Chapter XXII  Basic Considerations of Humanity in Relation to Diplomatic and Consular Law

I. Introduction: Diplomatic and Consular Law beyond the Inter-State Outlook

The adoption of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, followed by their wide acceptance by the member States of the international community, was soon to be reckoned as a landmark in the codification of modern International Law. Their success was attributed to their pertaining to a classic domain of International Law,¹ which already counted, prior to their adoption, on a considerable State practice on the matter. It was also attributed to their pertaining to State conduct, rather than to “the substance of inter-State relations”.² The aforementioned Conventions were regarded as generally “declaratory” of customary law on the matter, which was significant if one was to keep

"all hope of a possible future reconstruction of that minimum of international homogeneity (...). The desired homogeneity is not in any way equivalent to any philosophical, religious, moral or political uniformity. (...) What is postulated therefore is not any kind of uniformization, but a synthesis, in the spirit of full tolerance, of the wealth and diversity of structures, beliefs and ideologies with a minimum of cultural fundamentals in common”.³

It can hardly be doubted that, by the time the Vienna Conventions on Diplomatic and Consular Relations were adopted and entered into force, their implementa-

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² K. Zemanek, "Does Codification Lead to Wider Acceptance?", in ibid., p. 226.
tion was envisaged from the outlook of strictly inter-State relations. Yet, less than two decades later, those Conventions, or at least some of their provisions, could be read in a distinct light, ineluctably linking them to the fundamental rights inherent to the human person. The case of the Hostages (*United States Diplomatic and Consular Staff in Tehran, 1979-1980*), filed by the United States against Iran before the International Court of Justice [ICJ], can be recalled in this connection.

In the course of the proceedings (written phase) before the ICJ, the United States, in its memorial, after pointing out that, in the circumstances of the *cas d’espèce*, the U.S. nationals had been held *incommunicado* “in the grossest violation of consular norms and accepted standards of human rights”, added emphatically that Article 36 of the 1963 Vienna Convention on Consular Relations “establishes rights not only for the consular officer but, perhaps even more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others”. Again in the oral arguments before the ICJ, the complainant State further contended that the treatment dispensed by the Iranian government to the U.S. civil servants captured and kept as hostages in Tehran fell “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. (...) 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”.

In its Judgment of 24 May 1980 on the Hostages (*U.S. Diplomatic and Consular Staff in Tehran*) case *(United States versus Iran)*, the ICJ, referring to the International Law governing diplomatic and consular relations (Vienna Conventions of 1961 and 1963), felt obliged to draw “the attention of the entire international community” to

> “the irreparable harm that may be caused by events of the kind now before the Court. Such events cannot fail to undermine the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered

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5 ICJ, *Hostages (U.S. Diplomatic and Consular Staff in Tehran) case, ICJ Reports* (1979); Pleadings, Oral Arguments, Documents; p. 174 (emphasis added). The U.S. memorial added that “the right of consular officers in peacetime to communicate freely with co-nationals has been described as implicit in the consular office, even in the absence of treaties”; ibid., p. 174.

6 Cit. in *ibid.*, argument of the agent for the United States (Mr. Owen), pp. 302-303.