ordinate elements, including concealment, misrepresentation, and so on, which are not very relevant here.[6]

This illustration would seem to give a clue to the proper solution of the problem. The attitude of the totalitarian leaves the opponent little liberty to do anything but answer in kind. By hypothesis, and, it may be added, by experience, there is little possibility of eliciting a conciliatory attitude on the part of the totalitarian. To persist in trying to deal with him by the standard methods is to waste time and energy, create false impressions, and court failure in the end. On the other hand, the non-totalitarian government, including our own Department of State, is hardly equipped, in terms of personnel, psychology, experience, or training, to play the totalitarian game. It might be added that in its own domestic sphere, the totalitarian government pursues a similar policy of telling the citizenry what it wants them to know and making them accept it.

In short, it would appear that an adjustable technique is preferable to any rigid tactic. The standard conciliatory technique was based upon the assumption, accurate enough when that technique was developed, that others would employ it also and that, if mutually employed, it was the most fruitful technique available. Today this does not hold. Hence some modification seems indicated. In the international sphere it also appears that strong action by the executive and representative arms is called for in view of all the circumstances. On the domestic side likewise it would appear that a little less aloofness and indifference might be useful or even a reasonable amount of competent and lively statement of facts and explanations. In both fields what is to be avoided most is rigidity of technique of one kind or another and lack of capacity for alternation and realistic adjustment.[7]

PITMAN B. POTTER

THE ORDER OF THE INTERNATIONAL COURT OF JUSTICE IN THE ANGLO-IRANIAN OIL COMPANY CASE

The order of the International Court of Justice, under date of July 5, 1951,[1] in the Anglo-Iranian Oil Company Case, has raised a number of interesting questions of law and procedure in respect to which there appears to be considerable controversy.

On May 26 proceedings were instituted before the Court by Great Britain against Iran by an application addressed to the Registrar in accordance with Article 40 of the Statute of the Court. Subsequently, on June 22, Great Britain submitted a request to the Court to indicate certain interim measures of protection calculated to prevent damage to the property and interests

[6] P. B. Potter, Introduction to the Study of International Organization (New York, 1948, 5th ed.), pp. 269–270.

[7] See previous discussion, "The Alternative to Appeasement," in this JOURNAL, Vol. 40 (1946), p. 394.

[1] For text, see below, p. 789.

of the Oil Company, its national, pending the decision of the Court on the merits of the case, and to preserve the right of Great Britain to have a decision of the Court in its favor duly executed, should the Court render such a decision.

In accordance with Article 41 of the Statute of the Court, the Court is given 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." This power given to the Court corresponds more or less to that given to national courts to issue injunctions in cases where it is alleged that irreparable damage would be done to the interests of the plaintiff before a final decision on the merits of the case could be given. Under municipal law the jurisdiction of the court does not enter into the issue. If the court to which the request for injunctive relief does not have jurisdiction, some other municipal court will, excluding the exceptional case in which there is legislation precluding relief by injunction. By contrast, the question presented in the Anglo-Iranian Oil Co. case is the relation between the interim measures of protection requested by the British Government and the jurisdiction of the International Court to hear the case.

It is agreed that the Court is not obliged to determine definitively whether it has jurisdiction in the case before it can give provisional protection to the property involved. The very purpose of the interim measures of protection is to anticipate possible injury to the property pending the delays incident to a decision upon the question of jurisdiction as well as a decision upon the merits of the case. But at the same time the Court must have reasonable ground for believing that it will have jurisdiction when the case comes on to be heard; otherwise the Court might be led to interfere in questions which fall within the reserved class of domestic questions withheld from submission to the Court, whether in the declarations of the two parties accepting the compulsory jurisdiction of the Court or in the broad provision of Article 2(7) of the Charter of the United Nations.

Was there, then, reasonable ground for the assumption by the Court that when the case came on to be heard it would find that it had jurisdiction? The British declaration under Article 36(2) of the Statute of the Court recognized as "compulsory *ipso facto* and without special agreement" the jurisdiction of the Court in all four of the groups of legal disputes listed in the article. Exceptions were entered covering disputes for which other methods of peaceful settlement were provided, disputes with members of the British Commonwealth of Nations, disputes with regard to questions which by international law fell exclusively within the jurisdiction of the United Kingdom, disputes under consideration by the Council of the League of Nations, and disputes arising out of events occurring during the war; but these did not come into question, since the application instituting proceedings was made by Great Britain itself. On the other hand the Iranian dec-

laration, made on October 2, 1930, and ratified in 1932, was limited to the first group of disputes falling under Article 36(2), namely, "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." Further exceptions were entered covering disputes relating to the territorial status of Persia, disputes in respect to which the parties had agreed upon some other method of pacific settlement, and disputes with regard to questions which by international law fell exclusively within the jurisdiction of Persia, with the further reservation of a right to suspend proceedings in respect to any dispute which had been submitted to the Council of the League of Nations.

It would appear, then, that Great Britain could not maintain that the Court had jurisdiction of the case as being a "question of international law" under Article 36(2 b) of the Statute of the Court, although that issue did call for consideration under another head. What treaty or convention between Iran and Great Britain was there which might be made a basis of probable jurisdiction? In its application instituting proceedings, under date of May 26, 1951, the British Agent first set forth the facts giving rise to the dispute,[2] namely, the refusal of Iran to abide by the arbitration clause in the contract between Iran and the Oil Company, and the consequent denial of justice; and he then proceeded to argue the question of jurisdiction on the basis of two kinds of treaties accepted by Iran, the first being certain treaties and conventions by which Iran was under obligation to give most-favored-nation treatment to British nationals and by which Iran was under obligation to treat the nationals of other states in accordance with the principles of international law, and the second being a direct treaty obligation between Iran and the United Kingdom by which Iran was obligated to treat British nationals in accordance with the principles of international law. In the first case the obligation of Iran to treat British nationals in accordance with the rules of international law was by inference from one set of treaties to another, and in the second case the obligation was direct, arising out of an exchange of notes which took place on May 10, 1928, at the time of the abolition of capitulations in Persia, when Persia undertook that henceforth British nationals in Persia "shall be admitted and treated on Persian territory in conformity with the rules and practice of international law."

The date of this exchange of notes, however, calls for an interpretation of the meaning of the Iranian declaration of 1930, in which the acceptance of the jurisdiction of the International Court of Justice is, as has been indicated above, limited 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." Grammatically taken,

[2] For factual background of dispute see current note below, p. 749.

"subsequent" appears to relate to "treaties or conventions," which, if it were the correct interpretation, would nullify the argument of Great Britain based upon the earlier agreement of 1928. The logical interpretation, however, is that the word "subsequent" relates to "situations or facts." This is assumed by Great Britain to be the correct interpretation and it is consistent with the declarations made by a number of other states under Article 36 of the Statute.

It is of interest to note that although the agreement of 1933 between Iran and the Oil Company was not an agreement between two states, but between a state and a private company, nevertheless Great Britain, in its application instituting proceedings, argued 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."

Accepting the argument of Great Britain on the basis of treaties or conventions not as settling the question of jurisdiction definitively but merely as indicating that the Court might reasonably find that it had jurisdiction on that basis, the next question is whether the treatment by Iran of the Anglo-Iranian Oil Company was "in accordance with the principles of international law." The Government of Iran, looking upon its nationalization legislation as a matter essentially within its domestic jurisdiction, stood upon the ground of its sovereignty, rejecting both the jurisdiction of the Court as well as other methods of settlement set forth in the Charter. On the other hand, Great Britain, asserting the traditional right of a state to intervention on behalf of its national when there appears to be a denial of justice, held that the treatment of the Oil Company by the Iranian Government, and specifically the refusal of the Iranian Government to submit the dispute to arbitration as provided in its contract with the Oil Company, constituted a breach of the rules of customary international law.

The order of the Court under date of July 5 is directed solely to the request for interim measures of protection. It recites the specific measures requested by Great Britain and the fact that respect by the Iranian Government for the measures indicated would in no way prejudice the position of the Iranian Government in the proceedings at which the definitive jurisdiction of the Court would be determined, and, if jurisdiction be found, in the proceedings on the merits of the case. The order, after reciting the reply of the Iranian Government expressing the hope that the Court would declare that the case was not within its jurisdiction "because of the legal incompetence of the complainant and because of the fact that exercise of the right of sovereignty is not subject to complaint," proceeds to find that the complaint made in the British application was one of an alleged violation of international law by the breach of the agreement with the Oil Company and by the denial of justice resulting from the refusal of the

Iranian Government to accept arbitration in accordance with the terms of the agreement, and that "it cannot be accepted *a priori* that a claim based on such a complaint falls completely outside the scope of international jurisdiction." Curiously enough, the order of the Court makes no reference to the "treaties or conventions accepted by Persia" upon which its jurisdiction depended under the terms of the Iranian declaration of 1930.

Two of the judges, Judge Winiarski and Judge Badawi Pasha, dissented, arguing that the question of interim measures of protection was linked, for the Court, with the question of jurisdiction, and that the Court had power to indicate such measures only if it held, at least provisionally, that it was competent to hear the case. Not that the Court should pronounce finally upon the question of competence before indicating interim measures of protection; "but the Court must consider its competence reasonably probable." The power given to the Court by Article 41 of the Statute to indicate interim measures of protection, said the dissenting judges, was not unconditional; if there was no jurisdiction as to the merits there could be no jurisdiction to indicate interim measures of protection. It was not sufficient that there might be "a possibility, however remote," that the Court might be competent; there was no presumption in favor of the competence of the Court; if there existed serious doubts as to its jurisdiction, then the measures of protection could not be indicated. Iran had refused to appear before the Court and had put forward reasons for its attitude. The Court should, therefore, have first decided "in a summary way and provisionally" whether the arguments against its jurisdiction outweighed those in favor of it.

The case is of special interest, not only because of the issues involved, but because of the fact that the Court was not deterred from issuing its order by reason of the refusal of Iran to appear before the Court. Article 36(2) of the Statute provides for compulsory jurisdiction "*ipso facto* and without special agreement" in accordance with the reciprocal declarations made by particular governments. Does this mean that a state, after making a declaration such as that of the Iranian Government in 1930, may nevertheless use its own judgment whether the dispute falls within the scope of its declaration, so that the Court does not have jurisdiction unless the state, in pursuance of its declaration, consents to appear before it in the concrete case; or does the provision of Article 36(2) mean that a state, in making a declaration of compulsory jurisdiction, has already given provisional assent to the jurisdiction of the Court in the concrete case; so that the Court may then proceed, on the basis of Article 36(6), to decide definitively whether or not it has jurisdiction and then, if one of the parties fails to appear, give an *ex parte* judgment on the merits of the case in accordance with the terms of Article 53 of the Statute?

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