obviously open and shut. The Soviet Union has invoked a treaty basis for its invasion of Afghanistan. Upon examination of that treaty, however, it is readily apparent that, even if the invasion arguably had a basis in some treaty provisions, the Soviet action was violative of others. In any event, that treaty is subject to the supervening principles of the U.N. Charter. And one must doubt the allegation of an invitation to intervene from a chief of state who is subsequently denounced by the Soviets as a CIA agent and murdered.

As was pointed out by earlier speakers, the measures taken by the United States in response to the Soviet invasion have been legal. Care was taken to cut off the shipments of grain only above the limit to which the Soviet Union is entitled by the terms of the wheat agreement. Again, this is a case where the doctrine of reprisals could have come into play, but has not been invoked by the United States. Furthermore, neither the nonparticipation in the Olympics nor the restrictions placed on the sale of high technology have encroached upon the legal rights of the Soviet Union.

Professor Hassan has been gloomy about the practical utility of measures taken in response to the Soviet aggression in Afghanistan. There is no lack of realism in his observations. The question is, however, whether the Soviet Union should be made to pay a price for its act of aggression, or whether it should be allowed to go unscathed with the encouragement that this would give to the taking of similar acts in the future. The answer, I submit, is clear.

Internationally, the Security Council has responded with an encouraging renewal of its former vitality. In the case of Afghanistan, after the Soviet Union cast its predictable veto in the Security Council, the General Assembly reacted favorably with a resolution which attracted an exceptionally wide spectrum of support in condemnation of the Soviet aggression.

If one compares the terms of this resolution to those which are adopted by vote in the Security Council concerning certain African questions, it might be contended that the reaction of the United Nations to the Soviet invasion was unduly mild. It can also be argued that the nonaligned movement, under the misaligned leadership of Cuba, has not distinguished itself in response to this blatant act of aggression. Nonetheless, given the degree to which the Soviet Union has been indulged in international fora in recent years, the U.N. reaction is both significant and cause for some satisfaction.

REMARKS BY BENJAMIN B. FERENCZ*

I hope to both summarize the high points of the preceding speakers and place them in the overall context of the crises we now face. But rather than repeating, I would like to focus on possible areas of disagreement.

The Chairman, in his introductory remarks, contended that the events in both Iran and Afghanistan were clear and flagrant violations of international law. In fact, all the other speakers have echoed this point. I feel, on the other hand, that the illegality of both these actions is not so perfectly obvious.

We are dealing here with two alleged breaches of international law: first, an act of aggression and, second, the taking of hostages. When examining the Soviet actions in Afghanistan, it is important to note that no act may legally be labeled aggression unless the Security Council determines it to be so. The United States has agreed to this in the consensus definition. And, of course,
the Soviet Union has veto power in the Council. Thus, under the definition of aggression agreed to by the international community, including the United States, the final determination whether there has been an illegal act is left to the Security Council, which has not even considered the question.

Furthermore, an act of self-defense or collective self-defense would not constitute aggression. According to the Soviet allegation, troops were introduced into Afghanistan at the request of the local regime. Although certain doubts exist about this invitation, legal problems arise in this connection.

Seen in its broader, political context, the following series of events probably occurred in Afghanistan. The Soviets had succeeded in obtaining a friendly neighboring state, to which they had been supplying arms for several years. Due to internal dissent against the installation of the new regime, the Soviet Union feared that it was losing control of its satellite. When the Iranian revolution occurred, its U.S.-bolstered military force collapsed completely. As we know, the United States became an enemy of Iran. The Soviet Union consequently seized its chance to assert its military domination over Afghanistan, without fear of U.S. or Iranian intervention. It will remain there, moreover, until it has completed that domination and can withdraw with the assurance that Afghanistan is in hands friendly to the Soviet Union.

This should be the crime of aggression. In stark contrast to the principles of the Charter, the Soviet act was a clear-cut case of an unjustified intervention, a violation of sovereignty, and an interference in internal affairs. Under the ambiguous prevailing law, however, there is room for doubt. I wish it were otherwise.

The taking of hostages poses further legal difficulties. Since 1934 and the League of Nations, a series of conventions relating to the prevention of terrorism has been produced by the international community. This includes the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, which contains an amendment making the Convention inapplicable if the action was taken in pursuit of "self-determination and independence" or liberation from "alien domination" or "foreign occupation." The entire international community accepted this amendment by consensus. Thus, it is not astonishing that the hostages were taken. It is surprising, though, that those who accepted the loopholes have described the Iranian actions as clear and flagrant violations of international law. Where is the law?

Secretary Hinton has indicated that the United States is following a policy of making the process so costly for the Iranians that they must ultimately yield. Is this consistent with the assertion that the safety of the hostages was a primary concern in the formulation of U.S. policy toward Iran?

This method was used during the Vietnam War without success. Perhaps an alternative approach might be more appropriate in these circumstances. In my view, we should try to seek the friendship of the Iranians by trying to understand their feelings about the role of the United States in their country. Professor Hassan has already elaborated some of these feelings. In the end, the demands for an acknowledgment of the record of the United States in Iranian affairs and for the return of Iranian assets may not be so unreasonable.

Rosalyn Higgins has described the problems involved in the freezing of accounts belonging to the Iranian government. Paradoxically enough,
though, the Shah's assets have not been frozen. In my judgment, those assets were one of the means by which the liberty of the hostages might be bought. But, astonishingly, the United States has started an action at the International Court of Justice to seize Iranian assets as a form of reparation.

I would also like to call attention to Rosalyn Higgin's eloquent observation that both crises were "cruel indications of the shortcomings of the international order." This is most true, and the detention of the U.S. hostages is indeed a global problem.

Professor Hassan has tried to put things in their right light. He carefully alluded to the confrontation between the superpowers concealed behind both crises. He likewise referred to the differing perceptions of international law and to the fact that Hugo Grotius was only interested in law for the civilized nations. There must be the evolution of new rights for developing countries.

Stephen Schwebel was responsible for the most constructive and effective U.S. act relating to the Iranian crisis—the petition for interim measures by the International Court of Justice. Because it went to a court of law as its first significant response to an outrageous and unlawful act, the United States has received the support of the international community at large.

On the other hand, it is doubtful whether Soviet policy in Afghanistan will be influenced in the least by U.S. coercive actions taken in response. As Mr. Schwebel has indicated, there is not much to be done in such circumstances.

Now for my own views. Due to an emphasis on national rather than global thinking, I feel that we are in a sorry state. Decisions are being made by those people who are paid to defend the interests of their countries. They are, as the Germans say, befangen, or prejudiced. In an interdependent world, however, we can no longer afford to think in these terms. Other perceptions must be taken into consideration and, ultimately, the aspirations of other countries must be met. The development of the notion of the "common heritage of mankind" is an indication of some progress in the right direction. The aforementioned conventions on the control of terrorism, as imperfect as they are, all represent a growing awareness of the necessity for legal remedies to the types of situations with which we are currently faced. Perhaps we can use such incidents, events that disgrace mankind, to further a recognition of the need for an international morality and the need to create the required machinery to put the new rules into effect. New international structures and institutions are essential to prevent these types of situations. Until they are created, aggression and terrorism will continue.

When the United Nations convenes in September 1980, it will have before it a draft Code of Offenses Against the Peace and Security of Mankind. This Code includes prohibitions against acts of aggression, terrorist activities, and the taking of hostages. The United States has been opposed to having these discussions, and I urge you to push both U.S. and other representatives to pursue these talks. Problems similar to the two under scrutiny here must be discussed in a rational way, so that a code of behavior, setting out what is and what is not permissible, can be established. Furthermore, a court with the authority to determine whether this code has been violated should be created and empowered to impose sanctions, economic or otherwise, of a universal character. As Rosalyn Higgins asserted, this is not solely a U.S. problem. It is a world dilemma, and only by taking steps in this direction can we turn these tragedies into positive influences.