Dr. Gill, an internationalist well-known for his recent publications on the use of force, was requested by the editors of *Grotiana* to comment upon the present conflict. It was not our purpose to start a debate on the immediate consequences of the Gulf crisis in *Grotiana*. Our review is not a forum for the discussion of current issues in International Law or international relations. The task we set Dr. Gill was to discuss the long-term issues raised once more by the Gulf crisis. As we intended he points in his essay indeed to some constants to be discerned in the present situation. As is always the case in *Grotiana*, publication of an article does not imply that the board of editors is endorsing the author’s views. We are fully aware that another point of view than that chosen by Dr. Gill may well be adopted. Partly for this reason I was requested to add some comments from a historical and ‘Grotian’ perspective to Dr. Gill’s article.

Passing then, from my role as a member of a neutral collective, the board of editors, to that of an author called upon to add a postscript to Dr. Gill’s essay, I may start with remarking that his article in my opinion provides a good starting-point for discussion, notably because of the dichotomy he establishes between the two leading ideas of ‘International Law’ and ‘International Order’. Dr. Gill adopts a ‘realist’ stance which by some scholars may be considered thoroughly enforcement measures and relinquishes its right to take action under Article 51, or perhaps, does not reserve its right to take such action, that it would be precluded from taking action under Article 51 without renewed authorization from the Council. This point of view finds some support in the decision by the International Court in the *U.S. Diplomatic and Consular Staff Case* (1980 ICJ Rep. at 4), in which the Court censured the United States for undertaking military action under Article 51 while judicial proceedings were in progress; proceedings which had been expedited at the request of the U.S. Government. The abortive rescue mission was not determined by the Court to be illegal in itself, but because it could under the circumstances be “calculated to undermine respect for the judicial process”. Be that as it may, there is no analogy between the attitude and conduct of the United States in the *Hostages* crisis and of the United States and other States in the present Gulf crisis. The British and American governments, together with those of Kuwait and Saudi Arabia, have consistently reserved their right to take action under article 51 throughout the crisis. Consequently they cannot have waived their right to base their action upon Article 51 if they so choose.

Cf., his *Litigation strategy at the International Court; A Case Study of the Nicaragua v. United States Dispute* (Dordrecht, 1989), pp. 233-244 for a discussion of the United States’ allegation of self-defence. See also “The Law of Armed Attack in the context of the *Nicaragua* case” referred to in note 34 supra.
conservative or even obsolete. It is revealing for instance to compare his insistence on the traditional international order with the analysis in *Le Monde Diplomatique*, issue of January 1991, by Monique Chemillier-Gendreau under the title, suggestive in itself 'Que vienne enfin le règne de la loi internationale'. This secularization of the Lord's Prayer culminates in an appeal to proceed to a rectification of frontiers by way of a request for an Advisory Opinion of the International Court of Justice. The ICJ's authority and expertise, Mrs. Chemillier remarks, would enable that Court to find a solution for the territorial aspect of the crisis. We have here, and with a vengeance, the concept of 'Peace through Law' where it is held that steps towards a more 'just' international order will lead to the peaceful solution of disputes which, in the present imperfect order, are 'resolved' by violence. What is required, according to Mrs. Chemillier, is in other words not so much 'attributive' as 'distributive' justice, a more just apportioning of the world's resources and a more equitable international order, presumably before all a more just global economic system. The contrast with Gill's 'positivist' approach is indeed startling but may perhaps be not of a fundamental character. The two schools of thought which, for argument's sake, are here considered to be represented by Mrs. Chemillier and by Gill, share a belief in 'justice' as an essential element in a viable international order. Consequently, they both attribute considerable importance to the international legal process. These traits they do not have in common with the 'Hobbesian' school which considers international relations as essentially - and therefore in the final resort exclusively - dominated by power, and which regards law as its handmaid.

In *Grotiana*, the subscriber is entitled to expect if not 'Grotius opinion on the present Gulf crisis' - there can obviously be no such thing - at least some remarks on what may be considered a 'Grotian' approach and what may not. With Grotius one moves inevitably within the age-old paradigm of 'bellum justum'. The just-war doctrine resuscitated last year apropos of Iraq's invasion of Kuwait, is a descendant or at least a near relative of Grotius' bellum justum. Grotius, summing up of legitimate reasons for taking up arms, such as self-defence (*De Iure Belli ac Pacis*, Book II, chapter 1), the meting out of pun-

---

66 My translation. In the original: 'La haute juridiction de La Haye dispose d'une autorité et d'une compétence qui la mettent en situation de proposer utilement une solution à cet aspect territorial de la crise.' And the author concludes: 'Cette démarche contribuerait, avec d'autres esquissées ici, à créer les conditions de légitimité qui manquent actuellement à l'exigence hautement formulée d'application de la légalité internationale.'