The object of the claim having clearly disappeared, there is nothing on which to give judgment.[9]

EDWARD MCWHINNEY
Simon Fraser University, Vancouver

Article 2(7) of the UN Charter

To THE EDITOR-IN-CHIEF June 16, 1977

One might imagine that J. S. Watson's interpretation of Article 2(7) of the Charter[1] evinces the nearly logical fancies of an Alice-in-Wonderland "rule" dictated approach to law that Felix Cohen denounced so long ago,[2] but Watson's highly imaginative argument lacks too often, through its many erroneous twists and turns, the conceptual foundation and consistency that would have made it nearly logical. Like that famous cat, Watson produces a smile without a body.

To demonstrate, let us focus on one of his "very important" points made "against the teleological approach" to interpretation of Article 2. The logic, we are told, is compelling, quite clearly "stated" by the article itself provided "one reads Article 2 in its entirety" (either several times, upside-down, or, apparently, once over lightly). The teleological approach addresses the "purposes" of the United Nations and the UN Charter but, Watson affirms, "Article 1 and its *purposes* is not superior to Article 2 and the *principles* . . . Rather the reverse is true . . ."[3] Why are *principles* superior to *purposes*? The answer given is that the words of Article 2 demonstrate that the United Nations and UN members, while acting in pursuit of the *purposes*, must act in accordance with the *principles*. "One cannot get a clearer refutation" than that, we are told.

If one can't, however, then I for one am not convinced. Why the purposes have to be superior, or the principles, is nowhere explained. I had thought that they were of similar import, but let us pursue the reasoning a bit further. First, it does not seem evident at all that merely because one must act "in accordance with" *principles* while in pursuit of *purposes*, the *principles* are "superior" to *purposes*. Rather they seem of interdependent import. Second, if one does read Article 2 in its entirety, one would discover in paragraph four that one of the "principles" is that members shall refrain from the threat or use of force in any manner inconsistent with the *purposes*. Now I suppose that Watson would argue that these words in Article 2 make the *purposes* "superior" to the *principles* but, again, I am not convinced.

Third, if one investigates the content of the "principles" (e.g., paragraphs 1, 2, and 3), actual or conceptual differences between Article 1

[9] [1974] ICJ REP. 271–72.

[1] Watson, *Autointerpretation, Competence, and the Continuing Validity of Article 2(7) of the UN Charter*, 71 AJIL 60 (1977).

[2] Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 807 (1935). Watson's article demonstrates the failure of positivism to address realistic processes of authority, especially the separation of authority from raw power. He also assumes that authority can only exist with the state or some "centralized magisterial organ," thus posing an unrealistic dichotomy. *See also* Suzuki, *The New Haven School of International Law: An Invitation to a Policy-Oriented Jurisprudence*, 1 YALE STUDIES IN WORLD PUB. ORDER 1 (1974); J. Paust, *Human Rights and the Ninth Amendment: A New Form of Guarantee*, 60 CORNELL L. REV. 231 (1975).

[3] *Supra* note 1, at 71 (emphasis added).

purposes and Article 2 *principles,* much less the preambular "ends" and common (international) interests, seem to fade. All seem, in fact, intertwined. Moreover, Watson is aware of the need to interpret a treaty "in light of its object and purpose" but, quite conveniently, he refuses to apply this precept and to interpret Article 2(7) in light of the objects and purposes of the Charter.

Fourth, the general argument seems to be advanced by an author who is totally unaware of the import of Articles 25, 33(2), 34, 39, 48–49, 92, and 94 of the Charter and Article 36 of the Statute of the International Court of Justice, much less the authority therein demonstrated. Hardly any mention is made of significant developments in UN history (*e.g.*, UN responses to Rhodesia) or the various articles published in this *Journal* and elsewhere which explore relevant patterns of constituted authority.

Finally, expectations that are similar to the purposes in Article 1 are set out or expanded in Article 55. In contrast to much of Watson's reasoning, Article 56 discloses the obligation of member states to take joint and separate action to achieve those *purposes.* To follow Watson's logic, since Article 56 compels member states, while in pursuit of their compliance with the *principles,* to act in accordance with (indeed, to take joint and separate action to achieve) the *purposes,* then "clearly" the purposes are "superior" to the principles.

Whether or not positivism is realistic or a misnamed form of sophistic negativism,[4] Watson's approach is hardly realistic or useful. Nowhere does he explain why positivism, and not pure speculation, demonstrates that a theory of uninhibited state consent (the *old* Soviet theory) is necessary or superior to the Charter, especially paragraph 2 of Article 2 and Article 56. Nowhere is it written in the Charter that a state member has the authority to interpret in a final, "authoritative" mannner any article of the Charter.[5] In fact, several articles address the interpretive authority of the Court and the Security Council. Even Watson must admit that realism about law demonstrates an emerging authority of the General Assembly[6] and that numerous patterns of behavior and attitude are inconsistent with his own suppositions;[7] and so, like that cat and his smile, this negativistic thesis reveals itself as an unreal grin, which likewise should fade away.

JORDAN J. PAUST

[4] *See* Paust, *supra* note 2, at 236.

[5] *See* Paust & Blaustein, *The Arab Oil Weapon—A Threat to International Peace,* 68 AJIL 410, 423 n.58 (1974); and J. Paust, letter, 71 AJIL 508 (July 1977). We term initial state decisions "provisional characterizations." *See* M. MCDOUGAL & F. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER 218–19 (1961).

[6] *Supra* note 1, at 72 ("completely accurate"); *cf. id.* at 71.

[7] *Id.* One conveniently deleted pre-Charter case, for example, declares: "The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question: it depends upon the development of international relations." The oft-cited case is the Advisory Opinion on Nationality Decrees issued in Tunis and Morocco, [1923] PCIJ, ser. B, No. 4 (1923). Further, the analysis at *supra* note 1, at 63 is unconvincing and ignores Articles 25, 33(2), 34, 39, and others. *See also id.* at 65 ("cannot bind a member") and 66 ("neither is the Security Council except for its decisions under Chapter VII"). Watson's approach to state "practice" is also incomplete, rather like focusing on *law violators* as law creators and ignoring more widespread patterns of compliant and norm-creating practice and perspective. *See also supra* note 1, at 65 ("target states") and 70 (South Africa); *cf. id.* at 76 (an apt criticism of "simplistic" approaches to custom).