The prosecutor shall be given an opportunity to respond to the request for compensation[119] and a hearing shall be held if the prosecutor or the claimant so requests.[120] The decision shall be taken by a majority vote,[121] and the chamber—when determining quantum in cases where the claimant alleges wrongful prosecution—shall take into consideration the consequences of the grave and manifest miscarriage of justice on the personal, family, social, and professional situation of the complainant.[122] Such consideration is not required in cases related to wrongful detention or conviction.

In view of the cogency of the arguments in favor of compensating wrongly detained, prosecuted, or convicted persons, the adoption of a corresponding scheme to determine eligibility and quantum would go a long way toward dampening some of the reservations that individual members of the Security Council may have in granting the ad hoc Tribunals the ability to award compensation. In any case, the international community should remember that although the courts have striven to ensure that all the processes they apply are based on the principles of justice, fair trial, and the protection of the fundamental rights of the accused, their achievements will mean nothing if they fail to take responsibility and make amends for the harm caused when an individual is wrongly deprived of his liberty. The fundamental principles of the international criminal justice system demand no less.

STUART BERESFORD*

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters to publish and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

TO THE CO-EDITORS IN CHIEF:

The International Court of Justice has, by impressive majorities, rendered a momentous judgment in the *LaGrand* case.[1] The finding that an indication of interim measures of protection has binding force in law will surely have profound implications for many aspects of the Court's future work.

At this stage, however, my concern is merely to offer some comments on one element of the Court's reasoning.

In addition to the broad considerations that guided the Court to its finding, the Court conducted a detailed analysis of the texts of Article 41 of its Statute, and of the *travaux préparatoires*. The Court held that its initial finding was not contradicted by the application of the textual analysis or these supplementary means of interpretation.

[119] ICC Rules, *supra* note 116, Rule 174(1). The right of the prosecutor to have standing in this process is based on the fact that "the decision on compensation may also very well be a decision on the Prosecutor's mistakes." Bitti, *supra* note 89, at 631.

[120] ICC Rules, *supra* note 116, Rule 174(2). During the hearing and throughout the entire proceedings, the person making a claim for compensation is entitled to legal assistance. Although the Rules do not specify whether persons lacking sufficient means to pay for legal assistance will be assigned a counsel free of charge, the ad hoc Tribunals are likely to follow customary international law on this point and agree to such a proposition. *See* Bitti, *supra* note 89, at 630–31.

[121] ICC Rules, *supra* note 116, Rule 174(3).

[122] *Id.*, Rule 175.

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[1] LaGrand (Ger. v. U.S.) (Int'l Ct. Justice June 27, 2001); *see* William J. Aceves, Case Report: LaGrand (Germany v. United States), *in* 96 AJIL 210 (2002).

This exercise was not necessary for the Court's conclusion. But the Court made clear that it was applying the 1969 Vienna Convention on the Law of Treaties.

When the text of the Statute of the Court was reconsidered in 1945, it was an open question whether indications of interim measures of protection were of a binding nature. At the same time, a broad body of opinion held that in case of discrepancies between equally authentic language versions, the wiser choice would be to adopt the version that implied the more restrictive interpretation. This appears to have been Judge Manley O. Hudson's conclusion when he dealt with multilingual treaty texts in his work on the Permanent Court.[2] Judge Hudson was himself in favor of ascribing binding force to indications of interim measures of protection, but nevertheless espoused the traditional "canon of interpretation." That canon would not have supported the supplementary line of reasoning in the *LaGrand* case.

The interpretation of the Statute of the International Court of Justice may well call for approaches that differ from those which it would be appropriate to apply in the interpretation of older treaty texts generally.

Article 4 of the Vienna Convention ensures nonretroactivity with respect to treaties concluded before its entry into force, save for such rules as would be applicable independently of the Convention. I submit that, in general, the context for the interpretation of older treaties must be drawn widely.

In addition to the terminology and linguistic usage current at the time of drafting, the cultural and political settings must also be considered. That same historical context must extend equally to the expectations of the parties with regard to modes of interpretation, and thus requires reference, even today, to canons of interpretation. Those considerations apply with particular strength to the interpretation of treaties providing for boundary regimes and other territorial regimes. It has not yet been established that customary law imposes the mechanical application of Articles 31–33 of the Vienna Convention to such older treaties, to the exclusion of rules that would be applicable under intertemporal law.

PER TRESSELT*

THE FRANCIS DEÁK PRIZE

The Board of Editors is pleased to announce that the Francis Deák Prize for 2002 was awarded to Anthea Roberts of the Australian National University for her article entitled *Traditional and Modern Approaches to Customary International Law: A Reconciliation,* which appeared in the October 2001 issue.

The prize was established by Philip Cohen in memory of Dr. Francis Deák, an international legal scholar and lifelong member of the American Society of International Law, to honor a younger author who has published a meritorious contribution to international legal scholarship in the *American Journal of International Law.*

[2] In MANLEY O. HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE 1920–1942, at 649 (1943), Judge Hudson quotes the following texts from Mavrommatis Palestine Concessions (Greece v. Gr. Brit.), Jurisdiction, 1924 P.C.I.J. (ser. A) No. 2, at 19:

> The Court is of opinion that, where two versions possessing equal authority exist one of which appears to have a wider bearing than the other, it is bound to adopt the more limited interpretation which can be made to harmonise with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties.

In the authoritative French text:

> La Cour estime que, placée en présence de deux textes investis d'une autorité égale, mais dont l'un paraît avoir une portée plus étendue que l'autre, elle a le devoir d'adopter l'interprétation restreinte qui peut se concilier avec les deux textes et qui, dans cette mesure, correspond sans doute à la commune intention des Parties.

* Judge, EFTA Court. The views expressed are those of the writer and do not necessarily reflect those of the EFTA Court or the European Free Trade Association.