 79, at 194; Order of Aug. 3, 1932, *Case Concerning the Legal Status of the South-Eastern Territory of Greenland* (*Norway v. Denmark*), [1932] P.C.I.J., ser. A/B, No. 48, at 277.

34. Order of Oct. 24, 1957, *Interhandel Case* (*Switzerland v. United States*), [1957] I.C.J. 105; Orders of June 22, 1973, *Nuclear Tests Cases* (*Australia v. France*), [1973] I.C.J. 99, (*New Zealand v. France*), [1973] I.C.J. 135; Order of July 13, 1973, *Case Concerning Trial of Pakistani Prisoners of War* (*Pakistan v. India*), [1973] I.C.J. 328; Order of Sept. 11, 1976, *Aegean Sea Continental Shelf Case* (*Greece v. Turkey*), [1976] I.C.J. 3.

35. *Case Concerning the Barcelona Traction, Light and Power Company, Ltd.* (*Belgium v. Spain*), Judgment, [1970] I.C.J. 4.

sponsibility and diplomatic protection. In *Barcelona*, the separate opinions of Judges Padilla Nervo³⁶ and Ammoun³⁷ particularly called attention to the possible evolution of the law in the light of alleged abuses of diplomatic protection and the increased awareness of the problems of the developing countries—the “Third World.” The proposed “New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation” has been analyzed with balance and thoroughness by Professor García-Amador³⁸ and cannot be discussed in detail here. In my opinion, the basic law of state responsibility has not yet been revised or altered although it has been well examined by the International Law Commission.³⁹ If the International Court of Justice is again asked for interim protection against the feared results of nationalization, it might hesitate to go as far as it did in the *Anglo-Iranian Oil Company Case*.⁴⁰ On the other hand, in the *Case Concerning United States Diplomatic and Consular Staff in Teheran*,⁴¹ the Court’s unanimous interim order of December 16, 1979⁴² and final judgment of May 24, 1980⁴³ rest on impeccable rules of international law and on crystal-clear treaty bases of jurisdiction. Hesitancy in such a case would be highly unlikely.

As illustrated by the now pending case of *Continental Shelf—Tunisia/Libyan Arab Jamahiriya*,⁴⁴ disputes about the location of oil deposits in the seabed may arise between two Third World states as well as between other states. Interim protection might be sought if the resource was threatened where there is an imbrication of a single geological structure, of the type which I discussed in my separate opinion in the *North Sea Continental Shelf Cases*.⁴⁵ As arguments of the parties in that case pointed out, the same problems can arise where a river basin resource is to be shared.⁴⁶ The 1960 Indus Waters Treaty between India

36. *Id.* at 244-67.

37. *Id.* at 287-334.

38. García-Amador, *The Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation*, 12 *LAW. AM.* 1 (1980); see also Schachter, *The Evolving International Law of Development*, 15 *COLUM. J. TRANSNAT'L L.* 1 (1976).

39. See [1978] 2 *Y.B. INT'L. COMM'N*, Part 2, at 74, containing a discussion of the work of the Commission on state responsibility and the texts of the previously approved draft articles on state responsibility.

40. [1951] *I.C.J.* 89. In that case, the Court ordered interim measures of protection for the United Kingdom against Iran. The Court ordered that Iran should permit the Anglo-Iranian Oil Company to continue operations and that the Iranian Government should not interfere, by executive, legislative, or judicial process, with those operations pending final judgment. (Final judgment was entered at [1952] *I.C.J.* 93.)

41. 35 *U.N. SCOR*, *U.N. Doc. S/13989* (1980).

42. *Id.*

43. *Id.*

44. *I.C.J. Communique No. 78/7*, Jan. 12, 1978, cited in [1978] *BULL. LEGAL DEV.* 20. Malta and Libya have agreed to submit a similar dispute to the *I.C.J.*

45. [1969] *I.C.J.* 3, 67, 81-82.

46. *Id.*

and Pakistan serves as an example.⁴⁷ Such situations might well justify an order by the Court for provisional measures. Even the invocation of such protection from the Court may lead the parties to reach an agreement on preserving the status quo until the merits of the claim are finally adjudged.

As noted in the Resolution of the Security Council in the case of the *Hostages*,⁴⁸ the community interest in the rule of diplomatic immunity was registered in two great multilateral conventions, signed at Vienna.⁴⁹ The developments in the law of human rights are being registered in international conventions, both regional and global. As stated by Professors McDougal, Lasswell, and Chen, "agreements between states play a most important role in the development of customary international law."⁵⁰ The International Court of Justice could make a significant contribution if national courts were authorized to ask that Court for advisory opinions on the interpretation of multipartite conventions. Such references would tend to provide uniformity in the interpretation of such agreements. The idea has been advocated before⁵¹ and is now gaining support from resolutions introduced in the Congress by Senator Cranston and by Representatives Bingham and Pritchard.⁵²

As suggested in *A Modern Law of Nations*, there has been a trend in the use of the term "law-making treaties" which "supports the view that . . . there is a growing acknowledgement of a basic community interest which contrasts with the traditional strict bilateralism of law."⁵³ The functioning of the United Nations and its organs and conferences gives justification for the conviction that revisions of international law will continue to develop in such a way as to meet the needs of our international society.

47. Indus Waters Treaty, India-Pakistan, Sept. 19, 1960, 419 U.N.T.S. 125.

48. Note 8 *supra*.

49. Notes 6 & 7 *supra*.

50. M. McDUGAL, D. LASSWELL, & L. CHEN, *supra* note 14, at 266-67.

51. See P. JESSUP, *THE PRICE OF INTERNATIONAL JUSTICE* 76 *passim* (1970); Jessup, *Diversity and Uniformity in the Law of Nations*, 58 AM. J. INT'L L. 341, 350 (1964).

52. See, e.g., S. Con. Res. 85, 96th Cong., 2d Sess. (1980) (statement of Sen. Cranston); 126 CONG. REC. E3684-85 (daily ed. July 30, 1980) (statement of Rep. Bingham on expanding utilization of the World Court by national courts). Rep. Bingham included in his remarks the text of a letter written by me in support of the proposal.

53. P. JESSUP, *supra* note 1, at 133.