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Polish Judge Defended the Iranian Stance (Anglo-Iranian Dispute in 1951)

Abstract

The nationalization of oil fields in Iran on 20 March 1951 turned into a conflict between the British and Iranian governments. It was a heavy blow for the oil company from Great Britain, which since the beginning of the 20th century was present in Iran (since 1933 under the name of Anglo-Persian Oil Company, the name was changed for Anglo-Iranian Oil Company). British government lodged a complaint against Iran with the International Court of Justice, and then on 22 June 1951 filed a further request for the interim measures of protection to be implemented until the dispute is resolved. Two of the judges of the International Court of Justice gave a dissenting opinion in this case, one of them was a Polish judge, Bohdan Winiarski. In his opinion, and also opinion of Egyptian judge Abdel Hamid Badawi Pasha, the British government was not a party to the contract because it was signed between the Iranian Government and the Anglo-Persian Oil Company not with the British Government. This opinion was accepted by the International Court of Justice in Hague. The positive verdict of the Court was a huge victory for Iran. Without doubt, the Polish judge, Bohdan Winiarski, contributed to it.

Keywords: The International Court of Justice in Hague, Anglo-Persian Oil Company, Polish judge Bohdan Winiarski, British Government

Introduction

The dispute that flared up between Iran and the Anglo-Iranian Oil Company (AIOC)[1] after the announcement of the nationalization of oil fields in Iran, very swiftly turned into a conflict between the British and Iranian governments. The immediate cause of the conflict was the fact that the parliament of Iran had passed the act on nationalization of the Iranian oil industry on 20 March 1951. The law

[1] The original name of the company is Anglo-Persian Oil Company, which was altered to Anglo--Iranian Oil Company, after Persia changed its name to Iran in 1935. In its abbreviated form, common in the literature of the field, it will be represented as APOC or AIOC respectively.

was approved by both houses of the Iranian Parliament and on 1 May 1951 it was endorsed by Shah Mohammad Reza Pahlavi.

It was a heavy blow for the British oil company, which since the beginning of the 20th century was present in Iran, and since 1933 under the name of Anglo--Persian Oil Company (the name was changed for Anglo-Iranian Oil Company). For many years, it was looking for oil deposits and mining the south-western oil fields of Iran, drawing huge profits from them. Supporting the AIOC, on 26 May 1951 the British government lodged a complaint against Iran with the International Court of Justice, and then on 22 June 1951 filed a further request for the interim measures of protection to be implemented until the dispute is resolved.[2] It was demanded that until the International Court of Justice issues a verdict, the oil company should retain the right to continue its activities on the territory of Iran on the existing terms and conditions. It was hoped that the government of Iran would refrain from any activities against the company both before and after the dispute has been resolved.

The request regarding securing the rights of the British oil company was examined by the International Court of Justice on 5 July 1951. Having considered the petition, the judges acceded to the request of the British government and ruled that interim measures of protection, which were to be implemented on a reciprocal basis, were to be observed by both parties until the dispute has been resolved. The verdict was not unanimous. Two judges held joint dissenting opinion. A Polish judge, Bohdan Winiarski, together with an Egyptian judge, Abdel Hamid Badawi Pasha, declared that they were unable to concur in the Order of the Court.

Sources

The decision of the Court and the dissenting opinions of the two judges were printed in full in 1952 in a monthly titled *Zbiór dokumentów* (*A Collection of Documents*), 11–12, edited by Julian Makowski.[3] The collection of documents comprises also other important documents connected to the conflict, e.g., the verdict of the International Court of Justice on the complaint filed against Iran by the British government, notes of the Iranian government, a letter from the British government to the UN Security Council, the statement of the Iranian Prime Minister Mohammad Mosaddegh as well as his radio speech, the speeches by the representatives of Great Britain, USA and the Soviet Union. They give a picture of the events connected with the tense situation that developed in Iran after the decision of nationalization of oil fields had been announced. The documents show how involved both parties were in defending their own interests. They constitute

[2] *International Court of Justice, July 5th, 1951, Anglo-Iranian Oil Co. Case. Request for the Indication of Interim Measures of Protection* (*United Kingdom v. Iran), Order*, [in:] *Zbiór dokumentów*, no. 11–12, Polski Instytut Spraw Międzynarodowych, Warszawa 1952, p. 2589.

[3] The magazine was published by the Polish Institute of Foreign Affairs in Warsaw and came out between 1933 and 2002. The Polish Foundation of Foreign Affairs and the Ministry of Foreign Affairs. Diplomatic Academy were co-authors of the magazine.

an excellent source of detailed and reliable information that allows an insight into how the dispute unfolded and what were the prevailing sentiments on each side of the conflict.

The documents are published in one of the three official languages of the United Nations, i.e., English, French and Russian. All the documents have been also translated into Polish. They constitute a vital source that enables the analysis of the complicated dispute between Iran and Great Britain and the way in which both sides justified their positions. What they also reflect is the emotions that accompanied them in the struggle for their arguments. It is also interesting to see the way the judges of the Court of Justice justify their reasoning, the more so considering the fact that at the sitting when the interim measures were decided, two of the judges gave a dissenting opinion. One of them was a Polish judge, Bohdan Winiarski.

Judge

Who was the abovementioned Polish judge, who was in opposition to the ruling of the International Court of Justice regarding the interim measures of protection in the case of Anglo-Iranian conflict?

Professor Bohdan Winiarski, an accomplished lawyer and an expert on international law, was one of the two judges who gave dissenting opinion. He was renowned in the international lawyer's community. Before joining the Court of Justice in Hague, he had devoted many years to study law. He began studying at the Warsaw University and continued higher education at the Jagiellonian University in Cracow, Universite de Paris and in Heidelberg. In 1910 he obtained a PhD in law at the Jagiellonian University. Since 1921, he had been running lectures in international and public law in many academic centres, such as: Poznan University, Hague Academy of International Law, Oxford University. After obtaining his habilitation from Jagiellonian University in 1922, Bohdan Winiarski was appointed the professor of international law at the Poznan University, where he also served as dean of the Faculty of Law and Economics in the years 1936–1939.

In the biography of Bohdan Winiarski we can read that the path of his development was shaped by three passions: law, politics and justice.[4] He was regarded an expert in law and an accomplished academic. He devoted many of his publications to international courts. Winiarski was the first Polish judge to sit in the International Court of Justice in Hague.[5] From the very beginning of the Court's activity, Bohdan Winiarski carried out the function of a judge, which he was appointed to on 6 February 1946, according to some authors, against the

[4] *Summary of B. Winiarski's Biography for Library of Congress catalog*, trans. by P. Hermanowski, http://www.loc.gov/catdir/summary/law0701/2006498435.html (access: 8.10.2016).

[5] The Court of Justice was established during the conference in San Francisco 26 June 1945. It started its activity in 1946 replacing the Permanent Court of International Justice which had been active since 1922.

will of the communist government of Poland.[6] Professor Krzysztof Skubiszewski, in an article commemorating Winiarski points out that "considering the times (the conflict between East and West) the selection was the testimony to the great trust Winiarski's excellent colleagues put in him".[7] He performed the function of a judge over three consecutive terms until 1967, and his career in the Court of Justice spanned 21 years. Not only was Bohdan Winiarski the first Polish judge in the Court of Justice, but also the first Pole to preside the Court in the years 1961–1964.

Many distinguished lawyers underlined that for Winiarski, international court is more than mere employment, it was a vocation. In the view of Krzysztof Skubiszewski, "Bohdan Winiarski was a judge who was independent and of high law culture".[8] Charles De Visscher, an excellent Belgian lawyer, described him as "a great judge who was fully aware of the responsibilities coming with the judicial mission of the Court".[9] Authors writing about Bohdan Winiarski pointed out that on many occasions he offered a different opinion, thereby proving his objectivity and legal independence.[10] In the words of Charles De Visscher, he was characterized by integrity and straightforwardness in judgment that came with broad knowledge.[11]

The other judge who signed his name under the dissenting opinion was an Egyptian professor of law, Abdel Hamid Badawi Pasha. Both lawyers were almost at the same age. Badawi Pasha was three years younger than Winiarski. Both were professors of law (Badawi Pasha at the University of Cairo), both spent many years on the position of judges in the International Court of Justice in Hague. Badawi Pasha was a respected lawyer and a renowned expert on law, jurisprudence and legislature. He came from Alexandria in Egypt. Similarly to Bohdan Winiarski, he was elected a judge in the Court of Justice in 1946 and carried out this function until his death. Together with his Polish colleague, he voiced a dissenting opinion with the regard to the decision of the Court concerning the interim measures of protection in the case of Anglo-Iranian conflict.

History

In order to understand the decisions taken by the judges in this dispute, it is necessary to outline its causes and the course of events. The complaint on the part of the British that had been lodged with the Court led in consequence to a deep disagreement between Iran and Britain. A conflict which started in 1951 and did not finish until 1953, led to the radicalization of attitudes in Iran and the conse-

[6] J. Makarczyk, *The International Court of Justice in the Changing Political Environment*, [in:] *Perspectives on International Law*, ed. N. Jasentuliyana, London 1995, p. 294.

[7] K. Skubiszewski, *Bohdan Winiarski jako sędzia międzynarodowy*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1999, LXI, no. 3–4, p. 6.

[8] *Ibidem*, p. 14.

[9] *Ibidem*.

[10] *Summary of B. Winiarski's Biography…*

[11] *Ibidem*.

quent coup and overthrow of the rule of Prime Minister Mohammad Mosaddegh. The source of the conflict lied in the Iranian oil fields.[12]

The search for raw materials in Iran, including oil, started in the late 19th century. The British were the most active in the area. As early as 1872, the Iranian king Naser ad-din Shah granted the first concession for searching and exploiting the Iranian raw materials, including oil, to a British citizen. The man was Julius de Reuter. After a few years in 1901, the concession was taken over by a British financier, William Knox D'Arcy, who soon, in 1903, established an oil company, which was given the name of D'Arcy's First Exploitation Company. It was granted a 60-year-long exclusivity contract for running search and exploitation of raw materials in Iran.[13] In 1908, oil beds were found in the south-western province of Khuzestan. D'Arcy's oil company soon transformed into Anglo-Persian Oil Company on the basis of a new concession agreement signed in 1909. It carried out search and exploitation of oil deposits in south-western province of Khuzestan with significant interest and involvement of the British government.

Reza Shah Pahlawi's seizing of power in 1926 and his further policy of modernizing the country brought about severe tension between the Iranian government and the APOC. Iran's revenues from the extracted oil were meagre, while the Company expanded, becoming an international financial power. Ł. Hirszowicz writes that in 1950 the Anglo-Iranian Oil Company accounted for 14% of world's oil production.[14] It had exclusive rights to extract oil in the south-west of Iran. In return, the company paid dividends to the Iranian government. In those days, it amounted to only 16% of the profits. The amount of the dividend paid by APOC was considerably lower than in the case of an agreement signed by the company with other countries in the region, for instance, with Iraq. For many years it had caused increasing discontent of the Iranian government, which demanded renegotiation of the contract and sought to change the conditions of the agreement in terms of the distribution of profits.

In 1931, negotiations regarding the new concession agreement commenced. The company did not agree to the conditions put forward by the Iranian government, and finally in 1932, Reza Shah Pahlavi cancelled the concession agreement of 1901. The British government, which actively defended the interests of the company, joined the dispute and registered a complaint with the Council of the League of Nations. As it often happens in such circumstances, Britain demonstrated its military power in the Persian Gulf by sending gunboats to the region. Justifying its involvement and actions taken in the case of the private oil company, the British government invoked a provision that allowed to act within the scope of diplomatic care which every British citizen is entitled to.[15] Finally, the dispute between Iran and the oil company was resolved. By settlement and amendments

[12] For more on this subject see A.W. Ford, *The Anglo-Iranian Oil Dispute of 1951–1952: A Study of the Role of Law in the Relations of States*, Berkeley, CA 1954.

[13] R.W. Ferrie, *The History of the British Petroleum Company*, vol. 1: *The Developing Years, 1901–1932*, Cambridge 1982, p. 53.

[14] Ł. Hirszowicz, *Iran 1951–1953. Nafta. Imperializm. Nacjonalizm*, Warszawa 1958, p. 27.

[15] *International Court of Justice…*, p. 2597.

made to the agreement regarding the rights to search and exploitation of oil deposits in Iran, on 29 April 1933 a concession agreement was signed between the government of Iran and APOC with new terms and conditions coming into force. Although some new provisions were beneficial for the Iranian side as they augmented the level of the profits from the oil business, a provision was included that the concession would be retained for another 60 years. Article 21 of the concession agreement stipulates that the concession cannot be annulled by the Iranian government until it expires, and any breach thereof would have to be solved by arbitration (Art. 22).[16] After Iranian parliament's ratification and approval of the Iranian shah, the new agreement entered into force on 29 May 1933 and was binding until the oil business was nationalized in 1951. After the Second World War, further renegotiations of the conditions of the agreement with Anglo-Iranian Oil Company were attempted to provide mainly for the increase of oil royalties. However, these efforts failed as the agreement had not been ratified by the Iranian parliament.

This brief overview of the events and the history of concession agreements with the British oil company does not take into account the long and difficult record of the British-Iranian relationship in the context of the oil business as we wished to highlight the formal aspect of the singed concessions. It is important due to the argumentation of the judges in the International Court of Justice who adjudicated in the case of Anglo-Iranian conflict of 1951.

Complaint

The decision to nationalize the oil business was a result of many tensions in Iran: social, political and economic ones. The Second World War and the presence of the Allied Forces in Iran had seriously weakened the economy of the country, especially the state sector. Economic problems led to the radicalization of various social groups, intensifying the anti-Western sentiments among Iranians, particularly against the political and economic control exerted by the AIOC. Strikes in the oil fields that were exploited by British companies took place, with the great strike of workers in Khuzestan in 1946 being a prominent example in the case. Nationalist tendencies and opposition to conforming the country to foreign interests grew. On this wave of social rebellion, the coalition of secular and religious nationalist parties, called the National Front, with Mohammad Mosaddegh at its helm, dominated the elections to the parliament in 1950 spouting the slogan of nationalization of the oil fields. This allowed the nationalization of the oil industry in 1951. The act of 1 May 1951 required the government to the immediate expropriation of the AIOC. Negotiations on the issue of nationalization that were conducted by the AIOC and supported by the British government failed.[17]

[16] Ł. Hirszowicz, *op. cit*., p. 22.

[17] The account of events and the course of the negotiations with the Anglo-Iranian Oil Company is given at length by Ł. Hirszowicz, *op. cit*., pp. 117–181.

After announcing the nationalization of the oil business in Iran on 26 May 1951, the British government filed a petition with the UN International Court of Justice in Hague in the case of the Anglo-Iranian Oil Company. In the complaint, the British government accused Iran of violating international law by terminating the concession agreement of 29 April 1933 between the Iranian government and the AIOC and rejecting arbitration that was provided for therein.[18] Almost a month later, on 22 June 1951, the British government lodged a request with the Court to pass a ruling to ensure the so-called interim measures of protection in relation to the nationalization of the oil industry. They were to remain in force until the final verdict in the case has been given by the International Court of Justice. The British justified their request by fears that the actions of the Iranian government threaten the continuation of production, extraction and refining of the oil. They pointed out the threats on the Iranian side that in their view could lead for example to damaging machinery and devices or attack on workers. It was demanded that the AIOC should continue to entertain the rights from before the nationalization, bestowed upon them in the concession agreement of 1933.

The Court informed Iran about the filed complaint sending a telegram to the prime minister and the Iranian minister of foreign affairs with a petition to refrain from any actions that would escalate the ongoing conflict.[19] In a reply of 29 June, Minister of Foreign Affairs of Iran, Bagher Kazemi, sent a telegram and wrote a statement in which he stated that the Iranian government rejects the request lodged by the British government with the Court. He underlined that:

> […] the Iranian Government hopes that the Court will declare that the case is not within its jurisdiction because of the legal incompetence of the complainant and because of the fact that the exercise of the right of sovereignty is not subject to complain. Under those circumstances the request of interim measures of protection would naturally be rejected.[20]

The Iranian minister, Bagher Kazemi, in a telegram to the secretary of the Court pointed out that (invoked by the judge substantiating the verdict) the dispute arose between the government of Iran and a private oil company, and not between the British government, which have lodged the request with the Court. This means that the case is not subject to the jurisdiction of the Court but to the national courts, i.e., domestic jurisdiction.[21] Thus the right of the British government to file a complaint with the International Court of Justice was challenged. In this way, a binding rule was referred to according to which in international law only sovereign states can be the subjects of international law. Consequently, adopting such a position, the Iranians rejected participation in the sitting convened by the Court on 30 June 1951, where both sides had an opportunity to voice their remarks in regard to the request lodged by Britain. At the sitting, the Court established that

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[18] *International Court of Justice, July 22nd, 1952, Anglo-Iranian Oil Co. Case, Judgement*, [in:] *Zbiór dokumentów*…, p. 2597.

[19] *Ibidem*, p. 2594.

[20] *Ibidem*, pp. 2594–2595.

[21] *Ibidem*, p. 2596.

there were British representatives present in the room, and that there were no representatives of the Iranian government.[22]

To examine the petition in the case of interim protective measures filed by the British government, the Court of Justice convened on 5 July 1951. The results of the works of the Court were published in the 'Disposition', in which the content of the request filed by the British government was presented; the document also described the actions taken with regard to the case by the Court as well as the reaction of the Iranian side to the matter in question. At the end, the verdict of the court was given together with the justification. Eventually, the judges deemed it justified to introduce the interim measures of protection until the verdict on the British complaint has been delivered, which fulfilled the requests of the British government. The court stated that:

> […] the existing state of affairs justifies the indication of interim measures of protection.[23]

Considering the indication of the interim measures of protection to be justified, the judges of the Court of Justice underlined at the same time that this decision does not determine further stages in the case of the request put in by the British government. Rejecting the remarks of Iranians in which they challenged the legitimacy of the British complaint, the Court explained:

> […] that Government has adopted the cause of a British company and is proceeding in virtue of the right of diplomatic protection.[24]

As a consequence, the Court advised the actions that would be binding for both parties: for instance, an obligation for either party not to pursue any actions that could infringe on the right of the other party, which could exacerbate the dispute. However, further decisions were relevant to the Iranian party. In the disposition of the court we can read that the Iranian government cannot take any steps hindering the industrial and trade activity of the Anglo-Iranian Oil Company until the final resolution of the case has been carried out by the International Court of Justice, also that there shall be no personal changes to the board of the company, that is, it is to remain as before the nationalization of the oil industry. It was also decided that a supervisory committee should be established in order to oversee the finances of the company. The committee was to comprise two members appointed by each of the governments, and a fifth one from a different country.[25] The verdict of the Court ended with a paragraph which read:

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[22] *Ibidem*, p. 2595. In the reaction to the Iranian stance that did not agree to accept the jurisdiction of the International Court of Justice in Hague, on 28 September 1951, Great Britain, filed another complaint in the case of the AIOC, this time to the president of the UN Security Council, claiming that the action of Iran threaten security. It concerned Iran's failure to observe the resolution of the International Court of Justice. For the content of the complaint see *International Court of Justice*..., pp. 2610–2612. In the end, Britain did not achieve its goals. The UN Security Council did not pass a resolution on the matter. This time the Iranian delegation to the sitting of the Security Council was numerous, with Prime Minister Mohammad Mosaddegh as it head.

[23] *International Court of Justice*..., p. 2598.

[24] *Ibidem*, p. 2597.

[25] *Ibidem*, p. 2599–2600.

> Judges WINIARSKI and BADAWI PASHA, declaring that they are unable to concur in the Order of the Court, have appended to the Order the joint statement of their dissenting opinion.[26]

Dissenting Opinion

Bohdan Winiarski together with Badawi Pasha opposed the decision of the court to indicate interim measures of protection (requested by Britain) and voiced a dissenting opinion. The judges drew up a joined opinion in this matter.[27] The document was produced in two languages: English, which was the 'authentic one' as put by the judges of the court, and in French. In the French version and in translation into Polish it was published in *Zbiór Dokumentów* of PISM.

Explaining their dissenting opinion, the judges Winiarski i Badawi Pasha state in the introduction:

> Si justifiée que paraissent les mesures conservatoires formulées dans la présente ordonance, nous estimons que la Cour n'aurait pas dû les indique pour des raisons de principe qu'il est de notre devoir de constater brièvement.[28]

At the very beginning of the justification the judges pointed out that:

> Le problème des meseures conservatoires est liè pour la Cour à celui de sa competénce; elle ne peut les indiquer que si elle admet, ne fût-ce que provisoirement, sa competénce pour connaître du fond de l'affaire.[29]

The judges did not concentrate therefore on the heart of the matter, i.e., the question whether it is necessary or not to introduce the interim measures of protection, but formulated a more general question whether the conditions for the Court to resolve the problem have been met. Hence they referred to the fundamental rules concerning the competence of the Court specified in the statute of the International Court of Justice.

Judge Winiarski together with Badawi Pasha pointed to the ambiguity of the competence of Court of Justice in the context of the dispute. In their view, the situation was unclear due to the fact that Iran deemed that the Court did not have the right to settle the lodged complaint. At the same time, it did not accept the jurisdiction of the International Court of Justice. The judges invoked the article 41 paragraph 1 of the Statute of the Court which stipulated:

> The Court shall have 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** (put in bold by JSD).[30]

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[26] *Ibidem*, p. 2601.

[27] *Dissenting Opinion of the Judges Winiarski and Badawi Pasha, International Court of Justice, Hague 5 July 1951*, [in:] *Zbiór dokumentów*, p. 2602.

[28] *Ibidem*.

[29] *Ibidem*.

[30] *Statute of the International Court of Justice*, p. 27, http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (access: 17.06.2019).

This very phrase which is referring to "a party" was the main argument put forward by Winiarski. He also stressed that there is no doubt with regard to the argumentation he adopted, since Article 41 of the Statute of the International Court of Justice which it referred to, applies to the procedure. He explained that this provision can be found in the chapter called "Procedure", and therefore it should be interpreted from this perspective. He thereby indicated that in accordance with the Statute, for the Court to proceed with the case, there have to exist parties. The judges underlined that the Court of Justice is a competent body only as much as the parties accept its right to adjudicate.[31] Winiarski reiterated that Iran had not done so, it had not accepted the jurisdiction of the International Court of Justice in this matter:

> L'Iran affirme qu'il n'a pas accepté la juridiction de la Cour dans le cas presént, qu'il n'est nullement lié en droit; il a refusé de comparaître devant la Cour et a indiqué les raison de son attitude.[32]

The argumentation of both judges came down to the fact that before any steps could be taken by the Court, there have to exist specified parties to the dispute which accept the jurisdiction of the Court. They were therefore inclining towards the argumentation deployed by the Iranian side, which by refusing in its letter to give consent to the jurisdiction of the International Court, invoked the same argument, that is, the lack of competence of the Court to adjudicate the matter, because, as it was being explained, the British government, which filed the request, did not constitute a party to the ongoing dispute. It was the private company AIOC that was a party to the conflict, and therefore the case had to be heard by a domestic court.

On this basis, Winiarski, together with the Egyptian judge, came up with a conclusion that as the Court does not have the competence to adjudicate in the matter of the dispute, with the condition regarding the parties to the conflict not being met, it does not have the competence to indicate the interim measures of protection either.[33] "En droit international, c'est le consentement des parties qui confère juridiction à la Cour", he wrote in his justification.[34]

Bohdan Winiarski pointed out that introducing measures of protection has a special character and exceptional dimension in international law. Consequently, in the view of both judges, the Court should take into consideration the matter in its entirety to avoid a situation when the interim measures of protection are introduced, although there doubts over the competences of the Court. Winiarski concluded that in such circumstances there was a threat that those actions would be considered "as unacceptable interference in the matters of a sovereign state":

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[31] *Dissenting opinion…*, p. 2605.
[32] *Ibidem*, p. 2608.
[33] *Ibidem*, p. 2605.
[34] *Ibidem*.

> […] elles sont facilement considérée commme une ingérence à peine tolérable dans les affaires d'un Etat souverain.[35]

Summing up the substantiation of the submitted dissenting opinion, the judges Winiarski and Badawi Pasha state that having analyzed all the motives based on which the British government demands the competence of the Court, they came to a conclusion that:

> […] la Cour, lors de la décision finale, sera amenée à se déclarer incompétente dans cetté affaire et que, telles étant les conditions, les mesures conservatoires n'auraient pas dû étre indiquées.[36]

The opinion voiced by the two judges turned out to be right in the end, as the final verdict of the International Court of Justice in the case of the complaint on the part of the British government regarding the Anglo-Iranian Oil Company delivered on 22 July 1952 stipulated that the Court "has no jurisdiction in the matter in question",[37] i.e., that it does not possess competences to adjudicate in the petition submitted by the British government. The view of the two judges Winiarski and Badawi Pasha was thus endorsed, a position which was formulated in separate opinion, in which they invoked the same arguments, that is, they stated that the British government was not a party to the conflict. As for the concession granted in 1933, which the British referred to in their complaint, the Court pronounced in their verdict that:

> The Court cannot accept the view that the contract signed between the Iranian Government and the Anglo-Persian Oil Company has a double character. It is nothing more than a concessionary contract between a government and a foreign corporation. The United Kingdom Government is not a party to the contract.[38]

It followed that all the provisions included in the agreement, also the provision concerning arbitration that the British government referred to were not applicable to Britain because it was not a party to the conflict, and all contentious issues between the government of Iran and the oil company lied within the competences of domestic courts. The arguments of the judge Bohdan Winiarski were therefore valid. They were also invoked by the International Court of Justice in the verdict regarding the complaint submitted by the British government. With the jurisdiction having been finally adjudicated, the former resolution of the Court concerning interim measures of protection lost its legal force as well.

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[35] *Ibidem*, p. 2605. The argumentation was accepted in the speech in the forum of UN Security Council on 1 October 1951 by a representative of the Soviet Union, Semen Konstantinovich Tsarapkin, the deputy to the permanent representative of the Soviet Union at UN. Voicing his opinion in the context of the Anglo-Iranian Oil Company and the lack of agreement on the part of Iran to accept the ruling of the International Court of Justice in Hague, he considered the British complaint to the Security Council as interfering in the internal affairs of Iran and an attack on sovereign rights of the Iranian nation, see: *Przemówienie przedstawiciela ZSRR Carapkina w Radzie Bezpieczeństwa ONZ w sprawie Anglo-Irańskiego Towarzystwa Naftowego*, Flushing Meadow, dnia 1 października 1951 (published in Russian), [in:] *Zbiór dokumentów*, p. 2613.

[36] *Dissenting opinion…*, p. 2609.

[37] *International Court of Justice…*, pp. 2623–2664.

[38] *Ibidem*, p. 2657.

Conclusion

The verdict of the International Court of Justice in Hague was a huge victory for Iran. Without doubt, the Polish judge, Bohdan Winiarski, contributed to it. It was also appreciated by Iranians. As reported in the Polish press on 8 July 1951, Minister of Foreign Affairs of Iran Bagher Kazemi invited Kazimierz Śmiganowski, charge d'affaires to the Republic of Poland in Tehran, and "expressed the gratitude of the Iranian government and nation for the support, which a representative of Poland gave by voting against the decision of the court regarding the complaint the British government filed against Iran".[39]

Bohdan Winiarski was renowned in the legal milieu for being principled and eager to defend his rights. Krzysztof Skubiszewski points to the fact that Winiarski, as it transpires from his scientific views and dissenting opinions he gave in many different cases, had an uncompromising approach to the competence of the Court of Justice towards states. Not infrequently, he took an opposing stance in cases. Skubiszewski underlines that

> on many occasions in his academic papers or dissenting opinions, [Winiarski] presented a view that, similarly to the case of pre-war Court of Justice, the competence of the court hinges on the accord between the states that are parties to the dispute.[40]

Winiarski, consistently brought this argument up in his justification of the dissenting opinion given in the case of the British-Iranian dispute of 1951.

Not all supported his views and legal argumentation. He faced criticism from legal milieus. In the article titled *The Juridical Implications of the Anglo-Iranian Oil Company Case* the author, Brendan F. Brown, a professor of law, referring to the stance taken by judges Winiarski and Badawi Pasha in the context of indicating the interim measures of protection, accuses them of "the basic hostility […] to a philosophy of natural law",[41] and further that:

> 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.[42]

It does not change the fact however that the dissenting opinion of Bohdan Winiarski and his Egyptian colleague proved to be right, which was confirmed by the International Court of Justice in its verdict of 22 July 1952.

The expectations of Mohammad Mossadegh, Prime Minister of Iran, were also met. In his reminiscences he writes:

> When I was leaving Tehran, [going to the Hague] I hoped to convey the full picture of the injustice that my nation has had to experience.[43]

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[39] „Dziennik Łódzki" 1951, 10 July, http://bc.wbp.lodz.pl/Content/58084/DziennikLodzki1951nr188.pdf (access: 11.10.2016).

[40] K. Skubiszewski, *op. cit.*, p. 12.

[41] B.F. Brown, *The Juridical Implications of the Anglo-Iranian Oil Company Case*, "Washington University Law Review" 1952 (June), vol. 52, no. 3, p. 388.

[42] *Ibidem*, p. 389.

[43] M. Mosaddegh, *Khaterat va ta'allumat-e doktor Mohammad Mosaddegh (Reminiscences and Worries of Doctor Mohammad Mosaddegh)*, Tehran 1370/1992, p. 243.

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