DISSENTING OPINION OF JUDGE MOROZOV

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

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

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

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

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

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

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

Instead, the Court qualified the actions of Iran as violations of its

obligations *"under international conventions in force between the two countries"* (emphasis added).

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

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

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

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

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

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

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

4. On the other hand, the formula used by the Court in paragraph 1 of the operative part of the Judgment, read in combination with paragraph 55

of the reasoning and operative paragraphs 5 and 6, implies that the Court *only in the present Judgment* has decided not to enter into the question whether, in the particular circumstances of the case, Article 13 of the Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents "provides a basis for the exercise of the Court's jurisdiction with respect" to the claims of the United States of America.

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

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

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

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

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

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

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

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

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

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

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

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

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

In these completely unusual circumstances, it is not possible to include

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

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

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

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

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

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

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

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

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

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

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

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

In my view, the Court should not, in this completely unusual situation, have limited itself to stating that "an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations" and to "recall[ing] that in paragraph 47, 1 B, of its Order of 15 December 1979 the Court had indicated that no action was to be taken by either party which might aggravate the tension between the two countries" (par. 93). At the same time the Court said that "the question of the legality of the operation of 24 April 1980, under the Charter of the United Nations and under general international law", is not "before the Court" and that "It follows that the findings reached by the Court in this Judgment are not affected by that operation" (par. 94).

I consider that, without any prejudice to the above-mentioned exclusive competence of the Security Council, the Court, from a purely legal point of view, could have drawn attention to the undeniable legal fact that Article 51 of the Charter, establishing the right of self-defence, may be invoked

only "if an armed attack occurs against a Member of the United Nations". It should have added that in the documentation officially presented by the United States to the Court in response to its request relating to the events of 24-25 April 1980 there is no evidence that any armed attack had occurred against the United States.

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

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

(Signed) P. MOROZOV.