

THE JURIDICAL IMPLICATIONS OF THE ANGLO-IRANIAN OIL COMPANY CASE*

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The Anglo-Iranian oil dispute affords an illustration of the profound influence of legal philosophy upon enactment and judicial decision, despite the appearance of sole reliance upon positive law. It demonstrates how able jurists may appraise and utilize such law differently, depending upon their unexpressed and often subconscious convictions as to the nature of law, the extent of civil authority and the purpose of society, both national and international. The legal positions taken by Iran and Great Britain, the rationale of the order granting interim measures of protection by the International Court of Justice on July 5, 1951, and the attitude of the representatives of the various countries who considered the resolution presented by Great Britain to the Security Council of the United Nations on September 28, 1951 in furtherance of this order, were all pre-determined by non-articulated jurisprudential assumptions. It is the purpose of this paper to bring to the surface those ethical controls which determined legislative and judicial behavior, and to evaluate the merits of the underlying normative considerations. It will pass judgment upon the jurisdiction of the International Court of Justice to indicate interim measures of protection, and that of the Security Council to support those measures, but it will not undertake to discuss the justice of the agreement between Great Britain and Iran.

THE GRANTING OF INTERIM MEASURES OF PROTECTION

On July 5, 1951, the International Court of Justice handed down an order in the *Anglo-Iranian Oil Company* case, granting interim measures of protection, in pursuance of Article 41 of the Statute of the Court.¹ This order was intended to prevent irrep-

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1. Article 41 states: "1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

"2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council."

arable damage to the property and interests involved, pending a decision by the Court on the merits of the controversy, since Great Britain had instituted proceedings before the Court on May 26, 1951, by an application to the Registrar of the International Court of Justice in accordance with Article 40 of the Statute.² These proceedings sought the aid of the Court to redress the injustice claimed to have resulted from Iran's nationalization of its oil industry,³ on May 1, 1951, despite the existence of an agreement made by Iran (then Persia) with the company in April, 1933,⁴ which gave the company the exclusive right, or concession, to extract and refine petroleum in Iranian territory and to transport it.⁵ The application invoked Article 36 (2) of the Statute of the Court.⁶

2. Article 40 states: "1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

"2. The Registrar shall forthwith communicate the application to all concerned.

"3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the court."

3. The British application alleged the facts which led to the controversy and a resulting denial of justice to a British national. It charged that Iran had treated a British national in a manner not in accordance with the principles of international law and had, in consequence, committed an international wrong against the Government of the United Kingdom. The Court was asked to declare that Iran was under a duty to arbitrate the dispute as provided by Article 22 of the Convention of 1933 and to carry out any resulting award; or to declare alternatively that the Iranian Oil Nationalization Act was a breach of the Convention and of international law, that the denial of the remedy provided by Article 22 was a denial of justice under international law, and to adjudge that Iran pay full indemnification and determine the manner of such relief. See Application Instituting Proceedings, Anglo-Iranian Oil Company Case, May 26, 1951.

4. An oil contract had been made by Persia with D'Arcy, an Englishman, in 1901. The Anglo-Persian Oil Company took over D'Arcy's operations under his concession eight years later. In 1910, a new contract superseded that of 1901. The British Government became financially interested in 1912. The contract made in 1910 was replaced by the 1933 contract. A supplemental agreement to the 1933 contract was made in 1949 with representatives of the Iranian Government, increasing the annual royalties, but this was never ratified by the parliament of Iran. See OFFENHEIM, *IRAN'S OIL NATIONALIZATION* (unpublished manuscript 1951), citing WILBER, *IRAN, PAST AND PRESENT* 109-114 (1948); Fraser, *Statement to Stockholders of the Anglo-Iranian Oil Company*, Wall Street Journal, Nov. 28, 1951, p. 16, col. 3.

5. Under the 1933 contract, Persia (now Iran) granted to the Anglo-Persian Oil Company (now the Anglo-Iranian Oil Company) an exclusive concession to extract and refine petroleum in Persia, in consideration of certain royalties. It provided that its terms "shall not be annulled by the Government" nor altered "either by general or special legislation in the

The order declared that both parties should ensure that no action be taken which might prejudice rights in regard to the carrying out of any decision on the merits; that neither party should aggravate or extend the dispute; that no measure should be taken designed to hinder the carrying on of the industrial and commercial operations of the oil company, as carried on before the effective date of the Act of Nationalization, namely, May 1, 1951; and that operations should continue under the direction of its management, as it was before that date, subject only to modifications which might result from agreement with a Board of Supervisors, to be established by Great Britain and Iran. The Board was to consist of five members, two of whom were to be appointed by each country, while the fifth was to be chosen by agreement between the two countries, or in default of such agreement, and upon joint request of the parties, by the President of the Court.⁷ This order in no way prejudiced the rights of Iran in the subsequent proceedings at which there would be a definitive determination of the Court's jurisdiction, nor would it affect the proceedings on the merits of the controversy, if such jurisdiction was determined. Iran was not formally represented at the hearing. It rejected the jurisdiction of the Court for all purposes, on the ground that the dispute was exclusively within its domestic jurisdiction, since it related to the exercise of its sovereign rights.

future, or by administrative measures, or any other acts whatever of the executive authorities." It also provided: "any difference between the parties of any nature whatever and in particular any difference arising out of the interpretation of this agreement and of the rights and obligations therein contained as well as any differences of opinion which may arise relative to questions for the settlement of which, by the terms of this agreement, the agreement of both parties is necessary, shall be settled by arbitration." The contract could be terminated only by its expiration on December 31, 1993, or surrender of the concession, or a declaration by the arbitration tribunal cancelling the concession because of the company's default. See *OPPENHEIM, op. cit. supra* note 4, at 1.

6. This article contained the optional clause accepted by Iran and Great Britain. Paragraph 2 provided that:

"The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation. . . ."

7. Request for the Indication of Interim Measures of Protection, Anglo-Iranian Oil Company Case, Order of July 5, 1951, pp. 93, 94.

THE RELATIONSHIP BETWEEN THE AUTHORITY OF THE COURT TO
INDICATE INTERIM MEASURES OF PROTECTION AND
ITS JURISDICTION TO HEAR THE CASE

In a ten-to-two decision, the Court held that a definitive determination of jurisdiction to decide the case on its merits was not necessary in order to provide interim protection to the interests and property in question.⁸ The majority admitted, however, that there must be at least some reasonable possibility that the Court would conclude later that it had jurisdiction to adjudicate the case. It was this possibility which gave relevance and significance to the indication of interim protective measures, for there is no other Court to which recourse could be had.⁹

The majority of the Court later formulated the test of necessary relationship between its authority to grant interim measures and its jurisdiction to hear the case, in the following words:

. . . it cannot be accepted *a priori* that a claim based on such a complaint [*i.e.* a claim for relief on the merits of the case] falls completely outside the scope of international jurisdiction.¹⁰

But this criterion of positive law was in turn based upon a postulate of a philosophy of natural law, which would raise a presumption not only of reasonable possibility, but also of considerable probability, in favor of the jurisdiction of the Court to decide the case. According to this type of philosophy, the Court represents international authority, derived from the world community, rather than from a lesser human society which is politically organized along national lines. Sufficiently convincing evidence is not available to overcome that presumption. It is true that interim measures of protection were requested in six cases before the Permanent Court of International Justice, and that the requests were allowed in two and denied in the others.¹¹ But ap-

8. "Whereas the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction. . . ." *Ibid.*

9. "It follows that the Court must be concerned to preserve by such measures the rights which may be subsequently adjudged by the Court to belong either to the Applicant or to the Respondent." *Ibid.* See Fenwick, *The Order of the International Court of Justice in the Anglo-Iranian Oil Company Case*, 45 AM. J. INT'L L. 723 (1951).

10. Request for the Indication of Interim Measures of Protection, Anglo-Iranian Oil Company Case, Order of July 5, 1951, p. 93.

11. The President of the Court granted an indication by order in the Belgian-Chinese Case (1927), where the measures were finally revoked.

parently there is no precedent to show conclusively that there must be more than a reasonable possibility of final jurisdiction to support the authority of the Court to indicate interim protective measures.

The basic hostility of the two dissenting judges¹² to a philosophy of natural law is manifest from the nature of the test which they demanded, namely:

We find it difficult to accept the view that if *prima facie* the total lack of jurisdiction of the Court is not patent, that is, if there is a possibility, however remote, that the Court may be competent, then it may indicate interim measures of protection.¹³

They demanded that if the Court would not make a provisional and summary determination of its jurisdiction to hear the case, then at least, that jurisdiction must be probable, not merely possible.

The legal standard embodied in the minority opinion was grounded on a presumption in favor of the sovereignty of Iran, rather than of international authority. This standard was a deduction from the doctrine of the supremacy of national sovereignty, as understood after the emergence of the modern state in the sixteenth century, and thereafter. This doctrine is ultimately the basis of the conclusion reached by the dissenting judges. A provisional determination of the Court's jurisdiction to decide the case would have been time-consuming. It would have interfered with the essential purpose of interim measures. This purpose is to effectuate a high degree of equity, in unique and exceptional situations, by overcoming as far as possible the limitations of human justice caused by judicial delay. The amoral view of the minority of the Court would subordinate this equitable purpose to the delay which would have resulted in determining

Apparently the Court was not called upon to decide the basis of jurisdiction. The Permanent Court, not its President, indicated interim measures in 1939, in the *Electricity Company Case between Belgium and Bulgaria*. Interim measures were denied in the *Southeastern Greenland Case*, in the *Chorzow Case*, the *Pless Case*, and the *Polish Agrarian Reform Case*. See ORFIELD, *THE USE OF THE INJUNCTION IN INTERNATIONAL DISPUTES* 13, 14 and 11, n. (manuscript to be published, read at Equity Round Table of the Association of American Law Schools at its 1951 Meeting).

12. They were Winiarski of Poland and Badawi Pasha of Egypt. The Soviet judge did not take part in the decision.

13. Request for the Indication of Interim Measures of Protection, *Anglo-Iranian Oil Company Case*, Order of July 5, 1951, p. 97.

that the issues actually did come under international law, contrary to Article 61 (2) of the Rules of the Court, which states:

A request for the indication of interim measures of protection shall have priority over all other cases. The decision thereon shall be treated as a matter of urgency.

In reading into Article 41, which authorizes the granting of interim measures of protection, the requirement that the competence of the Court to decide the case on its merits must be probable, and in voting against the indication of such measures, evidently because of their conviction that such competence was improbable, the minority of the Court adopted an anti-natural law view toward the arguments which had been advanced by Great Britain and Iran. According to an analytical philosophy of law, the case presented by Great Britain might possibly come within the jurisdiction of the Court for adjudication. This was perhaps the reason why the dissenting judges deemed it necessary to demand more than a reasonable possibility, so as to rationalize their *a priori* convictions that interim measures should not be granted. They could not deny that the Court had been given authority by Article 36 (6) of the Statute to decide whether it had jurisdiction, when there was a dispute as to whether it was competent to adjudicate the case.¹⁴

The further antipathy of the dissenting judges to a moral concept of law is evident from their statement that interim measures of protection "may easily be considered a scarcely tolerable interference in the affairs of a sovereign State."¹⁵ National authority was thus emphasized at the expense of prophylactic justice. The upholding of the sovereignty of a nation was considered a more precious interest than that of preventing irreparable damage in a unique situation.

THE ASSUMPTION OF THE PROBABILITY THAT THE COURT WOULD LATER DECIDE IT HAD JURISDICTION TO HEAR THE CASE

The competence of the Court to adjudicate the merits of the dispute may be assumed as more than possible, only on the basis of an equitable approach to legal transactions. Reasonable dis-

14. Article 36 (6) states: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

15. Request for the Indication of Interim Measures of Protection, Anglo-Iranian Oil Company Case, Order of July 5, 1951, p. 97.

agreement may exist as to whether the British or the Iranian contentions should prevail, if moral factors are disregarded. These contentions in final analysis are derivatives from normative interpretations of factual patterns.

In the first place, the Court would have jurisdiction over the controversy as raising issues of international law, if the agreement of 1933 between Iran and the oil company was in effect a treaty or convention between two sovereign states. Great Britain claimed that it was, while Iran contended that it was not. If this agreement was a treaty or convention, then the case would clearly fall under the sphere of the compulsory jurisdiction of the International Court of Justice. Iran (then Persia) accepted the compulsory jurisdiction of the Permanent Court of International Justice in 1932, but with certain reservations.¹⁶ Such acceptance was later considered to be an acceptance of the compulsory jurisdiction of the International Court of Justice, for under paragraph 5 of Article 36 of the Statute of the International Court of Justice:

Declarations made under Article 36 of the Statute of the Permanent Court of International Justice, and which are still in force, shall be deemed as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run, and in accordance with their terms.

Article 36 (2) of the Statute of the International Court provided for compulsory jurisdiction in all legal disputes relating to "the interpretation of a treaty, any question of international law, the existence of any fact, which, if established, would constitute a breach of an international obligation," and "the nature or extent of the reparation to be made for the breach of an international obligation."

The controlling question in the argumentation, therefore, is whether the agreement is to be given the effect of a treaty or convention. If so, the dispute manifestly comes under Article 36, regardless of the exchange of notes in 1930, which had limited Iran's acceptance of compulsory jurisdiction to the sphere of

16. Included among these reservations was exclusion of the following from compulsory jurisdiction (a) questions concerning the territorial status of Persia, (b) disputes for which the parties had agreed upon some other method of peaceful settlement, (c) matters which according to international law came exclusively within the jurisdiction of Persia.

treaties or conventions only. But it may be argued that this agreement was not between two States, but only between a State and the corporate creature of another, or that the granting of the concession was an act performed by Iran only in the course of its fiscal administration and not in its sovereign capacity. Only a natural law interpretation can justify the British contention that the agreement "may, having regard to the circumstances in which it was made, be held to be a 'convention' within the meaning of that expression in the declaration deposited by the Imperial Government of Persia relating to Article 36 (2) of the Statute of the Court."¹⁷ This interpretation pierces the corporate veil. It recognizes that the British Government was financially interested in the company, coming to own a majority of its stock, and hence was the contracting party despite the corporate entity.¹⁸

Secondly, Great Britain contended that breach of the agreement made in 1933, even though it was not itself a treaty or convention,¹⁹ nevertheless related back to a treaty, particularly that of 1928, which provided that British nationals in Persia, "shall be admitted and treated on Persian territory in conformity with the rules and practices of International Law."²⁰ Hence, breach of the agreement may be considered as a violation of that treaty so as to bring the controversy within a treaty-category and within the scope of Article 36. But Iran had limited its acceptance of compulsory jurisdiction of the Court in 1930 to "situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia and *subsequent* to the ratification of this declaration [emphasis added]."²¹ But the treaty in question came into existence prior to the commitments of 1930 and 1931. It is only by reliance upon equity that the word "subsequent" may be construed as modifying "situations and facts," and not "treaties and conventions," so as to justify the British argument that Iran had breached rules of customary international law.

Analytically, Iran might well argue that while Great Britain had most-favored nation treaties with Iran, entitling British

17. See Fenwick, *supra* note 9, at 726.

18. See OPPENHEIM, *op. cit. supra* note 4 at 1.

19. See Fenwick, *supra*, note 9, at 725.

20. *Ibid.*

21. *Ibid.*

nationals in Iran to that same kind of treatment which was accorded the most privileged nationals of any other country under similar circumstances; yet the nationals of no other country enjoy the right to the continued use and enjoyment of any concession, so as to be exempt from the operation of nationalization acts. Iran might also point out that no treaty required Iran to desist from such acts, so that there is no violation of any express treaty right in regard to most-favored nation treatment. Only an ethical approach will admit of implications that Iran had assumed treaty obligations limiting its sovereignty in the matter of unilateral abrogation of agreements.

Thirdly, Great Britain argued that there was such a "denial of justice" under international law by Iran's failure to arbitrate according to the terms of the agreement of 1933 as to warrant the intervention of Great Britain on behalf of its national, *i.e.*, a corporate person. If this is so, then the controversy between Iran and the oil company, over the breach of the agreement, is supplemented by a new dispute, namely, a conflict of opinion between two States as to the justice of the treatment of a national of one of the States. It is imperative for Great Britain to show that there was a dispute between two States because Article 34 (1) of the Statute of the Court specifies that "only states may be parties in cases before the Court." But a controversy between States can be spelled out only if it is admitted a State exists for the protection of the persons under its authority, both national and corporate, and both at home and abroad, and that an injustice against a national is also one against the State in question. The oil company was a British national, since a majority of its stock was British owned and since its incorporation took place under British law. This natural law approach is contrary to the Iranian point of view, however, that the effects of its legislation upon aliens can be of no concern to any other nation, since disputes arising out of this legislation are not matters coming within international jurisdiction.

On the analytical level, Iran might well argue that the agreement was not binding on the sovereign, which might cancel it when it deemed necessary, since the sovereign is above both the moral and the positive law. This is contrary to natural law thinking. Nations, in the sense of artificial or moral persons, are subject to the dictates of natural law in regard to contracts in a

manner analogous to natural persons. By unilateral termination of the agreement which had created vested property rights in persons acting upon expectation of its continuance, and by refusing to permit the Court to consider the case, or to pass judgment upon Iranian claims that the agreement was unfair and not made by the true representatives of Iran, that country was acting contrary to a doctrine of natural law.

THE JURISDICTION OF THE SECURITY COUNCIL

The order of the Court was communicated to the parties and to the Security Council of the United Nations in accordance with Article 41 (2) of the Statute. But Iran ignored it as an interference with its internal affairs, refusing to comply on the basis of a theory of absolute political, legal and moral sovereignty. The Court had no power to enforce its order. On September 28, 1951, Great Britain requested the Security Council to call upon Iran to comply with the order. The question of jurisdiction again arose. On October 1, 1951, the Security Council voted nine-to-two to discuss the matter. Russia and Yugoslavia dissented.²² But after considerable debate, adjournment took place on October 19.

As in the Court, so likewise in the Council, arguments of positive law were merely prolongations of jurisprudential starting points. A natural law premise was necessary to sustain the British view that since Article 41 (2) provided for communication of the order to the Security Council it should be implied that the Council had jurisdiction, was intended to be the enforcing arm of the Court, and had power to deal with matters arising out of the indication of interim measures of protection. But for Analytical Jurisprudence, this was not so, for there was no express clause in the Charter or Statute conferring such power on the Council.

Again, the British representatives invoked Article 94 (2) of the Charter to prove the jurisdiction of the Council. The issue was whether an indication of interim measures of protection was a "judgment," or should be construed to be such for purposes of coming within the operation of this Article, which stated:

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council,

22. ORFIELD, *op. cit. supra* note 11, at 22.

which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

If the view of Analytical Jurisprudence is adopted, Iran would be correct in maintaining that these interim measures were not a judgment, for a judgment is a final determination, while the indication of such measures is not even an adjudication of the merits of the case. But a contrary conclusion would result from an ethical premise, for the essence of both judgment and indication of interim protective measures is the resulting binding obligation. If such measures did not bind equally with a final judgment,²³ then it would be possible for one of the parties to the dispute to interfere with the final judgment by doing that which the protective measures sought to prevent. Besides, these measures may be inextricably related to the final judgment.

Great Britain also relied on Article 33 of the Charter which provided:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

The Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means.

The British representative, Sir Gladwyn Jebb, argued that there had been a denial of justice by Iran, and that Great Britain had exhausted all avenues other than the Security Council. He maintained that the situation was potentially dangerous to world peace. This approach presumed that legislative justice would be forthcoming from the Council. Despite the assurance of the parties that force would not be used, the situation did constitute a potential danger to peace. The analytical view is that the Council is only a political body and can perform no judicial function.

A majority of the Council, like a minority of the Court, were influenced by an anti-natural law philosophy. They acted in accord with an exaggerated concept of national sovereignty. It was this concept which led to the presumption that the dispute

23. A final judgment is binding under Articles 59 and 60 of the Statute and Article 94, paragraph 1, of the Charter.

came within the domestic jurisdiction of Iran, that "denial of justice" was a legal question which the Court alone should decide, and that the Council had no jurisdiction until the Court had determined its own competence.²⁴

Far-reaching may be the effect of the Council's appeasement of Iran's contempt and refusal to cooperate with the effort of the Court. This was the first case before the Security Council involving the Court. A precedent based on Analytical Jurisprudence has been created which detaches law from morals in the field of international relationship, and reduces considerably the usefulness of the Court.

THE RELEVANCE OF COMPENSATION

The element of compensation was recognized as relevant to the Act of Nationalization, by both Iran and Great Britain, from the beginning of the dispute. Indeed, it was provided by Article 2 of an Act passed on April 30, 1951, to enforce the nationalization law ratified on March 20, 1951, that:

Should the Company make the claim for compensation an excuse to forestall prompt delivery, the Government may deposit up to twenty-five per cent of the current income, less cost of production, in any bank acceptable to both parties, to secure the claim.

A plan of compensation was also introduced into the discussion before the Security Council, where it was noted that Great Britain had admitted the right of Iran to nationalize its oil, provided it paid just compensation.²⁵ But thus far Great Britain has not accepted the Iranian offer of compensation. Now here, as in other phases of the case, the cleavage of thought is the direct result of underlying juridical assumptions. The determination of a compensation which will conform to the standard rules of international law, so as to be effective, prompt and adequate,²⁶ is a delicate and complex task, better performed by the judicial or arbitral process than by the crude method of bargaining between the parties. The difficulty of determining just compensation in this case is complicated by the fact that only the continued operation of the oil industry can produce the funds neces-

24. Journal of the Security Council, No. 565 (Oct. 19, 1951).

25. Journal of the Security Council, No. 561 (Oct. 16, 1951).

26. See Re, *The Nationalization of Foreign-Owned Property*, 36 MINN. L. REV. 323, 330 *et seq.* (1952).

sary for payment. This was brought out by the British representative in the debate before the Security Council. He stated that Iran should employ an agent to manage this industry, for Iran could not pay just compensation if it was unable to obtain revenue from the operation of the industry.²⁷

But Iran has refused to submit the matter of compensation to the Court, consistently with its concept of unlimited national sovereignty. In furtherance of that concept, it appears that the act of nationalization is now considered legally complete by Iran, regardless of the factor of compensation, which thus becomes in the nature of a privilege or favor from the expropriating State. But this theory is contrary to the natural law point of view, taken by Great Britain, which refuses to acknowledge the principle that one State has the right to take the property of the citizens of another State and pay for it when, in the judgment of that State, its economy may perhaps permit. The moral view dictates that the exercise of the right of a State to expropriate the property of foreign nationals is dependent upon the giving of just satisfaction as a concurrent, if not a precedent, condition.

IRAN AS JUDGE OF ITS OWN CASE

No domestic system of law and order could function if each citizen had authority to decide whether his case came within the jurisdiction of the courts. The same may be said of the International Court of Justice. To admit the right of any State to decide what is an issue of international law, and to interpret the extent of its duty to be bound by the compulsory jurisdiction of that Court, would be to destroy the possibility of any effective international judicial authority. Hence Article 36 (2) can only mean that each State gave provisional approval of the jurisdiction of the Court, empowering it to decide that it has definitive jurisdiction, in a particular case, so that even though one of the parties does not appear, the Court may adjudicate the case in accordance with Article 53 of the Statute.

Article 1 (1) of the Charter of the United Nations presumes good faith and reasonableness of conduct on the part of its members, when it declares the purpose:

. . . to bring about by peaceful means, and in conformity with the principles of justice and international law, adjust-

27. Journal of the Security Council No. 565, at 27 (Oct. 19, 1951).

ment or settlement of international disputes or situations which might lead to a breach of the peace.

Every failure to fulfill obligations under international law by a State is an impairment of the international social interest, and in turn raises the question of the use of physical force on the part of the community of States to redress the wrong. This conclusion rests squarely on a natural law conception of world society and international law.

In conclusion, it may be pointed out that there is an inner inconsistency between the natural law philosophy, which Great Britain has followed, but not articulated, and the analytical view of the State, which still prevails in the field of English constitutional law. The notion of the subordination of the will of the sovereign to an objective moral control, and to a body of international law implementing that control was replaced by totalitarian ideas, given currency by Hobbes and the other members of the Analytical School. In view of its current approval of an international theory of limitation of sovereignty of national legislatures, it would be fitting and proper for Great Britain to abandon the analytical doctrine of its own Parliamentary supremacy. It is paradoxical for any nation to return to classical conceptions of international law, for justification of its arguments in a case of epoch-making proportions, and yet not restore the limitation-theory of English civil authority, as exemplified by Magna Carta and the writings of Bracton.

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