

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

**ANGLO-IRANIAN
OIL Co. CASE**

(UNITED KINGDOM *v.* IRAN)

PRELIMINARY OBJECTION

JUDGMENT OF JULY 22nd, 1952

1952

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DE
L'ANGLO-IRANIAN OIL Co.**

(ROYAUME-UNI *c.* IRAN)

EXCEPTION PRÉLIMINAIRE

ARRÊT DU 22 JUILLET 1952

This Judgment should be cited as follows :

“*Anglo-Iranian Oil Co. case (jurisdiction), Judgment of July 22nd, 1952: I.C.J. Reports 1952, p. 93.*”

Le présent arrêt doit être cité comme suit :

“*Affaire de l'Anglo-Iranian Oil Co. (compétence), Arrêt du 22 juillet 1952: C. I. J. Recueil 1952, p. 93.*”

Nº de vente : 91
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JULY 22nd, 1952

JUDGMENT

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(ROYAUME-UNI *c.* IRAN)

EXCEPTION PRÉLIMINAIRE

22 JUILLET 1952

ARRÊT

INTERNATIONAL COURT OF JUSTICE

¹⁹⁵²
July 22nd
General List:
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YEAR 1952

July 22nd, 1952

**ANGLO-IRANIAN
OIL Co. CASE**
(UNITED KINGDOM *v.* IRAN)
PRELIMINARY OBJECTION

Interpretation of the Iranian Declaration of acceptance of the Court's compulsory jurisdiction: words to which the expression "postérieurs à la ratification de cette déclaration" refer.—Declaration limited to the application of treaties or conventions accepted by Iran after ratification of the Declaration.—Most-favoured-nation clause contained in a treaty earlier in date than the ratification of the Declaration: impossibility of founding thereupon a claim to invoke subsequent treaties for the purpose of establishing the Court's jurisdiction.—Treaties and conventions.—Nature of the Concession Contract of 1933.—Question whether any agreement between the Parties resulted from the action taken by the Council of the League of Nations.—Inapplicability of the principle of forum prorogatum.

JUDGMENT

Present: Vice-President GUERRERO, Acting President; President Sir Arnold McNAIR; Judges ALVAREZ, BASDEVANT, HACKWORTH, WINIARSKI, ZORIĆ, KLAESTAD, BADAWI PASHA, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON; M. Karim SANDJABI, Judge ad hoc; Registrar HAMBRO.

In the Anglo-Iranian Oil Company case,

between

the United Kingdom of Great Britain and Northern Ireland,
represented by :

Sir Eric Beckett, K.C.M.G., Q.C., Legal Adviser of the Foreign
Office,

as Agent,

assisted by :

Sir Lionel Heald, Q.C., M.P., Attorney-General,

Professor C. H. M. Waldock, C.M.G., O.B.E., Q.C., Chichele
Professor of International Law in the University of Oxford,

Mr. H. A. P. Fisher, Member of the English Bar,

~~Mr. D. H. N. Johnson, Assistant Legal Adviser of the Foreign
Office,~~

as Counsel,

and by :

Mr. A. D. M. Ross, Eastern Department, Foreign Office,

Mr. A. K. Rothnie, Eastern Department, Foreign Office,

as Expert Advisers ;

and

the Imperial Government of Iran, represented by :

M. Hossein Navab, Envoy Extraordinary and Minister Plenipo-
tentiary of Iran to the Netherlands,

as Agent,

and

Dr. Mossadegh, Prime Minister,

assisted by :

M. Nasrollah Entezam, Ambassador, former Minister,

and by :

M. Henri Rolin, Professor of International Law at Brussels
University, former President of the Belgian Senate,

as Advocate,

and by :

M. Allah Yar Saleh, former Minister,
Dr. S. Ali Shayegan, former Minister, Member of Parliament,
Dr. Mosafar Baghai, Member of Parliament,
M. Kazem Hassibi, Engineer, Member of Parliament,
Dr. Mohamad Hossein Aliabadi, Professor of the Tehran Faculty
of Law,
M. Marcel Sluszny, of the Brussels Bar,
as Counsel,

THE COURT,

composed as above,

adjudicating on the Preliminary Objection of the Government of
the Empire of Iran,

delivers the following Judgment :

On May 26th, 1951, the Government of the United Kingdom of Great Britain and Northern Ireland filed an Application instituting proceedings before the Court against the Imperial Government of Iran. The Application referred to the Declarations by which the Government of the United Kingdom and the Government of Iran accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Court's Statute. The Court is asked :

"(a) To declare that the Imperial Government of Iran are under a duty to submit the dispute between themselves and the Anglo-Iranian Oil Company, Limited, to arbitration under the provisions of Article 22 of the Convention concluded on the 29th April 1933, between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, and to accept and carry out any award issued as a result of such arbitration.

(b) Alternatively,

(i) To declare that the putting into effect of the Iranian Oil Nationalization Act of the 1st May 1951, in so far as it purports to effect a unilateral annulment, or alteration of the terms, of the Convention concluded on the 29th April 1933, between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, contrary to Articles 21 and 26 thereof, would be an act contrary to international law for which the Imperial Government of Iran would be internationally responsible ;

(ii) To declare that Article 22 of the aforesaid Convention continues to be legally binding on the Imperial Govern-

- ment of Iran and that, by denying to the Anglo-Iranian Oil Company, Limited, the exclusive legal remedy provided in Article 22 of the aforesaid Convention, the Imperial Government have committed a denial of justice contrary to international law;
- (iii) To declare that the aforesaid Convention cannot lawfully be annulled, or its terms altered, by the Imperial Government of Iran, otherwise than as the result of agreement with the Anglo-Iranian Oil Company, Limited, or under the conditions provided in Article 26 of the Convention;
 - (iv) To adjudge that the Imperial Government of Iran should give full satisfaction and indemnity for all acts committed in relation to the Anglo-Iranian Oil Company, Limited, which are contrary to international law or the aforesaid Convention, and to determine the manner of such satisfaction and indemnity."

Pursuant to Article 40, paragraphs 2 and 3, of the Statute, the Application was communicated to the Iranian Government as well as to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The Memorial of the Government of the United Kingdom was filed within the time-limit fixed by Order of July 5th, 1951, and subsequently extended at the request of that Government by Order of August 22nd, 1951. The Iranian Government, within the time-limit fixed for the presentation of its Counter-Memorial as finally extended to February 11th, 1952, by Order of December 17th, 1951, at the request of that Government, filed a document entitled "Preliminary Observations: Refusal of the Imperial Government to recognize the jurisdiction of the Court".

The deposit of this document having suspended the proceedings on the merits, an Order dated February 11th, 1952, fixed March 27th, 1952, as the time-limit within which the United Kingdom Government might submit a written statement of its observations and submissions in regard to the Objection. Furthermore, the States entitled to appear before the Court were informed of the deposit of the Objection. Finally, in pursuance of Article 63 of the Statute of the Court, the Members of the United Nations were informed that in its Objection, the Iranian Government relied, *inter alia*, upon its interpretation of Article 2, paragraph 7, of the Charter of the United Nations.

The Observations of the United Kingdom Government in regard to the Objection were deposited within the specified time-limit and the case was thus ready for hearing, as far as the Preliminary Objection was concerned.

As the Court included upon the Bench a Judge of the nationality of one of the Parties, the other Party—the Government of Iran—by virtue of Article 31, paragraph 2, of the Statute of the Court,

appointed Dr. Karim Sandjabi, Professor and former Dean of the Law Faculty of Tehran, Member of Parliament and former Minister, to sit as a Judge *ad hoc*.

As the President of the Court was a national of one of the Parties, he transferred the Presidency for the present case to the Vice-President, in accordance with Article 13, paragraph 1, of the Rules of Court.

Public hearings were held on June 9th, 10th, 11th, 13th, 14th, 16th, 17th, 18th, 19th, 21st and 23rd, 1952. The Court heard M. Navab, Dr. Mossadegh and M. Henri Rolin on behalf of the Iranian Government; and Sir Lionel Heald and Sir Eric Beckett on behalf of the United Kingdom Government.

In the course of the argument before the Court, the following submissions were presented :

On behalf of the Iranian Government :

May it please the Court

Subject to all reservations and without prejudice,

To find as fact and hold in law :

1° That the Government of the United Kingdom has altered the subject of its claim, as set forth in its Application instituting proceedings ;

That the said Application requested that the Iranian Government should be required to give full satisfaction and indemnity for all acts committed in regard to the Anglo-Iranian Company contrary to the rules of international law or to the Concession Convention of April 29th, 1933, and that the manner in which this satisfaction and reparation were to be given should be determined ;

That the United Kingdom Government requested, in its Memorial, as its principal demand :

restitution of the enterprise to the concessionary Company and the determination of the damages due to the said Company for loss and damage, either by the Arbitration Court provided for in Article 22 of the Concession or in such other manner as the Court may decide ;

as an alternative, if the Court should not order restitution of the enterprise, that the compensation due for regular expropriation should similarly be determined by the arbitral procedure laid down in Article 22 of the Concession Convention, or in such other manner as the Court may decide ;

as a further alternative, that, in any case, the provisions contained in the Nationalization Act with regard to compensation should be declared inadequate from the point of view of international law, and that the amount of such compensation should be determined by arbitration or by the Court ;

that the two first claims are inadmissible, because the Government of the United Kingdom by its Declaration of August 3rd, 1951, abandoned its request for adjudication of the said claims ;

That the third claim is not admissible, no such request having been formulated in the Application instituting proceedings;

That, in any case, the Court has no jurisdiction to deal with it, as this claim was formulated subsequent to the Iranian Government's denunciation on July 10th, 1951, of its Declaration of adherence to the Optional Clause under Article 36 of the Court's Statute, and was not concerned with the settlement of a dispute;

2° That the Court should declare that it lacks jurisdiction *ex officio* in application of Article 2, paragraph 7, of the Charter of the United Nations, the matters dealt with by the Nationalization Laws of March 20th and May 1st, 1951, being essentially within the domestic jurisdiction of States and incapable of being the subject of an intervention by any organ of the United Nations;

3° That the Court has jurisdiction only in so far as jurisdiction is conferred on it by the declarations of the Parties;

That in the present case the Iranian Declaration limits the jurisdiction of the Court to disputes arising after the ratification of the said Declaration, with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia and subsequent to the ratification of the said Declaration;

That the claims of the United Kingdom Government are based either upon treaties concluded between Iran and other Powers, the benefit of which can only be invoked by the United Kingdom by application of the most-favoured-nation clause, a clause which appears only in the treaties concluded between Iran and the United Kingdom in 1857 and 1903, i.e. prior to the ratification of the Iranian Declaration;

or upon an exchange of notes, which does not possess the character of a treaty or convention, dated May 10th, 1928, a date which is prior to the ratification of the Iranian Declaration and which confines itself to noting the Iranian Government's undertaking to respect, in regard to British nationals, the rules of general international law, the violation of which, as such, is not invoked by the United Kingdom Government, and would not give ground for the institution of proceedings before the Court, having regard to the Declarations of the two Parties;

or upon an alleged tacit agreement between the two Governments in connection with the renewal of the Anglo-Iranian Oil Company's concession in 1933, which tacit agreement is formally disputed, and in any case does not possess the character of a treaty or convention, because it was not concluded between States, was not put in writing, and was not registered in conformity with Article 18 of the Covenant of the League of Nations, which was applicable at that time;

That, accordingly, the Court, on these grounds, lacks jurisdiction;

4° That furthermore, a *prima facie* examination suffices to show that the British claims have no relation to the treaties, or alleged treaties, that are invoked, as these instruments manifestly do not possess the scope which the applicant State attributes to them;

That, on this ground also, the Court should declare that it lacks jurisdiction;

5° That the claim concerning the amount of the compensation due to the Anglo-Iranian Oil Company is also inadmissible, because that Company has not yet exhausted the local remedies provided by Iranian law;

6° That the United Kingdom and Iran, having in their Declarations reserved questions which, according to international law, are within the exclusive jurisdiction of States, this reservation, having regard to the substitution of Article 2, paragraph 7, of the Charter of the United Nations for Article 15, paragraph 8, of the Covenant of the League of Nations, must be understood as extending to questions which are essentially within the domestic jurisdiction of States;

That express declarations of this kind undoubtedly reinforce the general provision in Article 2, paragraph 7, of the Charter of the United Nations, and therefore constitute an additional reason for the Court to declare that it lacks jurisdiction;

In view of the foregoing,

To declare that it lacks jurisdiction,

And, in any case, to find that the claims are inadmissible.

As a further alternative,

To place on record for the Iranian Government its declaration that, in so far as may be necessary, it avails itself of the right reserved in its Declaration, to require the suspension of the proceedings, since the dispute before the Court has, in fact, been submitted to the Security Council and is under examination by that body.

On behalf of the United Kingdom Government :

1. That the question of the Court's jurisdiction is the only question which arises for decision by the Court at the present time and no other question, whether or not it is one which could be raised by preliminary objection, falls for decision by the Court at the present time.

2. That the Court has, under Article 36, paragraph 2, of its Statute, jurisdiction in respect of all disputes covered by the declaration of Iran accepting the Optional Clause.

3. That the Iranian declaration accepting the Optional Clause covers disputes arising after the ratification thereof in regard to situations or facts subsequent to the ratification thereof and having reference directly or indirectly to the application of treaties or conventions accepted by Iran at any time.

4. That by reason of the third conclusion, the Court has jurisdiction to entertain the claim of the United Kingdom that Iran, in putting into force the law of 1st May, 1951, relating to the nationalization of the oil industry in Iran, has violated its obligations towards the United Kingdom resulting from the following treaties or conventions accepted by Iran :

(a) The treaties and conventions between Iran and third States enumerated in paragraph 11 of Annex 2 of the United Kingdom

Memorial, being treaties or conventions upon which the United Kingdom is entitled to rely by reason of Article 9 of the Treaty of 1857 between the United Kingdom and Persia and Article 2 of the Treaty of 1903 between the United Kingdom and Persia.

- (b) The exchange of notes between the Imperial Government of Persia and the United Kingdom dated 10th May 1928 regarding the position of British nationals in Persia.
 - (c) The Treaty stipulation arising out of the settlement in 1933, through the mediation of the Council of the League of Nations, of the international dispute between the United Kingdom and Persia, the conditions of which settlement are contained in the Concession Convention concluded by the Imperial Government of Persia with the Anglo-Persian Oil Company in that year.
5. That the contention in paragraph 3 of the Iranian conclusions that the Persian declaration accepting the Optional Clause only covers disputes arising out of treaties accepted by Iran after the date of the ratification of that declaration, is wrong.

6. That if, contrary to the fifth conclusion, the Persian declaration is limited to treaties and conventions accepted by Iran after the date of the ratification of its declaration accepting the Optional Clause, the Court has jurisdiction to entertain the claim by the United Kingdom that Iran has infringed its obligations towards the United Kingdom resulting from the following treaties or conventions accepted by Iran :

- (i) the Treaty of Friendship, Establishment and Commerce between Persia and Denmark signed on the 20th February 1934; upon which the United Kingdom is entitled to rely by reason of Article 9 of the Treaty of 1857 and Article 2 of the Treaty of 1903 between the United Kingdom and Persia, and
- (ii) the treaty stipulation between the Government of Iran and the Government of the United Kingdom referred to in paragraph (c) of Conclusion 4.

7. That the contention in paragraph (1) of the Iranian conclusions that, by reason of a statement in a note of the 3rd August 1951, from the British Embassy in Tehran to the Iranian Government or otherwise, the United Kingdom has abandoned the claims formulated in letter A of its final conclusions contained in paragraph 48 of the United Kingdom Memorial of the 10th October 1951, and that therefore these claims cannot be entertained by the Court

- (a) does not relate to the question of jurisdiction and therefore does not fall for decision by the Court at the present time, and
- (b) is ill-founded.

8. The contention in paragraph (1) of the Iranian conclusions that the alternative claim (*litt. B*) of the final conclusions in paragraph 48 of the United Kingdom Memorial must be rejected on the ground that it was not covered by the Application instituting proceedings

(a) does not relate to the question of jurisdiction, and therefore does not fall for decision by the Court at the present time, and
(b) is ill-founded.

9. The contention in paragraph 1 of the Iranian conclusions that the Court has no jurisdiction to entertain the aforesaid claim B, on the ground that it was formulated after the denunciation by Iran of its declaration accepting the Optional Clause, is ill-founded.

10. That the contention in paragraph 5 of the Iranian conclusions that the said alternative claim B is not receivable because municipal remedies have not been exhausted

(a) does not relate to the question of jurisdiction and therefore does not fall for decision by the Court at the present time, and
(b) is ill-founded.

11. That the last "subsidiary" contention in the Iranian conclusions that, by reason of the penultimate paragraph of the Persian declaration accepting the Optional Clause, Iran is entitled to require that proceedings in the Court should be suspended on the ground that the dispute between the Parties has been submitted to the Security Council of the United Nations,

(a) does not relate to the question of the jurisdiction of the Court and therefore does not fall for decision at the present stage, and

(b) is ill-founded.

12. That the present dispute between the United Kingdom and Iran does not relate to a matter which, according to international law, falls exclusively within the jurisdiction of Iran and therefore the jurisdiction of the Court is not affected by exception (c) of the Iranian declaration accepting the Optional Clause.

13. That the contention in paragraph 6 of the Iranian conclusions that exception (c) of the Iranian declaration accepting the Optional Clause must, having regard to the provisions of paragraph 7 of Article 2 of the Charter of the United Nations, be regarded as extending to questions which are essentially within the jurisdiction of Iran, is ill-founded.

14. That if, contrary to Conclusion 13 above, the Iranian contention referred to in 13 above is correct, the present dispute does not relate to a question which falls essentially within the domestic jurisdiction of Iran.

15. That paragraph 7 of Article 2 of the Charter of the United Nations is not relevant to the jurisdiction of the Court.

16. That if, contrary to Conclusion 15 above, paragraph 7 of Article 2 of the Charter of the United Nations is relevant to the jurisdiction of the Court, the present dispute is not a matter which is essentially within the domestic jurisdiction of Iran.

17. That the Iranian Government, having in its conclusions submitted to the Court for decision several questions which are not objections to the jurisdiction of the Court and which could only be decided if the Court had jurisdiction, has by this action conferred jurisdiction upon the Court on the basis of the principle of *forum prorogatum*.

For these reasons, the Government of the United Kingdom accordingly prays the Court :

- (1) to declare that it has jurisdiction or, alternatively, to join the question of jurisdiction to the merits ; and
- (2) to order the Iranian Government to plead on the merits and fix the time-limits for the further written proceedings.

* * *

On April 29th, 1933, an agreement was concluded between the Imperial Government of Persia (now the Imperial Government of Iran, which name the Court will use hereinafter) and the Anglo-Persian Oil Company, Limited (later the Anglo-Iranian Oil Company, Limited), a company incorporated in the United Kingdom. This agreement was ratified by the Iranian Majlis on May 28th, 1933, and came into force on the following day after having received the Imperial assent.

On March 15th and 20th, 1951, the Iranian Majlis and Senate, respectively, passed a law enunciating the principle of nationalization of the oil industry in Iran. On April 28th and 30th, 1951, they passed another law "concerning the procedure for enforcement of the law concerning the nationalization of the oil industry throughout the country". These two laws received the Imperial assent on May 1st, 1951.

As a consequence of these laws, a dispute arose between the Government of Iran and the Anglo-Iranian Oil Company, Limited. The Government of the United Kingdom adopted the cause of this British Company and submitted, in virtue of the right of diplomatic protection, an Application to the Court on May 26th, 1951, instituting proceedings in the name of the Government of the United Kingdom of Great Britain and Northern Ireland against the Imperial Government of Iran.

On June 22nd, 1951, the Government of the United Kingdom submitted, in accordance with Article 41 of the Statute and Article 61 of the Rules of Court, a request that the Court should indicate provisional measures in order to preserve the rights of that Government. In view of the urgent nature of such a request, the Court, by Order of July 5th, 1951, indicated certain provisional measures by virtue of the power conferred on it by Article 41 of the Statute. The Court stated expressly that "the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction".

While the Court derived its power to indicate these provisional measures from the special provisions contained in Article 41 of the Statute, it must now derive its jurisdiction to deal with the merits of the case from the general rules laid down in Article 36 of the

Statute. These general rules, which are entirely different from the special provisions of Article 41, are based on the principle that the jurisdiction of the Court to deal with and decide a case on the merits depends on the will of the Parties. Unless the Parties have conferred jurisdiction on the Court in accordance with Article 36, the Court lacks such jurisdiction.

In the present case the jurisdiction of the Court depends on the Declarations made by the Parties under Article 36, paragraph 2, on condition of reciprocity, which were, in the case of the United Kingdom, signed on February 28th, 1940, and, in the case of Iran, signed on October 2nd, 1930, and ratified on September 19th, 1932. By these Declarations, jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it. As the Iranian Declaration is more limited in scope than the United Kingdom Declaration, it is the Iranian Declaration on which the Court must base itself. This is common ground between the Parties.

The Iranian Declaration, which was drafted in French, is as follows :

[Translation]

"The Imperial Government of Persia recognizes as compulsory *ipso facto* and without special agreement in relation to any other State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Permanent Court of International Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, in any disputes arising after the ratification of the present declaration with regard 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, with the exception of :

- (a) disputes relating to the territorial status of Persia, including those concerning the rights of sovereignty of Persia over its islands and ports ;
- (b) disputes in regard to which the Parties have agreed or shall agree to have recourse to some other method of peaceful settlement ;
- (c) disputes with regard to questions which, by international law, fall exclusively within the jurisdiction of Persia ;

However, the Imperial Government of Persia reserves the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to the Council of the League of Nations.

The present declaration is made for a period of six years. At the expiration of that period, it shall continue to bear its full effects until notification is given of its abrogation."

According to the first clause of this Declaration, the Court has jurisdiction only when a dispute relates to the application of a treaty or convention accepted by Iran. The Parties are in agreement on this point. But they disagree on the question whether this juris-

diction is limited to the application of treaties or conventions accepted by Iran after the ratification of the Declaration, or whether it comprises the application of treaties or conventions accepted by Iran at any time.

The Government of Iran contends that the jurisdiction of the Court is limited to the application of treaties or conventions accepted by Iran after the ratification of the Declaration. It refers to the fact that the words "*et postérieurs à la ratification de cette déclaration*" follow immediately after the expression "*traités ou conventions acceptés par la Perse*".

The Government of the United Kingdom contends that the words "*et postérieurs à la ratification de cette déclaration*" refer to the expression "*au sujet de situations ou de faits*". Consequently, the Government of the United Kingdom maintains that the Declaration relates to the application of treaties or conventions accepted by Iran at any time.

If the Declaration is considered from a purely grammatical point of view, both contentions might be regarded as compatible with the text. The words "*et postérieurs à la ratification de cette déclaration*" may, strictly speaking, be considered as referring either to the expression "*traités ou conventions acceptés par la Perse*", or to the expression "*au sujet de situations ou de faits*".

But the Court cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court.

The text itself conveys the impression that the words "*postérieurs à la ratification de cette déclaration*" relate to the expression which immediately precedes them, namely, to "*traités ou conventions acceptés par la Perse*", to which they are linked by the word "*et*". This is, in the opinion of the Court, the natural and reasonable way of reading the text. It would require special and clearly established reasons to link the words "*et postérieurs à la ratification de cette déclaration*", to the expression "*au sujet de situations ou de faits*", which is separated from them by a considerable number of words, namely, "*ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse*".

The Government of the United Kingdom has endeavoured to invoke such special reasons. It has relied on the fact that the Iranian Declaration is copied from the corresponding clause adopted by Belgium in 1925 which refers to "*tous les différends qui s'élèveraient après la ratification de la présente déclaration au sujet de situations ou de faits postérieurs à cette ratification*". It is argued that thereafter this formula or a similar one was adopted by numerous States and that the Iranian Declaration must be understood in the same sense, namely, that the expression "*et postérieurs à la ratification de cette*

déclaration" relates only to the expression "*au sujet de situations ou de faits*".

But these expressions, which in the Belgian Declaration are closely linked to each other, are in the Iranian Declaration separated by the words "*ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse*". By the interpolation of these words, the substance of the usual formula was so much altered that it is impossible to seek the real meaning of the Iranian Declaration in that formula. This Declaration must be interpreted as it stands, having regard to the words actually used.

The Government of the United Kingdom has further argued that the Declaration would contain some superfluous words if it is interpreted as contended by Iran. It asserts that a legal text should be interpreted in such a way that a reason and a meaning can be attributed to every word in the text.

It may be said that this principle should in general be applied when interpreting the text of a treaty. But the text of the Iranian Declaration is not a treaty text resulting from negotiations between two or more States. It is the result of unilateral drafting by the Government of Iran, which appears to have shown a particular degree of caution when drafting the text of the Declaration. It appears to have inserted, *ex abundanti cautela*, words which, strictly speaking, may seem to have been superfluous. This caution is explained by the special reasons which led the Government of Iran to draft the Declaration in a very restrictive manner.

On May 10th, 1927, the Government of Iran denounced all treaties with other States relating to the régime of capitulations, the denunciation to take effect one year thereafter, and it had commenced negotiations with these States with a view to replacing the denounced treaties by new treaties based on the principle of equality. At the time when the Declaration was signed in October 1930, these negotiations had been brought to an end with some States, but not with all. The Government of Iran considered all capitulatory treaties as no longer binding, but was uncertain as to the legal effect of its unilateral denunciations. It is unlikely that the Government of Iran, in such circumstances, should have been willing, on its own initiative, to agree that disputes relating to such treaties might be submitted for adjudication to an international court of justice by virtue of a general clause in the Declaration.

It is reasonable to assume, therefore, that when the Government of Iran was about to accept the compulsory jurisdiction of the Court, it desired to exclude from that jurisdiction all disputes which might relate to the application of the capitulatory treaties, and the Declaration was drafted on the basis of this desire. In the light of these considerations it does not seem possible to hold that the term "*traités ou conventions*", used in the Declaration, could mean treaties

or conventions concluded at any time, as contended by the Government of the United Kingdom.

It is objected that the Government of Iran, at or about the time when it signed the Declaration, concluded with a number of other States bilateral treaties which provided for arbitration of disputes relating to treaties already concluded or to be concluded. This attitude is said to be contrary to the view that the Government of Iran desired to exclude from the jurisdiction of the Court treaties accepted by it before the ratification of the Declaration.

This objection loses all weight when it is viewed in the light of the special reasons which prompted the formulation by the Iranian Government of its Declaration on the one hand, and of the arbitration clauses inserted in certain treaties on the other. That Government was dealing with two different situations, one being particular, the other general. It is quite understandable that it was disposed to accept the arbitration clause as it is expressed in the treaties concluded with certain States which were willing to give up capitulatory rights. But the Government of Iran was confronted with an entirely different problem when it was preparing a Declaration under Article 36, paragraph 2, of the Court's Statute, binding itself to submit to the jurisdiction of the Court in relation to all States which had signed similar Declarations or which might do so in the future, whether such States had concluded with Iran treaties replacing the régime of capitulations or not.

Having regard to these considerations, the Court is satisfied that it was the manifest intention of the Government of Iran to exclude from the jurisdiction of the Court disputes relating to the application of all treaties or conventions accepted by it before the ratification of the Declaration. This intention has found an adequate expression in the text of the Declaration as interpreted above by the Court.

That such was the intention of the Government of Iran is confirmed by an Iranian law of June 14th, 1931, by which the Majlis approved the Declaration. This law was passed some months after the Declaration was signed and some months before it was ratified. It was stated in that law that the Majlis approved the Declaration relating to the compulsory jurisdiction of the Court "as it was signed by the representative of Iran" on October 2nd, 1930; it was further stated that the law comprised a single article and the text of Article 36 of the Court's Statute, "together with the conditions of the Iranian Government's accession to the aforesaid Article". One of these conditions was mentioned as follows:

"In respect of all disputes arising out of situations or facts relating, directly or indirectly, to the execution of treaties and conventions which the Government will have accepted after the ratification of the Declaration."

This clause, referring as it does to "treaties and conventions which the Government will have accepted after the ratification of the Declaration", is, in the opinion of the Court, a decisive confirmation of the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court.

It is argued that the terms used in the law are not identical with the text of the Declaration. That is true. But it is irrelevant, since the law only paraphrases the Declaration without repeating it textually. Had the Iranian Government been of the opinion that the terms of the law differed from the true meaning of the Declaration, as it was signed in October 1930, it could easily have altered the Declaration. But it did not do so. It ratified it in September 1932 without any modification. It must therefore have considered that the Declaration corresponded to the explanation given in the law of 1931.

It is contended that this evidence as to the intention of the Government of Iran should be rejected as inadmissible and that this Iranian law is a purely domestic instrument, unknown to other governments. The law is described as "a private document written only in the Persian language which was not communicated to the League or to any of the other States which had made declarations".

The Court is unable to see why it should be prevented from taking this piece of evidence into consideration. The law was published in the Corpus of Iranian laws voted and ratified during the period from January 15th, 1931, to January 15th, 1933. It has thus been available for the examination of other governments during a period of about twenty years. The law is not, and could not be, relied on as affording a basis for the jurisdiction of the Court. It was filed for the sole purpose of throwing light on a disputed question of fact, namely, the intention of the Government of Iran at the time when it signed the Declaration.

Having regard to the foregoing considerations, the Court concludes that the Declaration is limited to disputes relating to the application of treaties or conventions accepted by Iran after the ratification of the Declaration.

* * *

The United Kingdom contends, however, that even if the Court were to hold that the Declaration applies only to disputes relating to the application of treaties or conventions accepted by Iran after the ratification of the Declaration, it would still have jurisdiction in the present case. The contention of the United Kingdom is that the acts of which it complains constitute a violation by Iran of certain of its obligations to the United Kingdom resulting from treaties or conventions accepted by Iran after the ratification of the Declaration. The treaties and conventions relied upon in this connection are :

(i) The Treaty of Friendship, Establishment and Commerce concluded between Iran and Denmark on February 20th, 1934 ; the Establishment Convention concluded between Iran and Switzerland on April 25th, 1934 ; and the Establishment Convention concluded between Iran and Turkey on March 14th, 1937.

(ii) What the United Kingdom Government describes as the "treaty stipulation" between the Government of Iran and the Government of the United Kingdom arising out of the settlement in 1933, through the mediation of the Council of the League of Nations, of the international dispute between the United Kingdom and Iran relating to a concession known as the D'Arcy Concession.

Article IV of the Treaty of 1934 between Iran and Denmark, upon which the United Kingdom Government relies, provides that :

[Translation] "The nationals of each of the High Contracting Parties shall, in the territory of the other, be received and treated, as regards their persons and property, in accordance with the principles and practice of ordinary international law. They shall enjoy therein the most constant protection of the laws and authorities of the territory for their persons, property, rights and interests."

The Establishment Conventions concluded by Iran with Switzerland and Turkey each contain an article similar to Article IV of the Iranian-Danish Treaty.

The United Kingdom relies on these three treaties by virtue of the most-favoured-nation clause contained in Article IX of the Treaty concluded between the United Kingdom and Iran on March 4th, 1857, and in Article 2 of the Commercial Convention concluded between the United Kingdom and Iran on February 9th, 1903.

Article IX of the Treaty of 1857 reads :

"The High Contracting Parties engage that, in the establishment and recognition of Consuls-General, Consuls, Vice-Consuls, and Consular Agents, each shall be placed in the dominions of the other on the footing of the most-favoured nation ; and that the treatment of their respective subjects, and their trade, shall also, in every respect, be placed on the footing of the treatment of the subjects and commerce of the most-favoured nation."

Article II of the Commercial Convention of 1903 provides as follows :

[Translation] "... It is formally stipulated that British subjects and importations in Persia, as well as Persian subjects and Persian importations in the British Empire, shall continue to enjoy in all respects, the régime of the most-favoured nation...."

It is argued by the United Kingdom Government that the conduct of the Iranian Government towards the Anglo-Iranian Oil

Company constitutes a breach of the principles and practice of international law which, by her treaty with Denmark, Iran promised to observe towards Danish nationals, and which, by the operation of the most-favoured-nation clause contained in the treaties between Iran and the United Kingdom, Iran became bound to observe towards British nationals. Consequently, the argument continues, the dispute which the United Kingdom has brought before the Court concerns situations or facts relating directly or indirectly to the application of a treaty—the Treaty of 1934 between Denmark and Iran—accepted by Iran after the ratification of her Declaration.

The Court cannot accept this contention. It is obvious that the term *traités ou conventions* used in the Iranian Declaration refers to treaties or conventions which the Party bringing the dispute before the Court has the right to invoke against Iran, and does not mean any of those which Iran may have concluded with any State. But in order that the United Kingdom may enjoy the benefit of any treaty concluded by Iran with a third party by virtue of a most-favoured-nation clause contained in a treaty concluded by the United Kingdom with Iran, the United Kingdom must be in a position to invoke the latter treaty. The treaty containing the most-favoured-nation clause is the basic treaty upon which the United Kingdom must rely. It is this treaty which establishes the juridical link between the United Kingdom and a third-party treaty and confers upon that State the rights enjoyed by the third party. A third-party treaty, independent of and isolated from the basic treaty, cannot produce any legal effect as between the United Kingdom and Iran : it is *res inter alios acta*.

It is contended by the United Kingdom that upon the coming into force of the Iranian-Danish Treaty on March 6th, 1935, Iran became bound, by the operation of the most-favoured-nation clause, to treat British nationals on her territory in accordance with the principles and practice of international law. Without considering the meaning and the scope of the most-favoured-nation clause, the Court confines itself to stating that this clause is contained in the Treaties of 1857 and 1903 between Iran and the United Kingdom, which are not subsequent to the ratification of the Iranian Declaration. While Iran is bound by her obligations under these Treaties as long as they are in force, the United Kingdom is not entitled to rely upon them for the purpose of establishing the jurisdiction of the Court, since they are excluded by the terms of the Declaration.

The United Kingdom argued that the question which the Court had to consider was not "what are the treaties which confer on Great Britain the rights in question", but "what are the treaties whose application is in dispute". But from the legal point of view, what is in dispute is not the application of the Treaty of 1934 between Iran and Denmark, but the application of the Treaty of 1857 or the Convention of 1903 between Iran and

the United Kingdom in conjunction with the Treaty of 1934 between Iran and Denmark. There could be no dispute between Iran and the United Kingdom upon the Iranian-Danish Treaty alone.

The United Kingdom also put forward, in a quite different form, an argument concerning the most-favoured-nation clause. If Denmark, it is argued, can bring before the Court questions as to the application of her 1934 Treaty with Iran, and if the United Kingdom cannot bring before the Court questions as to the application of the same Treaty to the benefit of which she is entitled under the most-favoured-nation clause, then the United Kingdom would not be in the position of the most-favoured nation. The Court needs only observe that the most-favoured-nation clause in the Treaties of 1857 and 1903 between Iran and the United Kingdom has no relation whatever to jurisdictional matters between the two Governments. If Denmark is entitled under Article 36, paragraph 2, of the Statute, to bring before the Court any dispute as to the application of its Treaty with Iran, it is because that Treaty is subsequent to the ratification of the Iranian Declaration. This can not give rise to any question relating to most-favoured-nation treatment.

The word "indirectement" in the phrase "au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions" has been relied upon in arguing that the dispute brought before the Court may be considered as involving indirectly the application of a treaty subsequent to the Declaration—the Iranian-Danish Treaty of 1934. The words "directement ou indirectement" clearly describe the manner in which a certain situation or certain facts forming the subject-matter of a dispute may be related to a treaty : such relation may be direct or indirect. But such direct or indirect relation is not in issue in the present case. What is in issue is whether the United Kingdom, for the purpose of satisfying the requirements of the Declaration, can invoke a treaty to which it is not a party by way of a treaty to which it is a party. The word "indirectement" cannot apply to the solution of this question. If the United Kingdom is not entitled to invoke its own Treaty of 1857 or 1903 with Iran, it cannot rely upon the Iranian-Danish Treaty, irrespective of whether the facts of the dispute are directly or indirectly related to the latter treaty.

The Court must, therefore, find in regard to the Iranian-Danish Treaty of 1934, that the United Kingdom is not entitled, for the purpose of bringing its present dispute with Iran under the terms of the Iranian Declaration, to invoke its Treaties of 1857 and 1903 with Iran, since those Treaties were concluded before the ratification of the Declaration ; that the most-favoured-nation clause contained in those Treaties cannot thus be brought into operation ; and that, consequently, no treaty concluded by Iran with any third party can be relied upon by the United Kingdom in the present case.

* * *

The Court will now consider whether the settlement in 1933 of the dispute between the Government of the United Kingdom and the Government of Iran relating to the D'Arcy Concession, through the mediation of the Council of the League of Nations, resulted, as is claimed by the United Kingdom, in any agreement between the two Governments which may be regarded as a treaty or convention within the meaning of this expression in the Iranian Declaration.

Whether or not the concession contract of 1933 or the settlement of the dispute in that year constituted an agreement between the Government of Iran and the Government of the United Kingdom is a question relating to jurisdiction, the solution of which does not depend upon a consideration of the merits. It can be and must be determined at this stage, quite independently of the facts surrounding the act of nationalization complained of by the United Kingdom.

In November 1932 the Iranian Government decided to cancel the D'Arcy Concession. On December 19th, 1932, the United Kingdom Government, having protested to the Iranian Government without avail, submitted the case to the Council of the League of Nations. The Council placed the question on the agenda and appointed a Rapporteur. On February 3rd, 1933, the Rapporteur informed the Council that the Governments of Iran and the United Kingdom had agreed to suspend all proceedings before the Council ; that they agreed that the Company should immediately enter into negotiations with the Iranian Government, the respective legal points of view being entirely reserved ; and that, in the event that the negotiations should fail, the question should go back to the Council. After prolonged discussion between the representatives of the Iranian Government and the representatives of the Company, an agreement—the Concession Contract—was signed by them at Tehran on April 29th. It was subsequently ratified by the Iranian Government. On October 12th, the Rapporteur submitted his report, together with the text of the new concession, to the Council, declaring that "the dispute between His Majesty's Government in the United Kingdom and the Imperial Government of Persia is now finally settled". Thereupon the representatives of Iran and the United Kingdom at the Council each expressed their satisfaction at the settlement thus reached. The question was removed from the agenda of the Council.

The United Kingdom maintains that, as a result of these proceedings, the Government of Iran undertook certain treaty obligations towards the Government of the United Kingdom. It endeavours to establish those obligations by contending that the agreement signed by the Iranian Government with the Anglo-Persian Oil

Company on April 29th, 1933, has a double character, the character of being at once a concessionary contract between the Iranian Government and the Company and a treaty between the two Governments. It is further argued by the United Kingdom that even if the settlement reached in 1933 only amounted to a tacit or an implied agreement, it must be considered to be within the meaning of the term "treaties or conventions" contained in the Iranian Declaration.

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 ; there is no privity of contract between the Government of Iran and the Government of the United Kingdom. Under the contract the Iranian Government cannot claim from the United Kingdom Government any rights which it may claim from the Company, nor can it be called upon to perform towards the United Kingdom Government any obligations which it is bound to perform towards the Company. The document bearing the signatures of the representatives of the Iranian Government and the Company has a single purpose : the purpose of regulating the relations between that Government and the Company in regard to the concession. It does not regulate in any way the relations between the two Governments.

This juridical situation is not altered by the fact that the concessionary contract was negotiated and entered into through the good offices of the Council of the League of Nations, acting through its Rapporteur. The United Kingdom, in submitting its dispute with the Iranian Government to the League Council, was only exercising its right of diplomatic protection in favour of one of its nationals. It was seeking redress for what it believed to be a wrong which Iran had committed against a juristic person of British nationality. The final report by the Rapporteur to the Council on the successful conclusion of a new concessionary contract between the Iranian Government and the Company gave satisfaction to the United Kingdom Government. The efforts of the United Kingdom Government to give diplomatic protection to a British national had thus borne fruit, and the matter came to an end with its removal from the agenda.

Throughout the proceedings before the Council, Iran did not make any engagements to the United Kingdom other than to negotiate with the Company, and that engagement was fully executed. Iran did not give any promise or make any pledge of any kind to the United Kingdom in regard to the new concession. The fact that the concessionary contract was reported to the Council and placed in its records does not convert its terms into the terms of a treaty by which the Iranian Government is bound *vis-à-vis* the United Kingdom Government.

The United Kingdom has stressed the similarity between the case of *The Free Zones of Upper Savoy and the District of Gex* and the present case, and has cited the Order made by the Permanent Court of International Justice on December 6th, 1930, in the former case to show that the concessionary contract of 1933 "laid down what was to be the law between the United Kingdom and Iran". The Court does not see any analogy between the two cases. The subject-matter of the dispute in that part of the Free Zones case which has been relied upon by the United Kingdom related to customs matters, which were of direct concern to the two countries, while the subject-matter of the dispute between the United Kingdom and Iran in 1932 and 1933 arose out of a private concession. The conclusion of the new concessionary contract removed the cause of a complaint by the United Kingdom against Iran. It did not regulate any public matters directly concerning the two Governments. It could not possibly be considered to lay down the law between the two States.

It is thus clear that the proceedings before the Council of the League of Nations which led up to the settlement in 1933 of the dispute between the United Kingdom and Iran relating to the D'Arcy Concession, did not result in the conclusion of any treaty or convention between the two countries.

* * *

The Court has found that the United Kingdom is not entitled to invoke any of the treaties concluded by Iran with Denmark and Switzerland in 1934 and with Turkey in 1937 and that no treaty or convention was concluded in 1933 between Iran and the United Kingdom. No other treaties having been relied upon by the United Kingdom as treaties or conventions subsequent to the ratification of the Iranian Declaration, the Court must conclude that the dispute brought before it by the United Kingdom is not one of those disputes arising "in regard 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". Consequently, the Court cannot derive jurisdiction in the present case from the terms of the Declaration ratified by Iran on September 19th, 1932.

* * *

During the oral proceedings, the United Kingdom Government presented a Submission "that the Iranian Government, having in its Conclusions submitted to the Court for decision several questions which are not objections to the jurisdiction of the Court, and which could only be decided if the Court had jurisdiction, has by this action conferred jurisdiction upon the Court on the basis of the principle of *forum prorogatum*". Although the Agent of the United

Kingdom Government stated subsequently that he did not wish to press his contention on this point, the Submission was not formally withdrawn. The Court must, therefore, deal with it.

The principle of *forum prorogatum*, if it could be applied to the present case, would have to be based on some conduct or statement of the Government of Iran which involves an element of consent regarding the jurisdiction of the Court. But that Government has consistently denied the jurisdiction of the Court. Having filed a Preliminary Objection for the purpose of disputing the jurisdiction, it has throughout the proceedings maintained that Objection. It is true that it has submitted other Objections which have no direct bearing on the question of jurisdiction. But they are clearly designed as measures of defence which it would be necessary to examine only if Iran's Objection to the jurisdiction were rejected. No element of consent can be deduced from such conduct on the part of the Government of Iran. Consequently, the Submission of the United Kingdom on this point cannot be accepted.

Accordingly, the Court has arrived at the conclusion that it has no jurisdiction to deal with the case submitted to it by the Application of the Government of the United Kingdom dated May 26th, 1951. It is unnecessary for the Court to consider any of the other objections raised to its jurisdiction. Since the Court is without jurisdiction in the present case, it need not examine any arguments put forward by the Iranian Government against the admissibility of the claims of the United Kingdom Government.

* * *

In its above-mentioned Order of July 5th, 1951, the Court stated that the provisional measures were indicated "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". It follows that this Order ceases to be operative upon the delivery of this Judgment and that the Provisional Measures lapse at the same time.

* * *

For these reasons,
THE COURT,
by nine votes to five,
finds that it has no jurisdiction in the present case.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-second day of July, one thousand nine hundred and fifty-two, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and to the Imperial Government of Iran, respectively.

(Signed) J. G. GUERRERO,
Vice-President.

(Signed) E. HAMBRO,
Registrar.

Sir Arnold McNAIR, President, availing himself of the right conferred on him by Article 57 of the Statute, appends to the Judgment the statement of his individual opinion.

Judges ALVAREZ, HACKWORTH, READ and LEVI CARNEIRO, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment statements of their dissenting opinions.

(Initialled) J. G. G.
(Initialled) E. H.