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INJUNCTION WITHOUT SANCTION: THE IRANIAN FIASCO

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In our Anglo-American system of law the interlocutory injunction is an efficient remedy for the preservation of the status quo *pendente lite*. It is the purpose of the writer to attempt an evaluation of the usefulness of this remedy in international law. Emphasis will be placed on the failure of the remedy in the current Anglo-Iranian oil dispute, and an analysis of the reasons for that failure and its probable effect on the future use of the interlocutory injunction by the International Court of Justice will be undertaken.

Any discussion of the use of the interlocutory injunction in international law necessarily involves the presumption that such injunctions are employed by international tribunals. Both the Permanent Court of International Justice and its successor, the present International Court of Justice, have on occasion issued interim orders designed to preserve the status quo during the interval until final adjudication on the merits of controversies pending before them. Some authorities would not dignify these orders by the appellation "injunction," since for them the term carries with it the notion of an efficient enforcement mechanism backed by the power to punish disobedience through contempt proceedings as well as other coercive sanctions.¹ No such enforcement mechanism has yet been developed in the field of international law.

If we agree, however, that a study of the injunctive order and of its enforcement involves two separate though interrelated problems,

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1. This criticism was voiced at the Equity Round Table discussion on "The Use of the Injunction in International Disputes," *supra*.

the similarity between Anglo-American interlocutory injunctions and the interim orders of the International Court of Justice becomes apparent. Both are used for the purpose of preserving the status quo *pendente lite*, and hence assume that a controversy is pending before the court.² In both the Anglo-American and international law fields requests for such interlocutory relief take priority over routine business.³ In both, opportunity is presented for prompt argument before the interlocutory order is issued;⁴ and if the motion for interim protection is granted, relief in the International Court, like Anglo-American injunctive relief, takes the form of an order to the defendant designed to preserve the status quo pending final adjudication of the controversy.⁵ Thus in the interim order the International Court is employing the equivalent of the Anglo-American interlocutory injunction, though under a different name.

The two remedies differ sharply, however, as to their enforceability against a recalcitrant defendant. In the Anglo-American system the primary enforcement mechanism is the contempt proceeding. The injunctive remedy was developed by the English Chancery Court; and, because of the position of the early chancellors as direct representatives of the king issuing orders in his name, speedy punishment for disobedience of such orders became an accepted part of Anglo-American jurisprudence.⁶

In the system of law that developed on the European continent, on the other hand, whereas specific relief, when feasible, has been preferred to damages,⁷ the usual method of enforcing decrees for such relief has been through execution *in natura* rather than by *in personam*

2. See HUDSON, *THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1920-1942*, 554 (1943); WALSH, *A TREATISE ON EQUITY* § 57 (1930).

3. See 1936 Rules of the Permanent Court of International Justice, Art. 61, ¶ 2, HUDSON, *op. cit. supra* note 2, at 748.

4. *Id.* ¶ 8. The President of the International Court has on occasion issued the equivalent of an *ex parte* temporary restraining order designed to preserve the status quo pending such argument. See the Belgian-Chinese Case, P.C.I.J., Ser. A., No. 8 (1927), 2 Hudson, World Ct. Rep. 3; Dumbauld, *Relief Pendente Lite in the Permanent Court of International Justice*; 39 AM. J. INT'L L. 391, 404 (1945).

5. See HUDSON, *op. cit. supra* note 2, § 533. As yet the International Court has not developed a means of protecting the defendant as a condition to granting interim relief similar to the Anglo-American requirement that complainant post a bond as a condition to obtaining interlocutory relief, but it has been argued that the Court has the power to require security in such cases. See DUMBAULD, *INTERIM MEASURES OF PROTECTION IN INTERNATIONAL CONTROVERSIES* 162 (1932).

6. See FOX, *THE HISTORY OF CONTEMPT OF COURT* 1, 3, 104 (1927); Maloney, *Injunctive Law Enforcement: Leaven or Secret Weapon*, 1 MERCER L. REV. 1, 20 (1949).

7. HUDSON, *THE ENFORCEMENT OF DECREES IN EQUITY* c. iii (1915); WALSH, *A TREATISE ON EQUITY* 300 (1930); Pound, *The Theory of Judicial Decision*, 36 HARV. L. REV. 641, 647 (1923).

punishment for contempt.⁸ Some continental codes have specifically abolished personal arrest as a civil enforcement sanction,⁹ and even in those countries such as Germany and Austria, where confinement has been used to coerce obedience to civil decrees, sequestration of assets is the preferred sanction and confinement as a sanction occupies a strictly secondary position.¹⁰ It seems fair to conclude that while the equitable remedy of specific performance has its parallels in the continental systems, a civil remedy similar to the Anglo-American injunction with its ancillary contempt proceeding has been slow in developing.¹¹ International law as reflected by the decisions of the Permanent Court of International Justice has likewise been slow to adopt the injunctive remedy.

Injunctive orders may be either interlocutory or on the merits. Sufficient authority for the International Court to grant injunctive relief following adjudication on the merits may be found in Article 38 of the Statute of the Court empowering it to apply "the general principles of law recognized by civilized nations."¹² The Court, however, has not as yet found occasion to employ the injunction in lieu of or as an adjunct to a judgment on the merits,¹³ though it has resorted to interlocutory injunctive relief on more than one occasion. In these cases we might expect to find the remedy freed of its Anglo-American limitations,¹⁴

8. Chafee, *Injunction*, 8 ENCYC. SOC. SCI. 53, 57 (1932).

9. *E.g.*, Italy; see DUMBAULD, *op. cit. supra* note 5, at 63. In none of the Latin states does one find the contempt proceeding. As Pekelis has put it, "this very concept of contempt simply does not belong to the world of ideas of a Latin lawyer." Pekelis, *Legal Techniques and Political Ideologies: A Comparative Study*, 41 MICH. L. REV. 665, 668 (1943); see Brodeur, *The Injunction in French Jurisprudence*, 14 TULANE L. REV. 211 (1940).

10. DUMBAULD, *op. cit. supra* note 5, at 42-50; Neitzel, *Specific Performance, Injunctions, and Damages in the German Law*, 22 HARV. L. REV. 161, 174, 181 (1909).

11. This was the conclusion of the drafting committee of the League of Nations. See the Phillimore report of March 20, 1918, DUMBAULD, *op. cit. supra* note 5, Annex 1.

12. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE ART. 38, § 1c. This provision in turn is copied from Art. 38, § 3, of the statute of its predecessor, the Permanent Court of International Justice. Judge Manley O. Hudson in a concurring opinion in the *Diversion of Waters from the Meuse Case* has pointed out that under Art. 38 "the Court has some freedom to consider principles of equity as part of the International law which it must apply." P.C.I.J., Ser. A/B, No. 70, 4, 77 (1937), 4 Hudson, World Ct. Rep. 178, 232. See Jenks, *Equity as a Part of the Law Applied by the Permanent Court of International Justice*, 53 L. Q. REV. 519 (1937).

13. The final-type injunction is not a complete stranger to international law, however. Such an injunction was recently granted by the Trail Smelter Arbitral Tribunal, which ordered Canada to stop its nationals from operating a smelter in such a way as to send noxious fumes into the State of Washington. Trail Smelter Arbitral Tribunal Decision, 35 AM. J. INT'L L. 684 (1941). It may be pertinent to note, however, that the tribunal was adjudicating a dispute between Anglo-American nations in which the injunction is an integral part of the national jurisprudence.

14. Judge Hudson in his concurring opinion in the *Diversion of Waters from the Meuse Case* states: "A sharp division between law and equity, such as prevails in the

such as the requirement of inadequacy of a money judgment or other so-called legal remedy, and the restriction to use solely for the protection of property rights.¹⁵ But as yet the injunction as used by the International Court apparently has not developed beyond these limitations, protection of property rights being involved in all three of the cases in which the remedy has been employed to grant interim relief,¹⁶ and the Court has been very hesitant to "indicate" the remedy when payment of indemnity is available as alternate relief.¹⁷

It is, of course, difficult to draw valid conclusions from the few cases in which quasi-injunctive relief has been discussed by the International Court of Justice, but it seems questionable whether the Court is as yet prepared, even *pendente lite*, to adopt the approach of the American Law Institute, which advocates the use of the injunction in all cases where other remedies are not as efficient to the ends of justice.¹⁸ Once the Court decides to use the remedy, however, it apparently will, in true equity fashion, "fit the punishment to the crime" and "suggest" the measures it thinks appropriate, regardless of the exact relief proposed by the applicant.¹⁹

Why have interim injunctions been employed so infrequently by the Court? A number of reasons suggest themselves. One is the lack of an adequate enforcement mechanism.²⁰ A second reason is connected with the method by which many cases reach the Court. Only states may be parties before the Court.²¹ But in cases similar to the *Iranian* case the directly injured party is a national of the complaining state, not the complaining state itself. In such cases the national must persuade his sovereign to espouse his cause, thus converting it into a government claim capable of being placed before the international tribunal.²²

administration of justice in some States, should find no place in international jurisprudence. . . ." P.C.I.J., Ser. A/B, No. 70, 4, 76 (1937), 4 Hudson, World Ct. Rep. 178, 232.

15. This limitation was first clearly enunciated by Lord Eldon in *Gee v. Pritchard*, 2 Swans. 402, 36 Eng. Rep. 670, 674 (1818).

16. *Belgian-Chinese Case*, P.C.I.J., Ser. A. No. 8 (1927), 2 Hudson, World Ct. Rep. 3; *Electricity Co. Case*, P.C.I.J. Ser. A/B, No. 79 (1939), 4 Hudson World Ct. Rep. 388; *Iranian Case*, I.C.J. 89 (1951). Protection of property rights was also involved when injunctive relief was granted in the *Trail Smelter Arbitral Tribunal* decision in 1941; sec. 35 AM. J. INT'L L. 684 (1941).

17. *Southeastern Greenland Case*, P.C.I.J., Ser. A/B, No. 48, at 288-289 (1932), 3 Hudson, World Ct. Rep. 81, 95-96; see *Belgian-Chinese Case*, *supra* note 16, at 7.

18. RESTATEMENT, TORTS § 933, Special Note (1934).

19. Such a suggestion *proprio motu* was made in the *Iranian* case, where the Court suggested the establishment of a board of supervisors. *Anglo-Iranian Oil Co. Case*, Order of July 5, 1951, I.C.J. 89, 93 (1951). See note 50 *infra*.

20. See pages 338, 348 *infra*.

21. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE Art. 34, § 1.

22. See Koessler, *Government Espousal of Private Claims before International Tribunals*, 13 U. OF CHI. L. REV. 180 (1946).

But the sovereign may be reluctant to espouse the cause because of possible political repercussions²³ and before intervening may insist that the national exhaust his remedies in the courts of the offending nation.²⁴ By the time these remedies have been pursued, any need for an interlocutory order to preserve the status quo is long past. Only if the sovereign is directly concerned, as is the case in the *Iranian* dispute where Great Britain herself is a majority stockholder in the Anglo-Iranian Oil Company, is the intervention likely to come soon enough to make an interim injunction of any value.

Before discussing the *Iranian* case in detail, it may be useful at this point to trace briefly the history of interim injunctive relief in international law. The idea of giving an international tribunal authority to issue interim orders to preserve the status quo apparently had its origin in the Convention establishing the Central American Court of Justice in 1907.²⁵ That Court made use of this power on one occasion to interdict military activity threatening to disturb the peace among Central American nations,²⁶ and twice to attempt to preserve the status quo pending a determination whether a grant of interoceanic canal rights to the United States by Nicaragua violated the rights of other nations.²⁷ Simi-

23. Thus the United States refused to bring the *Mexican Oil Expropriation* cases before the Court; see Koessler, *supra* note 22, at 188.

24. The United States imposed this requirement on the Standard Oil Company in the *Bolivian* confiscation case, and apparently also in the *Mexican* expropriation cases. See Kunz, *The Mexican Expropriations*, 17 N.Y.U.L.Q. 327, 371 *et seq.* (1940); see Note, 97 U. OF PA. L. REV. 79, 93 n. 115 (1948), to the effect that exhaustion of remedies in the courts of the defendant nation is a prerequisite to the exercise of diplomatic remedies.

25. Article 15 of the Convention for the Establishment of the Court provided: "From the moment in which any suit is instituted against any one or more governments up to that in which a final decision has been pronounced, the court may at the solicitation of any one of the parties fix the situation in which the contending parties must remain, to the end that the difficulty shall not be aggravated and that things shall be conserved in *statu quo* pending a final decision." DUMBAULD, *op. cit. supra* note 5, at 95. See HUDSON, *op. cit. supra* note 2, c. 3. Similar powers to issue interim orders for the preservation of the status quo were given to the International Central American Tribunal created by a Convention entered into in 1913 by the United States and 15 Central American republics. DUMBAULD, *op. cit. supra* note 5, at 102.

26. Honduras v. Salvador and Guatemala. A translation of the interlocutory decree will be found in 2 AM. J. INT'L L. 838 (1908). The final decision is reprinted in 3 AM. J. INT'L L. 434-436, 729-736 (1909).

27. Costa Rica v. Nicaragua, 5 Anales 87 (1916); El Salvador v. Nicaragua, 5 Anales 229, 6 Anales 96, 11 AM. J. INT'L L. 674 (1917). Both cases are summarized in HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE 1920-1942, 58-62 (1943). In view of the events in the current Iranian case it is interesting to note that in *Costa Rica v. Nicaragua* the latter country, like Iran, denied the jurisdiction of the Court, disregarded an interim order, failed to appear or submit a reply to Costa Rica, and notified the Court that it would not abide by an adverse decision. It is also interesting to note that, following these two decisions adversely affecting the interests of the United States, this country, which originally had strongly urged the establishment of the Court,

lar provisions for the interdiction of military activity and the preservation of the status quo were incorporated in a number of treaties between the United States and other countries negotiated during the term of office of Secretary of State Bryan.²⁸ This provision of the "Bryan Treaties" in turn served as the basis for Article 41 of the Statute of the Permanent Court of International Justice.²⁹ Unfortunately the committee drafting the statute failed to stipulate any penalties for disobedience to the interim measures provided for by the statute and provided only that the Court might "indicate" such measures. In view of this omission of sanctions, it was the feeling of some authorities that such indications of interim measures by the Permanent Court of International Justice were mere suggestions and carried no obligatory force.³⁰ On those occasions when interim measures were indicated by that court,³¹ however, they were in each case voluntarily complied with, and the question of employing sanctions did not arise.

In the wake of World War II, when the United Nations Organization replaced the old League of Nations as keeper of world peace, the International Court of Justice became the United Nations' arbiter of legal disputes, replacing the Permanent Court of International Justice in that capacity. The statute of the new court gave it the same power to indicate interim measures that had been possessed by its predecessor.³² In addition, however, the United Nations Charter provided a possible enforcement mechanism by conferring on the Security Council the right "to make recommendations or decide upon measures to be taken to give effect to the judgment" rendered by the Court.³³ Was an effective sanction for the enforcement of interim orders thus created?

has been accused of failure to work toward a renewal of the Court's life when the convention creating it expired. See DUMBAULD, *op. cit. supra* note 5, at 95, n. 4.

28. Such provisions may be found in treaties with Guatemala, Panama, Nicaragua, Salvador, Persia, China, France, and Sweden. DUMBAULD, *op. cit. supra* note 5, at 99. The treaties are collected in a Carnegie publication, TREATIES FOR THE ADVANCEMENT OF PEACE (1920).

29. *Ibid.* See HUDSON, *supra* note 2, at 425.

30. DUMBAULD, *op. cit. supra* note 5, at 1689; Hostie, *The Statute of the Permanent Court of International Justice*, 38 AM. J. INT'L L. 407, 427 (1945). *Contra*: HUDSON, *op. cit. supra* note 27, at 425-426; see also Hudson, *The Thirtieth Year of the World Court*, 46 AM. J. INT'L L. 1, 23 (1952).

31. Belgian-Chinese Case, P.C.I.J., Ser. A, No. 8 (1927), 2 Hudson World Ct. Rep. 3; Electricity Co. Case, P.C.I.J., Ser. A/B, No. 79 (1939), 4 Hudson, World Ct. Rep. 388.

32. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE Art. 41. This article is an exact copy of Art. 41 of the Statute of the Permanent Court of International Justice.

33. U. N. CHARTER Art. 94, § 2. Whether an interim order can be classed as a "judgment" is one of the problems to be discussed in this article. See page 350 *infra*.

The current *Anglo-Iranian Oil Company* case³⁴ unfortunately indicates a negative answer to that question.

Let us now examine the background of the *Anglo-Iranian Oil Company* case. Relationships between Iran (then Persia) and the company began in 1901, when the Persian Government granted William D'Arcy, a British national, a 60-year concession to extract and export Persian oil.³⁵ Persia cancelled this concession in 1932 but entered into a new 60-year concession agreement in 1933 after Britain appealed the cancellation to the Council of the League of Nations.³⁶ This new concession gave the company the exclusive right to extract petroleum throughout Persia.³⁷ Article 21 provided:

This Concession shall not be annulled by the Government and the terms therein contained shall not be altered either by general or special legislation in the future, or by administrative measures or any other acts whatever of the executive authorities.

Article 22 further provided:

Any differences between the parties of any nature whatever and in particular any differences arising out of the interpretation of this Agreement and of the rights and obligations therein contained . . . shall be settled by arbitration.

In case arbitration became necessary, each party was to appoint an arbitrator and the two arbitrators were to appoint an umpire. If one of the parties failed to appoint an arbitrator within sixty days the International Court on request of either party could appoint a sole arbitrator.³⁸

The Convention of 1933 provided that Persia should be paid a royalty of four shillings a ton on all petroleum distributed, plus twenty per cent of the distribution to the ordinary stockholders.³⁹ This basis

34. I.C.J. Rep. 1951, p. 89, 45 AM. J. INT'L L. 789 (1951).

35. After oil was discovered in 1908 the Anglo-Persian Oil Company was organized to take over the concession. The Government of the United Kingdom acquired a majority interest in the company in 1914. See Hudson, *The Thirtieth Year of the World Court*, 46 AM. J. INT'L L. 1, 12 (1952).

36. LEAGUE OF NATIONS OFFICIAL JOURNAL 2296 (1932); see LEAGUE OF NATIONS OFFICIAL JOURNAL 197-211, 827, 1606 (1933).

37. The 1933 concession is set out in LEAGUE OF NATIONS OFFICIAL JOURNAL 1653 (1933).

38. Concession of 1933, Art. 22D.

39. *Id.* Art. 10. Henry F. Grady, United States Ambassador to Iran during the current negotiations, states that the Iranians were receiving only about 15% of the oil company's net proceeds. Grady, *What Went Wrong in Iran*, The Saturday Evening Post, Jan. 5, 1952, pp. 30, 57. This 15% figure is consistent with the 20% figure provided in the Concession, since the 20% was not 20% of the net profits, but of the distribution to stockholders.

for distribution, although it gave the company the lion's share of the profits, was at first satisfactory to Iran. But the Iranians noted with interest the successful Mexican expropriation of American oil concessions,⁴⁰ an expropriation which was followed by an operating agreement under which Mexico received the major part of the companies' profits from the working of the expropriated wells.⁴¹ Mexico's action naturally led the Iranians to begin thinking along similar lines. Fuel was added to the fire when the Arabian American Oil Company began negotiating an agreement with Saudi Arabia for equal sharing of profits from its Arabian operations.⁴² In July 1949, in an attempt to satisfy Iran, the Anglo-Iranian Oil Company offered the Iranians a supplementary agreement under which they would receive approximately thirty per cent of the company's net profits, but after a year of wrangling this supplemental agreement was finally rejected and in March 1951 the Iranian Majlis and Senate declared the oil industry nationalized.⁴³ Britain then offered Iran an agreement for equal sharing of profits, but the offer came too late and was likewise rejected.⁴⁴

When Iran refused a British request for arbitration and the British became convinced that Iran was determined to carry through its nationalization plans, the United Kingdom on May 26, 1951, instituted proceedings before the International Court of Justice,⁴⁵ petitioning the Court to declare Iran under a duty to arbitrate the dispute.⁴⁶ Meanwhile Iran was threatening to evict the British managerial staff of the oil company. As a result, on June 21, 1951, Britain notified the President of the Court that she planned to file a request for an interim injunction, and asked the Court to call upon Iran not to further disturb the status quo, pending argument on the motion for interim relief.⁴⁷ The President of the Court immediately telegraphed this request to Iran, and Iran as

40. See Kunz, *The Mexican Expropriations*, 17 N.Y.U.L.Q. 327 (1940).

41. Grady, *supra* note 39, at 58.

42. See statement of Sir William Fraser, C.B.E., Chairman to the stockholders of the Anglo-Iranian Oil Company, N. Y. Times, Dec. 2, 1951, p. 6F. Grady states that an international oil company in Iraq is paying royalties on a similar 50-50 basis. Grady, *supra* note 39.

43. *Ibid.* The 30% figure is taken from Grady, *supra* note 39.

44. Grady, *supra* note 39.

45. The request may be found in International Court of Justice, 1951, General List, No. 16. See also Bishop, *The Anglo-Iranian Oil Company Case*, 45 AM. J. INT'L L. 749, 752 (1951).

46. Britain also requested the Court to appoint a sole arbitrator under the provisions of the Convention of 1933 (see note 38 *supra*), but the Court refused to grant this relief. I.C.J. Yearbook, 1950-1951, p. 48. See Hudson, *The Thirtieth Year of the World Court*, 46 AM. J. INT'L L. 1, 15 (1952).

47. See Anglo-Iranian Oil Co. Case, Request for the Indication of Interim Measures of Protection (United Kingdom/Iran), I.C.J., Rep. 1951, p. 89, 45 AM. J. INT'L L. 789, 791 (1951).

promptly rejected the overture on the ground that the Court lacked jurisdiction.⁴⁸

On June 22d Britain filed its prayer for interim measures,⁴⁹ and the Court set June 30th as the date for hearings on the motion. Iran failed to appear at the hearings. On July 5th the Court issued an opinion granting interim relief and providing for the establishment of a "board of supervisors" to run the concession pending final adjudication of the dispute.⁵⁰

48. *Ibid.*

49. The reasons given by Britain as justifying interim relief included the following: the danger of losing skilled personnel; Iranian interference with management of the company would result in disrupting the enterprise; loss of markets and good will. See Request for Indication of Interim Measures, *supra* note 45, at 6-12. For the measures requested see 45 AM. J. INT'L L. 789, 790 (1951).

50. The Indication reads as follows:

"THE COURT

"Indicates, pending its final decision in the proceedings instituted on May 26th, 1951 by the Government of the United Kingdom of Great Britain and Northern Ireland against the Imperial Government of Iran, the following provisional measures which will apply on the basis of reciprocal observance:

1. That the Iranian Government and the United Kingdom Government should each ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of any decision on the merits which the Court may subsequently render; -

2. That the Iranian Government and the United Kingdom Government should each ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;

3. That the Iranian Government and the United Kingdom Government should each ensure that no measure of any kind should be taken designed to hinder the carrying on of the industrial and commercial operations of the Anglo-Iranian Oil Company, Limited, as they were carried on prior to May 1st, 1951;

4. That the Company's operations in Iran should continue under the direction of its management as it was constituted prior to May 1st, 1951, subject to such modifications as may be brought about by agreement with the Board of Supervision referred to in paragraph 5;

5. That, in order to ensure the full effect of the preceding provisions, which in any case retain their own authority, there should be established by agreement between the Iranian Government and the United Kingdom Government a Board to be known as the Board of Supervision composed of two Members appointed by each of the said Governments and a fifth Member, who should be a national of a third State and should be chosen by agreement between these Governments, or, in default of such agreement, and upon the joint request of the Parties, by the President of the Court.

"The Board will have the duty of ensuring that the Company's operations are carried on in accordance with the provisions above set forth. It will, *inter alia*, have the duty of auditing the revenue and expenses and of ensuring that all revenue in excess of the sums required to be paid in the course of the normal carrying on of the operations and the other normal expenses incurred by the Anglo-Iranian Oil Company, Limited, are paid into accounts at banks to be selected by the Board on the undertaking of such banks not to dispose of such funds except in accordance with the decisions of the Court or the agreement of the Parties."

Anglo-Iranian Oil Co. Case, Request for the Indication of Interim Measures of Protection (United Kingdom/Iran), I.C.J. Rep. 1951, p. 89, 45 AM. J. INT'L L. 789, 793 (1951).

When Iran refused to accede to the order of the Court and proceeded with plans for nationalization of the industry, Britain on September 2, 1951, finally asked the United Nations Security Council to call on Iran to obey the Court's order.⁵¹ Iran in turn challenged the jurisdiction of the Council, Premier Mossadegh appearing in person on October 15th for this purpose.⁵² Britain was unable to line up the necessary seven members of the Council behind its request and after considerable discussion the Council finally refused to take any action until the Court passed on the disputed question of jurisdiction.⁵³ It was not until December 8, 1951, that Iran finally agreed to appear to argue the question of jurisdiction.⁵⁴ As yet the Court has not ruled on this issue. By the time it does the suggested interim measures will be beyond any possible execution or value. The British have left Iran, the refineries are closed, and the country stands on the verge of bankruptcy but solidly united in its determination to carry through the nationalization program.

Does Iran have any substantial basis for her position that the International Court lacks jurisdiction in the case, and, if so, what is the relationship of this issue to the duty of Iran to obey the interim order? The question of jurisdiction would seem to be an extremely close one. Iran claims that her dispute is with the oil company, not the British Government, and that the Statute of the Court provides that it has jurisdiction only over disputes between states.⁵⁵ But once the claim has been espoused by the British Government, under international law it becomes a government claim subject to adjudication before the International Court.⁵⁶ This doctrine traces back at least to the time of Vattel,⁵⁷ and while there is some dispute as to whether the sovereign is acting to avenge an injury to itself or in the capacity of *parens patriae* for

51. N. Y. Times, Sept. 29, 1951, pp. 1, 5, Sept. 30, p. 4.

52. N. Y. Times, Oct. 16, 1951, p. 6.

53. N. Y. Times, Oct. 20, 1951, pp. 1, 3. Previously India and Yugoslavia had proposed weakening amendments to the British resolution that the Council should call upon Iran to resume negotiations (N. Y. Times, Oct. 17, 1951, pp. 1, 10). It finally became apparent that Britain could hope for only six votes in favor of its resolution, whereas seven were necessary (see U. N. CHARTER Art. 27) even in the absence of a possible Russian veto, and as a result she acceded to a French motion to postpone further action until the Court passed on the question of jurisdiction. N. Y. Times, Oct. 20, 1951, pp. 1, 3. For further details see, Liang, *The Question of Domestic Jurisdiction in the Anglo-Iranian Oil Dispute Before the Security Council*, 46 AM. J. INT'L L. 272, 275-277, 281 (1952).

54. N. Y. Times, Dec. 11, 1951, p. 11; see Hudson, *supra* note 35, at 16. Iran finally filed its plea to the jurisdiction of the Court on Feb. 4, 1952. N. Y. Times, Feb. 5, 1952, p. 3. Britain's answer to this plea was due May 27, 1952.

55. See note 21 *supra*.

56. Koessler, *supra* note 22.

57. 2 VATTTEL, LE DROIT DES GENS § 71 (1758).

the benefit of its national,⁵⁸ as did the Emperor of Austria when seeking an injunction in the English chancery court in the case of *Emperor of Austria v. Day & Kassuth*,⁵⁹ the International Court has recognized the standing of the sovereign in such cases.⁶⁰

The jurisdiction of the Court, however, even in disputes between states, must be based on the previous consent of the parties. Article 36 of the Statute of the International Court of Justice provides for such consent, which will establish compulsory jurisdiction in relation to any other state accepting the same obligation. The Statute provides that this consent may be given as to four classes of disputes:

- 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.⁶¹

Britain has accepted the jurisdiction of the Court in all four classes of disputes,⁶² but the Iranian declaration, made in 1932, was limited to "situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia [now Iran] and subsequent to the ratification of this declaration."⁶³ This declaration would arguably limit compulsory reciprocal jurisdiction to the first class of disputes mentioned in Article 36 of the Statute, namely, the interpretation of treaties. But the present dispute grows out of the unilateral termination by Iran of a concession contract or "Convention" entered into in 1933 between the Government of Iran and the Anglo-Iranian Oil Company.⁶⁴ If Iran had accepted jurisdiction in all four classes of cases provided for in the Statute, the Court could base jurisdiction on the ground that Britain, by espousing the Oil Company's claim, had turned it into a state claim, the rejection of which constitutes a breach of an international

58. Koessler, *supra* note 22, at 186 *et seq.*

59. 3 De G.F. & J. 217 (Ch. App. 1861).

60. Judgment No. 2 (jurisdiction) concerning the Mavromatis Palestine Concession, P.C.I.J., Ser. A, No. 2 (1924), 1 Hudson, World Ct. Rep. 293, 301-302.

61. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE Art. 36, § 2.

62. Fenwick, *The Order of the International Court of Justice in the Anglo-Iranian Oil Co. Case*, 45 AM. J. INT'L L. 723, 724 (1951).

63. Seventh Annual Report of the Permanent Court of International Justice, P.C.I.J., Ser. E, No. 7; see Bishop, *The Anglo-Iranian Oil Co. Case*, 45 AM. J. INT'L L. 749, 754 (1951).

64. 14 LEAGUE OF NATIONS OFFICIAL JOURNAL 1653 (1933); see Bishop, *supra* note 63.

obligation. But where, as in this case, jurisdiction is limited to the interpretation of treaties, it is open to question whether a convention with a national becomes a treaty in the sense of the Statute of the court simply by its espousal by the government of that national.⁶⁵

Assuming, however, that the dispute falls within Section 2(a) of Article 36 of the Statute, there remains Iran's objection that the dispute is one falling exclusively within the domestic jurisdiction of Iran, and hence is beyond the jurisdiction of the International Court of Justice. Most states when accepting compulsory jurisdiction under Article 36 of the Statute made reservations as to matters of domestic jurisdiction, and Iran in its declaration excepted disputes with regard to questions which by international law fall exclusively within the jurisdiction of that state.⁶⁶ A similar limitation as to all United Nations action is found in Article II, par. 7, of the United Nations Charter.⁶⁷ However, in the absence of express reservations in the declaration accepting compulsory jurisdiction,⁶⁸ the question of what lies within the domestic jurisdiction of a state is a matter for interpretation by the International Court of Justice.⁶⁹ What are matters of domestic jurisdiction which are excluded from the consideration of the Court? Matters of immigra-

65. Great Britain is also relying on a 1928 treaty made directly between Britain and Iran, under which British nationals in Persia ". . . shall be admitted and treated on Persian territory in conformity with the rules and practice of international law." See Fenwick, *supra* note 62, at 725. The applicability of this treaty, however, depends on the meaning of the words "subsequent to the ratification of this declaration" found in the Persian declaration of 1932 accepting compulsory jurisdiction in "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." If subsequent relates to "treaties," as it would appear, Persia did not accept jurisdiction as to the 1928 treaty. Britain, however, claims that the word "subsequent" relates to "situations or facts" rather than treaties. If the British interpretation should be accepted by the Court, the 1928 treaty can provide a basis for jurisdiction to determine whether Iran, in nationalizing its oil industry, is treating the Anglo-Iranian Oil Company "in conformity with the rules and practice of international law."

66. See note 63 *supra*.

67. "Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter . . ." See Note, *The "Domestic Jurisdiction" Limitation in the United Nations Charter*, 47 COL. L. REV. 268 (1947).

68. Thus the United States has reserved the right to determine for itself what constitutes matters of domestic jurisdiction. See Hudson, *The World Court: America's Declaration Accepting Jurisdiction*, 32 A.B.A.J. 832 (1946). For an article questioning the validity of this reservation see, Lawson, *The Problem of the Compulsory Jurisdiction of the World Court*, 46 AM. J. INT'L L. 219 (1952).

69. Decision in the Franco-British Tunisian dispute, P.C.I.J., Ser. B, No. 4 (1923); see Gregory, *An Important Decision by the Permanent Court of International Justice*, 17 AM. J. INT'L L. 298 *et seq.* (1923). The Statute of the Court provides: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." STATUTE OF THE INTERNATIONAL COURT OF JUSTICE Art. 36, § 6.

tion, naturalization, and tariffs are usually considered protected by the clause.⁷⁰ But the Court has stated that when a treaty between the parties covers the problem in issue it becomes an "engagement of international character," and hence within the jurisdiction of the Court.⁷¹ To except the *Anglo-Iranian* case from the domestic jurisdiction limitation on this basis, it will be necessary for the Court to include in such "engagements" international "conventions" as well as treaties, for there must be a showing that the engagements apply to the facts in dispute in order that the matter be considered non-domestic.⁷²

It would appear, then, that the issue of jurisdiction is one as to which there is real doubt, but, as the court has stated, "it cannot be accepted a priori that . . . such a complaint falls completely outside the scope of international jurisdiction."⁷³

If we agree that the Court may reasonably find that it has jurisdiction, should it be required to determine this issue definitively before issuing an interim order to preserve the status quo? In taking the position that it can issue the order before determining the question of jurisdiction, the Court is in accord with Anglo-American decisions as to the use of the interlocutory injunction at a similar stage;⁷⁴ and any other position would allow a violator to avoid the interim order in any case by the simple expedient of questioning the jurisdiction of the Court.

Suppose, however, that the Court, after issuing an interim order, later determines that it does not in fact have jurisdiction, and meanwhile the defendant, as in the case of Iran, has ignored the interim order. Is any penalty to be attached to disobedience if this order is void for lack of jurisdiction, or is the defendant free to take his chances that the Court will finally agree with his position as to its jurisdiction? The traditional Anglo-American view would seemingly regard the void order as a nullity which could be disregarded with impunity.⁷⁵ But the recent

70. P.C.I.J., Ser. B, No. 4 (Advisory Opinion on nationality decrees issued in Tunis and Morocco Feb. 7, 1923), 1 Hudson, World Ct. Rep. 143, 156; see Gregory, *supra* note 69; Note, *supra* note 67, at 273.

71. Advisory Opinion, *supra* note 70.

72. *Id.* at 64, 1 Hudson World Ct. Rep. at 157.

73. I.C.J. Rep. 89 (1951), 45 AM. J. INT'L L. 789, 792 (1951).

74. United States v. United Mine Workers, 330 U.S. 258 (1947), Carter v. United States, 135 F.2d 858 (5th Cir. 1943); *cf.* Passmore Williamson's Case, 26 Pa. 9 (1855); see 5 HOLDSWORTH, HISTORY OF ENGLISH LAW 325 (2d ed. 1937). Two of the judges would have required the International Court of Justice to go further and decide provisionally that it was competent to hear the case before issuing an interim order. See Fenwick, *supra* note 62, at 727. Such a requirement might unwarrantedly delay interim measures in a case where speed is of the essence.

75. *In re Burrus*, 136 U.S. 586 (1890); *In re Ayers*, 123 U.S. 443 (1887); see HIGH, INJUNCTIONS § 1425 (4th ed. 1905); Cox, *The Void Order and the Duty to Obey*, 16 U. OF CHI. L. REV. 86 (1948).

decision of the United States Supreme Court in the case of *United States v. United Mine Workers*⁷⁶ seemingly commits the American courts to the proposition that the court may have a sort of jurisdiction to determine jurisdiction in cases in which real doubt exists and that this jurisdiction will support contempt proceedings for failure to obey a temporary restraining order during the period when the court is determining its own jurisdiction.⁷⁷ It has been argued that this new doctrine applies only to jurisdiction over the subject matter, not jurisdiction over the person,⁷⁸ but a more fundamental objection to the application of the United Mine Workers' doctrine in international law is the inability of the Court to secure punishment of a violator of a void order. If the Security Council, the enforcement agency for orders of the International Court, will not even "note" an indication of the Court prior to a decision by the Court on the issue of jurisdiction,⁷⁹ it seems highly unlikely that it will take steps to punish disobedience of such an interim order when jurisdiction is later determined to be lacking. For those who agree with the statement of Mr. Justice Holmes that "the foundation of jurisdiction is physical power,"⁸⁰ the void order may well be considered a nullity.

This raises the whole question of enforcement of judgments and orders of the International Court. Some followers of the positivist school of jurisprudence would not even dignify the decisions of such a court with the appellation "law" because of lack of effective enforcement mechanism,⁸¹ and this objection may be applied with particular force to interim measures "suggested" by the Court. While the framers of the United Nations Charter sought to put teeth into the judgments of the Court by conferring on the Security Council the right "to make recommendations or decide upon measures to be taken to give effect to the judgment" rendered by the Court,⁸² as yet these teeth have never been bared. Moreover, it may be questioned whether the "provisional measures" provided for by Article 41 of the Statute of the Court fall

76. 330 U.S. 258 (1947).

77. ". . . the District Court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction." *Id.* at 290 (dissenting opinion, Vinson, C. J.)

78. CHAFFEE, *SOME PROBLEMS OF EQUITY* c. IX (1950); see Cox, *supra* note 75, at 87 *et seq.*

79. N. Y. Times, Oct. 20, 1951, pp. 1, 3.

80. See *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

81. Thus Austin classified international law as "positive international morality" because "set and enforced by mere opinion." AUSTIN, *LECTURES* 89, 177 (1873). See PATTERSON, *AN INTRODUCTION TO JURISPRUDENCE* § 2.34 (3d mimeo ed. 1949).

82. U.N. CHARTER Art. 94, § 2. This goes further than the power of the League of Nations Council under Art. 13(4) of the League Covenant, since it could only "propose" steps to be taken. See Sloan, *Comparative International and Municipal Law Sanctions*, 27 NEB. L. REV. 1, 8 (1947).

within the meaning of the term "judgment" as used in Article 94 of the United Nations Charter.⁸³ But the same objection might be made as to final injunctive orders of the Court; and such an interpretation would strip international quasi-injunctive relief, interlocutory or final, of much of its efficacy. This result would be in line with the view of such eminent authorities as the late Professor Borchard, who believed that the "threat of group force" would stifle "the atmosphere of harmony, trust, and mutual respect . . . indispensable to progress" and therefore "the attractions of organized force, so inherent in municipal law, must be vigorously repudiated in the field of international law and relations to which it is totally unsuited."⁸⁴ Yet, in an age when the subjective viewpoint of the individual state has replaced international principles of morality based on natural law,⁸⁵ there is much to be commended in the approach of the American Legal Realists who, taking the position that the words in the United Nations Charter have no absolute meaning, would, where those words are open to interpretation, so construe them as to strengthen rather than weaken the one organization capable of enforcing judicially invoked sanctions as a substitute for national self-help which might touch off a third world debacle.⁸⁶ From this viewpoint, it is arguable that the Security Council had authority, when notified of the rejection of the interim measures suggested by the Court,⁸⁷ to "decide upon measures" to give effect to those suggestions.

Such measures by the Security Council need not go to the extent of using force. There are other weapons in the enforcement arsenal of the United Nations.⁸⁸ These could include withdrawal of diplomatic recognition by member states, including withdrawal of ambassadors or even suspension of privileges⁸⁹ or expulsion⁹⁰ from the United Nations itself. In addition, economic sanctions could be applied by member

83. The representative of Iran, in fact, raised this objection. See Liang *supra* note 53, at 276. Art. 41, § 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."

84. Borchard, *The Place of Law and Courts in International Relations*, 37 AM. J. INT'L L. 46, 57 (1943).

85. It is generally conceded that Grotius founded the law of nations upon principles of "natural law." See PATTERSON, *op. cit. supra* note 81, at 132.

86. See McDougal and Gardner, *The Veto and the Charter: An Interpretation for Survival*, 60 YALE L. J. 258 (1951).

87. Art. 41, § 2, of the Statute provides for such notification.

88. For a full discussion of such sanctions see Sloan, *supra* note 82.

89. U.N. CHARTER Art. 5 provides for such suspension by the General Assembly upon the recommendation of the Security Council. Privileges which might be suspended include the privileges of voting in the Assembly and participating in its deliberations.

90. Art. 6 of the Charter provides for expulsion by the General Assembly upon recommendation of the Security Council of any member "which has persistently violated the Principles" of the Charter.

nations, such as export and import limitations, discriminatory duties, or trade embargoes. Of course these sanctions may be applied unilaterally by the injured state, but usually, to be effective, they will require concerted action by other members of the United Nations family. Moreover, there is the possibility of applying cross sanctions through the withholding of privileges granted by other United Nations organs. The use of collateral powers through the withholding or revocation of economic privileges granted by sister agencies has proved a very effective means of enforcing American administrative regulations.⁹¹ While the use of such cross sanctions has not been fully explored in the international field, their possible effectiveness in the *Iranian* case is evidenced by the effect of the American delay in implementing an Export-Import Bank loan to Iran.⁹² As a result of failure to obtain these funds, while Mossadegh may have won a technical legal battle against the International Court, he is in danger of losing his war against Britain through the impending bankruptcy of his nation.⁹³ A loan to Iran is now being considered by the World Bank.⁹⁴ A refusal of that loan upon recommendation of the Security Council might convince Iran of the desirability of obeying the Court's order.⁹⁵

It may be well at this time to give some brief thought to the present state of international law as to liability for expropriation of foreign-owned property,⁹⁶ since any decision on the merits in the *Iranian*

91. See LANDIS, *THE ADMINISTRATIVE PROCESS* 118-119 (1938).

92. See Grady, *supra* note 39, pp. 57-58. See also *Time*, Nov. 26, 1951, p. 38.

93. See *Time*, Nov. 19, 1951, p. 39.

94. See *Time*, Dec. 17, 1951, pp. 34, 36; *N. Y. Times*, Dec. 9, 1951, p. 1; Jan. 2, 1952, p. 8; Feb. 17, 1952, p. 1.

95. Kelsen puts his finger on the weakness of the Security Council enforcement mechanism when he points out: "The latter [the Security Council] is not bound, it is only authorized to take enforcement action under the conditions determined in Art. 39. It may, for political reasons, not be willing or, due to its voting procedure, not be able to work. Since, on the other hand, self-help is, in principle, prohibited, a situation may occur under the Charter where it is impossible to enforce the law against violations other than those committed by armed attack (Art. 51). This is no improvement of the legal status as it existed under the Covenant and even under general international law prior to the Charter." Kelsen, *Sanctions in International Law under the Charter of the United Nations*, 31 *IOWA L. REV.* 499, 522-523 (1946). While Kelsen's criticism is a valid one, his pure theory of law approach is in turn open to the criticism that it fails to take sufficient account of the importance of political as compared with purely legal considerations. In the *Iranian* case, for example, even if the Security Council considered interfering with the loan, political considerations might cause it to pause, for forcing Iran into bankruptcy might result in delivering that country into the hands of the Iranian Communists.

96. This problem was discussed by one of the speakers at the International Law Round Table of the Association of American Law Schools at its 1951 meeting. For this excellent treatment, with emphasis on the Iranian expropriation, see Re, *The Nationalization of Foreign-Owned Property*, 36 *MINN L. REV.* 323 (1952). See also Herz, *Expropriation of Foreign Property*, 35 *AM. J. INT'L L.* 243 (1941); Kunz, *The Mexican Expropriation*, 17 *N.Y.U.L.Q.* 327 (1940).

case will involve this question. Such a decision would be relevant to the interim order because while the Security Council is unlikely to take steps akin to criminal contempt proceedings for the purpose of punishing Iran for violating that order, if Britain should prevail on the merits, there remains the possibility of a court-imposed sanction against Iran's violation through an increase in the final award by way of a sort of civil contempt judgment.⁹⁷

Traditionally international law writers have condemned confiscation of foreign-owned property without compensation, but have recognized the right of a sovereign to expropriate such property for reasons of public utility by the exercise of a right akin to that of eminent domain, provided such expropriation is followed by full and immediate compensation.⁹⁸ We would like to believe that this principle of full and immediate compensation would be recognized and accepted by the International Court of Justice today, but it is necessary to recognize that this requirement was developed in a nineteenth century laissez faire philosophical climate which regarded the primary function of the state as the protection of private property.⁹⁹ Today with the abandonment of "laissez faire" and the development of the concept of the "welfare" state, some writers contend that measures of nationalization are an extension of the police power of the state, and that, in the exercise of such power, a state need not pay full compensation provided the foreign owners receive equal treatment with nationals of the expropriating state.¹⁰⁰ Perhaps the method of final settlement of the American claims in the *Mexican Oil Expropriation* cases¹⁰¹ is one indication of a developing tendency toward a compromise position that expropriation for purposes of nationalization must be followed by "reasonable" compensation, which does not necessarily mean full and immediate compensation. This compromise result may find justification both on the realistic ground that half a loaf is better than none, and in the philosophic tenets of the sociological jurists who approach international law in terms of

97. If Iran should win on the merits, or the cause be settled by the parties, under American jurisprudence there would no longer be any basis for an award akin to a civil contempt judgment. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418 (1911); see Comment, 45 MICH. L. REV. 469, 500 (1947).

98. Herz, *supra* note 96, at 253.

99. This concept of the sanctity of property rights found philosophic justification in the writings of the English philosopher John Locke. See LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT 122, 168 (Hafner ed. 1947).

100. See DE LAPRADELLE-NIBOYET, 8 REPERTOIRE DE DROIT INTERNATIONAL 51 *et seq.* (1930), in which quotations from such authorities are collected by Basdevant; also see Herz, *supra* note 96, at 252, 256-262.

101. Through the negotiation of long-term management contracts between Mexico and companies whose properties had been expropriated. See Grady, *supra* note 39, at 58.

social ends¹⁰² and recognize that juristic theories to be workable must conform to society's conception of those ends. The problem might be looked upon in terms of a conflict between the Lockean law of nature recognizing an immutable right to private property¹⁰³ and the extreme socialist position that no private right can stand in the way of social advance.¹⁰⁴ Lauterpacht points to the middle approach based on a modern "natural law with changing contents" aimed at promoting the social ends of international society.¹⁰⁵ Such a natural law theory, while recognizing the right of the state to expropriate property in cases of social necessity, would also recognize private property rights to the extent of providing for just compensation for the expropriated property, leaving it to the Court to determine what is just in the individual case.¹⁰⁶

Returning to the action of the Security Council in the *Iranian* case, we may hazard some predictions as to its effect on future use of interim measures by the International Court of Justice. As a result of the Council's failure to back up the Court, it seems probable that this seldom used equitable remedy will be employed even less frequently in the future. Judges, being human, are interested in preserving the respect of their litigants. When a court hands down a judgment, enforcement of that judgment is outside the scope of its duties, and failure of the enforcement mechanism is of no direct concern to the court. But when an injunction, especially an interlocutory injunction, is disobeyed with impunity, the court loses face, and in all probability will not issue similar decrees in like future situations.¹⁰⁷ No court likes to be told, in the words of Andrew Jackson, "John Marshall has made his decision, now let him enforce it."¹⁰⁸ It will be most unfortunate if the *Iranian* case

102. See Liang, *Roscoe Pound and the Science of International Law*, 22 *TULANE L. REV.* 369 (1948).

103. LOCKE, *op. cit. supra* note 99.

104. "The proletariat will . . . wrest by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State." MARX, *COMMUNIST MANIFESTO* 41 (Moore trans. 1888). Among the first measures recommended by Marx in communist controlled countries is "abolition of property in land and application of all rents of land to public purposes." *Ibid.*

105. Lauterpacht forecasts "the renaissance" of this "natural law . . . into the domain of international law . . ." LAUTERPACHT, *PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW* 58, n. 7 (1927).

106. Thus Iran, like Mexico, has offered to make compensation over a period of years from current revenues of the expropriated oil properties. See *Time*, June 4, 1951, p. 32. If Iran could really guarantee such payments, they might today be looked upon as just compensation.

107. Thus Re refers to ". . . the elementary principle of equity jurisprudence that a Court of Chancery will not issue a vain decree, *i.e.*, as a matter of expediency it will not issue a decree where it does not possess means to enforce such decree." RE, *FOREIGN CONFISCATIONS* 34 (1951).

108. This famous utterance was the final footnote to Chief Justice Marshall's decision in the *Georgia Indian* cases. *Worcester v. Georgia*, 6 Pet. 515 (U.S. 1832).

should cause the Court to limit injunctive relief to litigation between friendly nations in which there is a reasonable expectation of compliance.¹⁰⁹ Such a result often would deprive injured parties of the possibility of protection through voluntary compliance with an injunctive order.

At a time when the expansion of injunctive relief beyond the protection of property rights is an outstanding development in current Anglo-American law, it would be doubly ironic to curtail even in property cases its use in international law because of lack of effective sanctions. In a way the fate of the interim order is linked with the fate of the United Nations. In the *Iranian* case Britain chose to seek injunctive relief rather than employ self-help. If British troops had moved into Iran, they might have touched off World War III. Weakening the sanctions behind interim injunctive orders may encourage such attempts at self-help. The United Nations can ill afford to take that chance.

109. *E.g.*, the order to Canada in the *Trail Smelter Arbitral Tribunal* case to cease operation of a smelter from which noxious fumes were drifting into the United States is one with which voluntary compliance could be anticipated. See 35 AM. J. INT'L L. 684 (1941).