it is to be feared that the determination of jurisdictional issues is likely to be made on a case-by-case basis. The delineation of judicial trends may therefore be difficult for quite some time to come, unless, of course, the volume of Iranian litigation is such that it speeds up the analytic and comparative process of judicial decisions. Until then, many uncertainties will remain unresolved.

This last remark applies to all types of situations, whether contractual or noncontractual, in which courts in the United States may assert jurisdiction over foreign states. In the contractual field, however, much will depend upon whether or not the parties had provided prior to the Act, or have since it took effect, for waivers of immunity coupled with (1) a clear definition of the commercial nature of the relationship; and (2) submission to the jurisdiction of a judicial or arbitral forum in the United States. Only in the affirmative can the parties have the reasonable assurance that planning ahead of litigation, in sovereign immunity as in other fields, may have its own rewards.

GEORGES R. DELAUME*

CORRESPONDENCE

TO THE EDITORS-IN-CHIEF:

June 20, 1980

Professor Falk's editorial comment on the Iran hostage crisis, which appeared in the April issue of the *Journal*, is puzzling. No doubt Professor Falk is well intentioned and morally upright, but he has written a moralistic tract, lacking precision of language, logic, rigorous analysis, or any other characteristic that might qualify it to appear in a legal journal.

What are "crimes of state," "tyrants," "a framework of minimum morality"? Do these words have internationally recognized meaning? Do they evoke the same reaction in Moscow, Tehran, Beijing, Pretoria, and Princeton? I submit that they do not, and that the use of such vocabulary in the context of a professional critique of international law is nonsense.

The basic weakness of international law is the lack of an underlying consensus. Without such a consensus there can be no enforceable law, no matter how many citizens form voluntary organizations to regulate the behavior of governments.

It is precisely for this reason that there is so little effective substantive international law. On the other hand, there is a worldwide consensus to the effect that nations must have the means to communicate with each other, and that the procedures necessary to effect such communications must be safeguarded. Consequently, international law governing diplomatic immunity, which is procedural in essence, is on much firmer footing than international law attempting to deal with ill-understood substantive issues.

* Legal Policy Adviser, International Bank for Reconstruction and Development; Professorial Lecturer in Law, The George Washington University. The views expressed in this paper are those of the author and do not necessarily represent those of the IBRD.

It is this distinction between the procedural and the substantive, and not a "proimperial and a progovernmental bias built into modern international law," that explains the relative strength of the concept of diplomatic immunity and the weakness of the alleged "laws" to which the Iranian revolutionaries are trying to appeal. In fact, diplomatic immunity is a neutral concept, equally useful to the weak and the strong. It protected a Swedish diplomat engaged in desperate humanitarian efforts in Nazi-occupied Hungary, and it even protects the unusual envoys Colonel Qaddafi has lately sent to Britain and the United States.

Nothing that has happened in Iran can give rise to the conclusion that "the content and impact of [the law of diplomatic immunity] are arbitrary and one-sided." In fact, it is a neutral, procedural law, without which diplomatic intercourse between nations would not be possible. Neither irrational Iranian revolutionary outrage nor the most profound guilt feelings among Western intellectuals can lend substance to Professor Falk's theories about the inequities of the Vienna Conventions on Diplomatic and Consular Relations, and the need to redraft them to achieve a better balance of rights.

There is no imbalance, and no need for redrafting. There is a need for observance of what is clearly established international law. Such observance will not bring about the millenium, nor will it satisfy Iran's just grievances, but it will make it possible for governments to communicate with each other. That is the only purpose for which this international law was adopted, and the reason for its general observance by rational governments.

PETER M. SUSSMAN