3. OBSERVATIONS AND SUBMISSIONS PRESENTED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN REGARD TO THE PRELIMINARY OBJECTION LODGED BY THE IMPERIAL GOVERNMENT OF IRAN

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[NOTE—As stated in footnote 1 on page 67 of the Memorial and in the note at the beginning of Annex 3 thereto, the United Kingdom Government endeavours as far as possible throughout the pleadings in this case to use the words "Persia" and "Persian" when dealing with the pre-1935 period and the words "Iran" and "Iranian" when dealing with the post-1935 period.]

Introductory

1. These Observations and Submissions are presented to the Court in pursuance of an Order made by the President of the Court dated 11th February 1952. (*I.C.J. Reports 1952*, page 13.) In submitting them the Government of the United Kingdom maintains all the contentions and submissions which it has presented in its Memorial and in the Annexes thereto, to which these Observations and Submissions are supplementary.

2. The document filed with the Court by the Iranian Government on 4th February 1952 is entitled "*Observations préliminaires — Refus du Gouvernement impérial de reconnaitre la compétence de la Cour — Affaire de l'ex-Anglo-Iranian Oil Co*". It is treated by the President of the Court in the above-named Order as a Preliminary Objection falling within Article 62 of the Rules of Court, and the Government of the United Kingdom proposes to treat it as a Preliminary Objection to the jurisdiction of the Court to deal with the merits of the *Anglo-Iranian Oil Company* case and to reply to it accordingly. The Preliminary Observations of the Iranian Government appear to evince some confusion as to the question which is now before the Court. It will be convenient, therefore, before turning to the main purpose of these Observations and Submissions, to clear up this confusion and to dispose of certain irrelevant matters introduced by the Iranian Government.

The Order of 5th July 1951

3. The Iranian Government has devoted some paragraphs (paragraphs 3-5) of its Preliminary Observations to commenting, in terms which are scarcely consistent with the respect due to the International Court of Justice, on the Order of the Court

made on 5th July 1951, indicating Interim Measures of Protection (*I.C.J. Reports 1951*, page 89), and has alleged, *inter alia*, that the Court had no competence to make that Order. These comments and allegations are quite irrelevant at the present stage of the proceedings. The question of the Court's competence to make the Order indicating Interim Measures of Protection is a different question from that of the Court's jurisdiction to determine the dispute on the merits, and the former question is not now before the Court. The Court cannot now be asked to reconsider whether or not it came to a correct decision in making its Order of 5th July. The Iranian Government did indeed, before that Order was made, contest the competence of the Court. It addressed to the Court a communication, which is referred to in the Order of 5th July, and the Court in its Order dealt specifically with the two objections which the Iranian Government had raised in that communication. The Iranian Government has failed to appreciate correctly the principle upon which the Court proceeded in considering itself competent to make that Order [1]. The United Kingdom Government infers from the Order that the Court did not, as the Iranian Government alleges in paragraph 3 of its Preliminary Observations, proceed on the basis that its competence to deal with the merits of the dispute was merely "éventuellement possible". Of the two objections which Iran had put forward, one (namely that the dispute was merely one between the Iranian Government and the Anglo-Iranian Oil Company) was totally rejected by the Court, as being founded on a misconception, and the other (that relative to domestic jurisdiction) was stated by the Court to be an objection which, having regard to the grounds on which the United Kingdom Government based its claim, could not be accepted *a priori*, that is to say it was an objection which could not in principle be established on a summary consideration. The Government of the United Kingdom does not consider it necessary to comment further on the gratuitous and discourteous remarks made in this connection by the Iranian Government [2].

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[1] The Iranian Government quotes from the book of the former Judge Manley O. Hudson, but it does not quote from the latest edition of that work, which is dated 1943 and where the author expressed views somewhat different from those in the earlier edition.

[2] On pages 289 and 290 of its Preliminary Observations, the Iranian Government indulges in a digression into what seem to be mere technicalities of French municipal law, into which the Government of the United Kingdom does not propose to follow it. These technicalities do not appear to be germane, even by way of analogy, to the question of the Court's competence to indicate Interim Measures, a question which itself is quite irrelevant to the matter now before the Court. It will be sufficient to say that that competence derives solely from Article 41 of the Statute of the Court and Article 61 of the Rules of Court, and that the Court, in making the Order of 5th July, acted strictly within the powers conferred on it by those Articles.

The proceedings in the Security Council

4. Following upon the Order of 5th July 1951 and the further events described in paragraphs 1, 2 and 2A of the Memorial, the United Kingdom Government felt obliged to bring to the notice of the Security Council the fact that the Iranian Government had refused to comply with the Order indicating Interim Measures of Protection (which, in accordance with Article 41 (2) of the Statute of the Court, had been notified to the Security Council), but on the contrary was persisting in the course of action which had led the United Kingdom to apply to the Court for Interim Measures of Protection. Accordingly, on 29th September 1951, the United Kingdom submitted to the Security Council the draft resolution which is printed as Annex 1 hereto; subsequently the United Kingdom submitted in succession two revised draft resolutions which are printed as Annexes 2 and 3 hereto. An extended debate took place in which representatives both of the United Kingdom and of Iran took part [1]. The United Kingdom representative did not, of course, put before the Security Council the grounds on which the Government of the United Kingdom, though not in general disputing the right of a State to nationalize enterprises situated in its territory, contends that, in its actions towards the Anglo-Iranian Oil Company, Iran had contravened international law, grounds which are set out in the United Kingdom Memorial and are summarized in paragraph 7 thereof. Nor, of course, did the United Kingdom representative place before the Security Council the grounds on which the United Kingdom alleges that the Court has jurisdiction to decide the present case upon the merits, grounds which are set out in Annex 2 to the Memorial. Neither of these was relevant to the matter which the United Kingdom was bringing to the attention of the Security Council, namely the failure of Iran to comply with the Court's Order indicating Interim Measures of Protection. On 19th October, on the proposal of the French representative (S/PV. 565, page 6), the Council resolved to adjourn consideration of the latest United Kingdom draft resolution until after the Court had decided the question of its (the Court's) competence to deal with the *Anglo-Iranian Oil Company* case on the merits; the words used by the French representative were: "until the International Court of Justice shall have ruled upon its own competence in the matter".

The sole question which the Court has to consider is whether it has jurisdiction to deal with the merits of the case

5. It is, in the submission of the United Kingdom Government, important to remember that the two questions:

[1] The verbatim report of this debate is contained in S/PV. 559-S/PV. 565.

(i) has the Security Council jurisdiction to entertain the draft resolutions submitted by the United Kingdom, or (in general) to consider or take any action in relation to the *Anglo-Iranian Oil Company* case ? and

(ii) has the International Court of Justice jurisdiction to decide the *Anglo-Iranian Oil Company* case on the merits ?

are quite distinct and do not fall to be determined by the same criteria. This point was expressed very clearly in the Security Council by Mr. Tsiang[1]. The first question (jurisdiction of the Security Council) depends in the *first place* on whether the dispute falls within the provisions of Chapter VI of the Charter or whether the Security Council has jurisdiction under Article 41 (2) of the Court's Statute or Article 94 (2) of the Charter, and in the *second place* whether, if so, the Security Council is deprived of jurisdiction by Article 2 (7) of the Charter. That question (namely the question of the jurisdiction of the Security Council) is one which the Court has not to decide in these proceedings. Indeed, it is a question which could not arise for the Court except upon a request for an advisory opinion under Article 96 of the Charter. The Government of the United Kingdom does not therefore propose to address any argument to the Court upon this first question. The second question (the jurisdiction of the Court) depends on Article 36 of the Court's Statute, and in particular upon paragraph 2 of that Article and upon the terms of the acceptance of the Optional Clause by the United Kingdom and by Iran.

6. It will appear from paragraphs 9-14 of these Observations and Submissions that, in the submission of the Government of the United Kingdom, Article 2 (7) of the Charter is not relevant to the question of the jurisdiction of the Court at all, and that consequently the Court, in deciding the question now before it, will not have to consider the meaning or effect of that paragraph. It is none the less true that the decision of the Court on the question of its own jurisdiction will, as it appears that certain members of the Security Council believed[2], assist the Security Council in determining the question of its (the Council's) jurisdiction. This is so for two reasons :

(i) Both Persia and the United Kingdom, in their declarations accepting the compulsory jurisdiction of the Court, made

[1] Mr. Tsiang said : "However, I should like to call the attention of the Coucil to this fact : The competence of the Security Council and the competence of the International Court of Justice are not identical. Should the Court decide that it was not competent to render judgment on this question, that would not automatically mean that the Security Coucil was also not competent to deal with this question. On the other hand, should the Court decide that it was competent to render judgment on this question, that also would not automatically mean that the Security Council was competent" (S/PV. 565, pp. 16-20).

[2] See the speeches of the representatives of France and India (S/PV. 565, page 6 and page 36).

reservations relating to "domestic jurisdiction". In deciding the question of its jurisdiction, the Court will have to interpret and apply the words used in these reservations, which read as follows :

(By Persia)

"questions qui, d'après le droit international, relèveraient exclusivement de la juridiction de la Perse".

(By the United Kingdom)

"questions which by international law fall exclusively within the jurisdiction of the United Kingdom".

In the French text of Article 2 (7) of the Charter there occur the words *"compétence nationale"*, and in the English text the words "domestic jurisdiction". For reasons explained in the United Kingdom Memorial[1], there can be no doubt that the expressions *"juridiction"* and *"compétence nationale"* in French and "jurisdiction" and "domestic jurisdiction" in English bear the same meaning. The difference (if any) between the effect of the words quoted above from the respective declarations on the one hand and that of the words "matters which are essentially within the domestic jurisdiction of any State" *("des affaires qui relèvent essentiellement de la compétence nationale d'un État")* in Article 2 (7) of the Charter on the other hand, lies in the difference (if any) between the effect of the qualifying adverbs "exclusively" *("exclusivement")* and "essentially" *("essentiellement")*[2]. In elucitating the meaning of the word "jurisdiction" *("juridiction")* in its application to the present case the Court will, therefore, inevitably assist the Security Council in applying to the same case the words "domestic jurisdiction" *("compétence nationale")* in Article 2 (7) of the Charter. It is believed that this is what the Indian representative on the Security Council meant (S/PV. 565, page 36).

(ii) The second reason why the Court's decision on its own competence will assist the Security Council was indicated by the representative of Ecuador (S/PV. 565, page 21),

[1] See Annex 2, paragraph 18, footnotes 2 and 3 (Memorial, p. 156), and Annex 2, paragraph 26 (A) (Memorial, p. 162).

[2] It follows, from the contention of the United Kingdom Government, that Article 2 (7) is not relevant to the question of the jurisdiction of the Court, that the Court will not have to pronounce upon the meaning of the word "essentially" *("essentiellement")* in that Article or upon the question whether, and if so in what respect, it differs from that of the word "exclusively" *("exclusivement")* in the declarations. The United Kingdom Government will however argue in the alternative, in Annex 4 of these Observations and Submissions, that the present case is not *essentially* within the domestic jurisdiction of Iran any more than it is *exclusively* within her jurisdiction.

where he said that, if the Court held itself competent, the judgment of the Court would either be complied with by the losing party, in which event the matter would not trouble the Security Council again, or, if it were not complied with, the other party could bring the case under Article 94 (2) of the Charter. He indicated that the object of Ecuador was to "reinforce the authority of the International Court of Justice" and he therefore considered it essential that the legal issue, the question of domestic jurisdiction, should be decided by the Court.

7. The Iranian Government in its Preliminary Observations has contended that the decision to which the Court will come on the question of its competence cannot even be considered as an advisory opinion and, consequently, is not binding on anyone (page 3, paragraph 1, *ad fin.*), and further that the present discussion concerning the jurisdiction of the Court is designed *solely* to enlighten the Security Council and can have "aucun caractère d'ordre judiciaire" (page 4, paragraph 2). The decision of the Court will, as has been explained in the preceding paragraph, incidentally assist the Security Council in deciding the question of its own competence, but that this will not be its sole effect is clear from Article 36, paragraph 6, of the Statute of the Court, which provides as follows:

> "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The decision of the Court as to jurisdiction is, of course, binding on the parties to the dispute, by virtue of Article 94 of the Charter, in just the same way as any other decision of the Court. Such a decision has nothing in common with a consultative or advisory opinion, nor indeed has such an opinion been requested. It is somewhat paradoxical that the Iranian Government should suggest that the decision can have "aucun caractère d'ordre judiciaire" when it is at pains, in paragraph 5 of its Preliminary Observations, to stress that the Court is an "organe judiciaire, exclusivement judiciaire".

8. Turning then to the sole question which the Court has now to consider, it is the contention of the Government of the United Kingdom that the jurisdiction of the Court depends on its Statute, and in particular on Article 36 thereof, together with the declarations, made under the Optional Clause by Persia and the United Kingdom. Paragraph 2 of Article 36 (Optional Clause) provides as follows:

> "2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the

same obligation, the jurisdiction of the Court in all legal disputes concerning :

(a) the interpretation of a treaty ;
(b) any question of international law ;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation ;
(d) the nature or extent of the reparation to be made for the breach of an international obligation."

This paragraph expressly sets out, under the letters *(a)* to *(d)*, the four categories of matters in respect of which States may accept the compulsory jurisdiction of the Court. It clearly follows that, where States have accepted the compulsory jurisdiction of the Court, the Court has jurisdiction to determine legal disputes concerning any one or more of those categories of matters, except in so far as any reservations or qualifications in the declarations of the disputants debar the Court from doing so.

Article 2 (7) of the Charter has no bearing on the question which the Court has to consider

9. The Iranian Government, on the other hand, contends that Article 2 (7) of the Charter in some way cuts down the power given to States by Article 36 of the Statute to accept the compulsory jurisdiction of the Court. An examination of the actual words of Article 2 (7), however, makes it quite clear that it is totally inapplicable to the International Court of Justice. The introductory words of the paragraph are as follows :—

"Nothing contained in the present Charter shall authorize the United Nations to intervene...."

In the first place, the paragraph refers only to intervention by the *United Nations*. The International Court of Justice is not the United Nations ; it is (as Articles 7 and 92 of the Charter state) a principal organ, and the principal judicial organ, of the United Nations. Moreover, the later words in Article 2 (7) are clearly inapplicable to the Court : the words *"but this principle shall not prejudice the application of enforcement measures under Chapter VII"* indicate that the paragraph is directed to the limitation of the action of the United Nations as such, including the Security Council acting on their behalf (Article 24 (1)). The function of the Court is a specialized one and its duties are peculiar to it ; they bear no resemblance to those functions and duties which the United Nations Organization has as such under the Charter. The special status of the Court is made clear by the fact that it, alone of the organs of the United Nations, has a Statute to define and regulate its functions, which is separate from (though an integral part of) the Charter ; Article 92 of the Charter provides that the Court shall function in accordance with the Statute ; Article 1 of the Statute provides that "the International Court of Justice,

established by the Charter of the United Nations as the principal judicial organ of the United Nations, shall be constituted and shall function in accordance with the provisions of the present Statute". There is not a word in the Charter or the Statute to suggest that the powers and functions expressly conferred on the Court by the Statute (in accordance with which the Articles quoted above provide that it is to function) are to be limited by general provisions in the Charter. It is inconceivable that, if it had been intended that Article 2 (7) of the Charter should limit the jurisdiction expressly conferred on the Court by the Statute, express words to this effect would not have been used either in the Statute or in Article 92 of the Charter. Reference may perhaps be made to two principles, of which the first, though expressed here in the particular form known to Anglo-Saxon law, none the less represents (equally with the second) a rule of construction of universal application coming within Article 38 (1) *(c)* of the Court's Statute. The *first* is that a grantor will not without express and unambiguous words be deemed to have intended to derogate from his grant ; the *second* is that enshrined in the maxim *generalia specialibus non derogant.* The Court should not, in the submission of the Government of the United Kingdom, give an application to general words in the Charter which contradict special provisions contained in the Statute and derogate by implication from the specific powers granted expressly and unambiguously by the Statute.

10. Secondly, Article 2 (7) is merely a negative provision, which deprives the United Nations of a power which, apart from Article 2 (7), the Charter might be said to have conferred on it : the words are : "Nothing contained in the present Charter shall *authorize....*" In fact there is nothing which the Charter *authorizes* the International Court of Justice do so, save perhaps that Article 96 by implication authorizes the Court to give advisory opinions, though in truth it is Article 65 of the Statute which expressly so authorizes the Court and Article 96 of the Charter merely authorizes the General Assembly, Security Council and other organs of the United Nations and specialized agencies (if so authorized by the General Assembly) to request advisory opinions. *A fortiori,* Article 2 (7) does not purport to limit the acceptance by the Court of a jurisdiction which States may confer upon it, and which is derived not from the Charter but from the voluntary acts of States under Article 36 of the Court's Statute. For Article 36 is a facultative or enabling article, which empowers States to refer to the Court in advance either all disputes concerning the matters mentioned in the Article, or certain of such disputes ; it is the declarations which confer jurisdiction on the Court ; Article 36 of the Statute merely authorizes States to make such declarations and lays down the matters in respect of which they may be made.

11. Thirdly, Article 2 (7) relates solely to *intervention* by the United Nations. The word "intervention" is quite inappropriate

to describe the exercise by the Court of its functions. There has indeed been some discussion as to the meaning of the word intervention : and as to whether or not "discussion" or the "passing of a recommendation" constitute intervention within the meaning of this paragraph. Whatever may be the true meaning of the word, it is certain that the exercise by the Court of its functions under the Statute cannot be "intervention". It merely delivers decisions and judgments and advisory opinions on the application of States or at the request of international organs, in those cases where it finds that it has jurisdiction to do so (see Articles 36 (6) and 53 (2) of the Statute).

12. The arguments thus derived from an examination of Article 2 (7) itself are confirmed when one looks to Article 36 of the Statute of the Court. That Article, by paragraph 1, provides that the jurisdiction of the Court comprises *all cases* which the parties refer to it and all matters specially provided for in the Charter of the United Nations [1] or in treaties and conventions in force, and makes it plain that the Court shall have jurisdiction over all cases which the parties refer to it and in all cases provided by treaties and conventions in force. States, Members of the United Nations, are not bound to accept the jurisdiction of the Court in any case at all but are free to accept it either *ad hoc* or by treaty or convention or by declaration under the Optional Clause to the extent that they may freely decide to do so. They may subject their declarations to reservations and make them operative only for a limited period of time. But if the Iranian contention were right and Article 2 (7) applied to the jurisdiction of the Court, the result would be that States would not be free to refer certain categories of inter-State disputes to the Court even if they wished to do so. It would mean, as in fact Iran contends that it means, that, where there has been a pre-existing treaty or convention or acceptance of the Optional Clause freely entered into, conferring jurisdiction on the Court, this jurisdiction might be cut down by the provisions of Article 2 (7). However, paragraph 5 of Article 36 of the Statute of the Court provides expressly that : "Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties

[1] So far, nobody has discovered what effect these words "all matters specially provided for in the Charter of the United Nations" have, and it is thought that they were drafted on the assumption (in the end not realized) that the Charter itself would provide for the compulsory jurisdiction of the Court in certain cases. At any rate, a contention by the Government of the United Kingdom in the first *Corfu Channel* case *(Preliminary Objection)* that these words might have some meaning by reference to Article 25 of the Charter, when the Security Council had recommended that the parties should refer a dispute to the Court, did not find favour in the separate opinion of a large number of Judges of the Court (see joint separate opinion of Judges Basdevant, Alvarez, Winiarski, Zoričič, De Visscher, Badawi Pasha and Krylov to the Judgment of 25th March, 1948, *I.C.J. Reports 1948*, p. 31) and this particular contention was not dealt with in the majority decision.

to the Present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms." Surely, if there existed any possibility of the scope of the declarations already made under Article 36 being limited by the terms of the Charter, this would have been the appropriate place for giving expression to any such limitation.

13. The remarkable contention that Article 2 (7) of the Charter applies to the Court's jurisdiction in contentious cases is supported by very little argument in paragraphs 13 and 14 of the Iranian Government's Preliminary Observations. The contention is presumably put forward because the Iranian Government, whether as a result of confusion or otherwise, is desirous of obtaining from the Court in these proceedings an opinion as to the jurisdiction not of the Court but of the Security Council and, moreover, an opinion which "ne présente pour personne aucun caractère obligatoire" (see paragraph 1 of the Iranian Preliminary Observations and also paragraph 7 of these Observations and Submissions). The contention, however, reveals a complete failure to appreciate the reason why Article 2 (7) is included in the Charter. States, when they become Members of the United Nations, are obliged to accept the whole of the Charter and all the jurisdiction which the Charter "authorizes" the United Nations to exercise ; they cannot accept just so much of the jurisdiction as they individually may choose. Article 2 (7) is, therefore, a necessary protection for Members against excess of jurisdiction on the part of the United Nations. (Article 15 (8) of the Covenant of the League was a similar provision and inserted for a similar reason.) Article 2 (7) has, however, no possible place as a qualification of the Court's Statute. By virtue of Article 36 of the Statute, States can become parties to the Court's Statute on the footing that they accept the Court's jurisdiction to the extent that they freely choose and no more. When States have freely consented, by instruments entered into before the Charter came into force, to accept the jurisdiction of the Court (or of the Court's predecessor, the Permanent Court of International Justice) in a given class of case because they were willing that that class of case affecting them should be judicially decided at The Hague, there is no conceivable reason for holding that Article 2 (7) of the Charter limits the jurisdiction conferred on the Court by those instruments.

14. There is a further reason why Article 2 (7), which is a perfectly appropriate provision limiting United Nations action, is inappropriate as a limitation on the jurisdiction of the Court. If a State is not contravening any of its obligations under international law, then before the Court it will be successful in the proceedings. A State therefore, which is acting within its domestic jurisdiction, has always, under the general rules of international law, a valid

defence before the Court on the merits if its action is challenged [1]. On the other hand, before the General Assembly or the Security Council, the position is entirely different. But for Article 2 (7), it might be argued that, by reason of other provisions of the Charter, there is nothing to prevent either of these organs from discussing the actions of a State which is not contravening any of its international obligations, and recommending (or in certain cases even deciding) that it should follow a course of conduct which directs it to do something which it is not legally obliged to do, or refrain from doing something which it is legally entitled to do. Article 2 (7) is therefore a necessary protection for States against undue interference with their sovereignty by the United Nations, but for this further reason is quite unnecessary in the case of the Court [2].

The case falls within Article 36 of the Statute of the Court unless the Declaration of either Persia or the United Kingdom is so worded as to exclude it

15. For the reasons given in paragraphs 9-14, the jurisdiction of the Court in the present case is governed, not by Article 2 (7) of the Charter of the United Nations, but by Article 36 of the Statute of the Court and the declarations made under paragraph 2 of that Article by Persia and (by virtue of the requirement of

[1] For the meaning of "domestic jurisdiction", see paragraph 38 below.

[2] Since the United Kingdom Government contends that Article 2 (7) of the Charter does not apply to the jurisdiction of the Court, when the Court is requested to deliver judgments in contentious proceedings where its jurisdiction is founded on the consent of the parties either *ad hoc* or on the basis of engagements of a more general character previously entered into, it is unnecessary for the United Kingdom's case to consider whether or not Article 2 (7) of the Charter has any application to the Court when the Court is requested to give an advisory opinion by one of the other organs of the United Nations. There are certain grounds, however, on which the two cases can be distinguished : in the first place, an advisory opinion is requested by an organ of the United Nations in order to assist that organ in deciding what, if any, action ("intervention") it shall take and the organs of the United Nations requesting the opinion are themselves undoubtedly subject to Article 2 (7). Secondly, while it is the case that the Court has no jurisdiction to decide a dispute between two States unless its jurisdiction has been accepted voluntarily, it may be asked by the Security Council or the General Assembly to give an advisory opinion with regard to a dispute between two States in regard to which those States have not accepted the jurisdiction of the Court at all. In the case of the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (*I.C.J. Reports 1950*, page 65), the point of the applicability of Article 2 (7) of the Charter to the Court, when asked to give an advisory opinion, was raised, and the Court, having decided that the case was not one of domestic jurisdiction anyway, contended itself with remarking : "These considerations also suffice to dispose of the objection based on the principle of domestic jurisdiction and directed specifically against the competence of the Court, namely, that the Court, as an organ of the United Nations, is bound to observe the provisions of the Charter, including Article 2, paragraph 7" (page 71). The Court therefore did not express any opinion in that case one way or the other on the question whether Article 2 (7) was binding on it when it was asked for an advisory opinion.

reciprocity) by the United Kingdom. The question of the Court's jurisdiction becomes therefore the question whether the issues which await decision on the merits fall within the provisions of that Article and those declarations.

In the present case the Government of the United Kingdom contends and the Iranian Government denies :

(i) that Iran has committed breaches of treaties ;

(ii) that there are rules of international law regulating the circumstances in which and the manner in which a State can, by the method of nationalization or otherwise, legitimately cancel concessions held by foreigners and expropriate the property of foreigners, and that the Iranian Government has acted towards the Anglo-Iranian Oil Company in contravention of these rules ;

(iii) that the Iranian Government has acted towards the Anglo-Iranian Oil Company in a manner which constitutes a breach of international obligations, both customary and conventional ;

(iv) that, since there has been such a breach of international obligations as aforesaid, Iran is obliged to make reparation to the Government of the United Kingdom for such breach, and that the question of the nature and extent of such reparation must be determined by the Court or by some impartial body nominated by the Court ; and that the provisions for compensation contained in the Iranian Act of 1st May 1951 in no way satisfy the requirements of international law.

On all these points there is a legal dispute between the United Kingdom and Iran, and all these points fall within the categories set out in Article 36. The case is therefore one which falls within Article 36, and, unless the declaration of either Persia or the United Kingdom is so worded as to exclude it, the jurisdiction of the Court is plain. In view of the fact that the Persian declaration is expressed to be made "conformément à l'article 36, paragraphe 2, du Statut de la Cour", it can scarcely be denied that, subject to any limitations or reservations contained in the declaration, the compulsory jurisdiction thus accepted by Persia extends to all those categories of matters specified in Article 36, paragraph 2. The next task is to consider the two declarations accepting the jurisdiction of the Permanent Court of International Justice (which are continued as acceptances of the jurisdiction of the International Court of Justice by Article 36, paragraph 5, of the Statute), and which are set out in Annex 2 to the Memorial, paragraphs 2 and 4 (Volume II, page 14 [1]) and, in particular, the limitations and reservations contained in them.

[1] See pp. 146-147.

The relationship created by declarations under the Optional Clause

16. It may be convenient, however, to deal first with a general point raised by the Iranian Government, namely, the relationship created by declarations under the Optional Clause. The Iranian Government (paragraph 17 of its Preliminary Observations) has put forward the proposition that the obligations created by such reciprocal declarations as those of the United Kingdom and Iran are in no sense contractual. The Iranian Government asserts that such acceptances are engagements by the States making them towards the Court, and that the existence of parallel engagements creates symmetric and similar obligations. It is not clear how the practical effect of this theory differs (if at all) from that of the theory which the Iranian Government is attacking, since it is not disputed that, where one State has made such a declaration towards the Court, another State which has made a similar declaration can rely on the declaration made by the first. The United Kingdom Government does not therefore propose to spend much time on a theoretical issue which it believes to have no practical significance. It affects at most only one of the United Kingdom arguments relating to the interpretation of the Iranian declaration, namely, that in paragraph 36 of Annex 2. The United Kingdom Government, however, feels bound to observe that the theory now put forward by Iran is not that generally held[1] and accords singularly ill with the words in fact used in the Persian declaration as well as in those of the United Kingdom and other States. It is to be noted that the Persian Government accepted the jurisdiction of the Permanent Court of International Justice "de plein droit et *sans convention spéciale, vis-à-vis de tout autre État acceptant la même obligation,* c'est-à-dire sous condition de réciprocité", and the United Kingdom declaration contained similar terms. The words in italics make it clear that Persia was placing herself under an obligation towards other States, and intended by her declaration to place herself, in relation to any dispute falling within the terms of the declaration which might arise in the future, in the same position as if there were a "convention spéciale" specifically concluded in relation to the particular dispute. Moreover, in addition to the authorities quoted in paragraph 36 of Annex 2 to the Memorial, it is pertinent to refer once again to the judgments in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77). Judge Erich

[1] The theory put forward by the Iranian Government with regard to declarations under the Optional Clause is said to be based upon the theoretical views of French writers regarding *contrats d'adhésion ou de guichet* under French municipal law. Even in this field the theory of no contract is not apparently the general one. See Planiol, *Traité élémentaire de droit civil*, 2nd Edition, Volume 2, § 54 ; and Josserand in *Recueil des Études sur les sources de droit en l'honneur de F. Gény*, Volume 2, pp. 336-338, and in *Recueil d'études en l'honneur d'E. Lambert*, Volume 3, pp. 143, 145-146.

(at p. 140) referred to the *mutual obligation (obligation réciproque)* of Belgium and Bulgaria to submit their dispute to the Permanent Court of International Justice based upon their declarations accepting the compulsory jurisdiction of the Court. Judge Anzilotti said (at p. 87) :

> "As a result of these declarations, an agreement came into existence between the two States accepting the compulsory jurisdiction of the Court, in conformity with Article 36 of the Statute and subject to the limitations and conditions resulting from the declarations, more especially from that of the Belgian Government. This agreement, hereinafter referred to as the Declarations, came into force on March 10th, 1926, the date of the Belgian ratification. The Bulgarian Declaration is made without limitation of time, but the Belgian Declaration being made for a period of fifteen years as from the date of ratification, the duration of the Declarations is until March 10th, 1941",

and at page 89 he referred to "the text of the Declarations, which, together with Article 36 of the Statute, determine the content of the Agreement concluded between the two Governments". Finally the Court itself (at p. 81) gives March 10th, 1926—the date of the ratification of the Belgian Declaration, the Bulgarian Declaration having already been ratified in 1921—as "the date of the establishment of the juridical bond *(lien juridique)* between the two States under Article 36 of the Court's Statute".

The reservations in the Persian acceptance of the Optional Clause

The limitation to disputes arising out of treaties or conventions

17. To turn now to the reservations or exclusions made in the acceptance of the Optional Clause by Persia, there are in fact two which have been raised as relevant to the present case. The first is that Persia's declaration limits the jurisdiction of the Court to disputes arising out of treaties and conventions, and there is a difference between the parties as to whether the jurisdiction is simply limited to treaties and conventions or whether it is confined to treaties and conventions concluded after a certain date. The second limitation, which relates to "domestic jurisdiction", has already been referred to in paragraph 6 above and is further dealt with in paragraphs 35-48 below. The United Kingdom Government now proceeds to deal with the Iranian observations relating to the first limitation.

These observations are contained in paragraphs 18-20 of the Iranian Preliminary Observations and are made in reply to paragraphs 28-40 of Annex 2 to the Memorial. The Iranian Government has distorted the United Kingdom Government's arguments on this point and appears to suppose that in its argument the United

Kingdom has altogether ignored this limitation [1]. In fact, the United Kingdom Government has given full effect to this limitation to disputes with reference to treaties and conventions. Indeed a great part of Annex 2 to the Memorial is devoted to showing that the present dispute is a dispute with reference to situations or facts relating directly or indirectly to treaties or conventions accepted by Persia: see especially paragraph 7 *(c)* and paragraphs 9-14A and 40 of that Annex, and paragraphs 6-6B of the Memorial. As stated in paragraph 34 of Annex 2 to the Memorial, the proper deduction from the terms of the Persian declaration, and that which is in accordance with the ordinary rules of interpretation, is that by adding to the common form the words:

> "(les différends) au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse",

but in every other respect adhering exactly to the *ipsissima verba* of the common form declarations, the Persian Government intended to adhere to the common form and to give the same meaning to the standard form of words as they bear in other declarations which employ them, *subject only to* the exceptional limitation of the class of differences, to which the declaration was to apply, imposed by the additional words quoted above, that is the limitation to disputes arising out of conventional obligations [2].

18. *The United Kingdom interpretation gives, as no other interpretation gives, full effect to every word in the Persian declaration.* The interpretation which the Iranian Government is now putting forward does not give effect to every word in the declaration. In fact, it makes three lines of the declaration completely superfluous. The Government of the United Kingdom has pointed out in paragraph 35 of Annex 2 that, if the interpretation now put forward by the Iranian Government were correct, the Persian declaration would contain words which are completely otiose, namely the words "qui s'élèveraient après la ratification de la présente déclaration", since no dispute arising out of a treaty ratified after the ratification of the declaration could arise before the ratification of the declaration. In fact, if the interpretation now put forward by the Iranian Government were correct, still further words would be otiose, namely the words "situations ou faits ayant directement

[1] The Iranian references to the United Kingdom arguments are confusing here. Presumably at the bottom of page 296 of the Iranian Preliminary Observations the reference intended is to paragraph 34 of Annex 2 to the Memorial, and not to paragraph 34 of the Memorial. In any case the reference to page 42 cannot be right: the reference intended is presumably to page 28 of Volume II (pp. 166-167 of this volume).

[Note by Registry]: The original Vol. I ended at page 37, and in Vol. II page 42 was blank.

[2] This limitation of course excludes disputes as to the application of the rules of general international law, save where (as in the present case) there exists a conventional obligation to observe those rules.

ou indirectement trait à", since the two classes (i) of disputes with regard to the application of a treaty, and (ii) of disputes with regard to situations or facts relating directly or indirectly to the application of a treaty, are for practical purposes identical. But, on the interpretation, which the United Kingdom Government submits to be the proper interpretation, these words "situations ou faits" are necessary, and indeed vital, since the temporal adjective, upon which the exception *ratione temporis* is based, is attached to them. If the intention of the Persian Government in 1930 had really been what the Iranian Government now alleges it to have been, it is almost inconceivable that it would not have expressed it in the following simple words: "sur tous les différends au sujet de l'application des traités ou conventions acceptés par la Perse après la ratification de cette déclaration". It is hardly credible that a government having the simple intention which Iran now alleges the Persian Government to have had should not have expressed it in this simple, obvious way, but instead should have inserted three additional lines which, if the interpretation now put forward by the Iranian Government is correct, are entirely otiose and do nothing except create an ambiguity. Consequently, in the submission of the United Kingdom, the argument in paragraph 36 of Annex 2 to the Memorial as to the Persian intention in 1930 is almost inescapable.

19. It can scarcely be the intention of the Iranian Government seriously to allege (as it appears to do in paragraph 18 of its Preliminary Observations) that the Court must accept the *ipse dixit* of the present Iranian Government in February 1952 as to the interpretation of the declaration by reason of the fact that the Persian Government of 20 years ago was the author of it. It could be argued, on the contrary, that the interpretation least favourable to Iran must necessarily be adopted, in case of ambiguity, by the application of the principle that a document, which has been drafted by a State unilaterally, and in circumstances in which that State enjoys complete freedom to express its intentions in terms which it chooses itself, is to be construed strictly *contra proferentem*. (See the *Brazilian Loans* case, Series A, No. 21, page 114.) In fact, however, the United Kingdom Government asks the Court to interpret the declaration in accordance with other well-recognized principles, upon which the Court and its predecessor have acted, and to determine the intention of the Persian Government, not by the *ipse dixit* of its successors of to-day, but objectively in the light of the form and terms of the declaration which it made.

The Government of the United Kingdom does not say (as the Iranian Government alleges in paragraph 18 of its Preliminary Observations) that the interpretation put forward by the United Kingdom is "grammaticalement contestable". The United Kingdom Government says that the two interpretations of the declarations are both grammatically possible, and that the Court should therefore, in interpreting the declaration, give due weight

(i) to the fact that, save for the addition of words limiting the acceptance to disputes arising out of treaties and conventions, the declaration is in identical terms with the "common form" declarations (see paragraphs 31-34 of Annex 2 to the Memorial, and paragraph 17 of these Observations and Submissions) ;

(ii) to the fact that, if the Iranian interpretation were correct, many words of the declaration would be entirely superfluous, whereas the interpretation suggested by the United Kingdom gives a meaning to every word (paragraph 35 of Annex 2 to the Memorial, and paragraph 18 of these Observations and Submissions) ;

(iii) to the reasons given for limitations *ratione temporis* expressed in the case of the *Phosphates in Morocco (Preliminary Objections)*, Series A/B, No. 74, at p. 24 (paragraph 35A of Annex 2 to the Memorial) ;

(iv) to the consensual nature of declarations under the Optional Clause (paragraph 36 of Annex 2 to the Memorial).

20. In paragraph 19 of its Preliminary Observations, the Iranian Government attempts to counter the argument contained in paragraph 35A of Annex 2 to the Memorial, namely that the interpretation put forward by the United Kingdom Government is in accordance with the true *raison d'être* of the limitation *ratione temporis*, in the following manner : it alleges that the Persian Government had a reason for limiting its acceptance to disputes relating to treaties and conventions accepted by Persia after 19th September 1932, namely that in October 1928 [1] Persia had abrogated her treaties with other States which were based on the régime of capitulations and therefore wished to exclude from the jurisdiction of the Court disputes relative to treaties in force before 1928. The United Kingdom Government does not wish to be taken to admit the admissibility of this argument ; but even if the argument be admissible, the conclusion which the Iranian Government seeks to derive from it clearly does not follow for at least three reasons :

(a) The interpretation which the United Kingdom Government alleges to be the correct one is equally consistent with the desire of the Persian Government to exclude disputes arising out of treaties relating to capitulations. For, on the United Kingdom interpretation, the Persian declaration is limited (i) to disputes arising after 19th September 1932, and (ii) relating to situations or facts posterior to 19th September 1932. Both these limitations are quite

[1] In fact, as appears from Annex I to the Iranian Preliminary Observations, the treaties were abrogated in May 1927, but the abrogation was not to take effect until May 1928.

sufficient to exclude disputes with regard to situations or facts relating to the régime of capitulations arising out of the treaties on which that régime was based. There was therefore no necessity arising out of the denunciation by Persia of capitulations to limit the acceptance of compulsory jurisdiction to treaties or conventions ratified after 19th September 1932.

(b) It cannot be said that the denunciation of capitulations made it necessary to limit the acceptance to treaties concluded after 19th September 1932, when the result of the denunciation itself was *ipso facto* to render the capitulations conventions and treaties dead letters. Why should they be excluded from the acceptance when they had ceased to exist? This indeed would have been pushing at an open door.

(c) There is conclusive evidence to show that during the period 1929-1934 nothing was further from the mind of the Persian Government than to limit its acceptance of international jurisdiction to treaties or conventions ratified after 19th September 1932 or any other date. With impressive uniformity, Persia during those years assumed the initiative in using language in treaties with other States which is quite inconsistent with any such intention (see paragraph 21 below).

21. In the Treaty of Friendship and Arbitration concluded at Tehran between Persia and Belgium on 23rd May 1929 (ratifications exchanged 24th November 1930, *League of Nations Treaty Series*, Reg. No. 2568, Vol. 110, p. 372), there occurs the provision (Article V) that

> "Les États contractants conviennent de soumettre à l'arbitrage tous les différends qui surgiraient entre eux à propos de l'application ou de l'interprétation des stipulations de *tous les traités et conventions conclus ou à conclure*, y compris le présent traité, et qui n'auraient pu être réglés à l'amiable dans un délai raisonnable par les procédés dilpomatiques ordinaires. Cette disposition s'appliquera également, le cas échéant, à la question préalable de savoir si le différend se rapporte à l'interprétation ou à l'application desdits traités et conventions. La décision du tribunal arbitral obligera les parties."

To the same or similar effect are Article III of the Treaty of Friendship and Arbitration concluded at Tehran between Persia and the Netherlands on 12th March 1930 (ratifications exchanged 17th December 1930, *League of Nations Treaty Series*, Reg. No. 2599, Vol. 111, p. 390); Article IV of the Treaty of Friendship concluded at Tehran between Persia and Germany on 17th February 1929 (ratifications exchanged 11th December 1930, *League of Nations Treaty Series*, Reg. No. 2576, Vol. 111, p. 29); Article V of the Treaty concluded at Tehran between Persia and France on

10th May 1929 (ratifications exchanged 5th July 1934, *League of Nations Treaty Series*, Reg. No. 3465, Vol. 150, p. 329) ; Article IV of the Treaty of Friendship concluded at Tehran between Persia and Sweden on 27th May 1929 (ratifications exchanged 26th May 1930, *League of Nations Treaty Series*, Reg. No. 2420, Vol. 105, p. 279) ; Article VI of the Treaty of Friendship concluded at Moscow between Persia and Lithuania on 13th January 1930 (ratifications exchanged 22nd June 1932, *League of Nations Treaty Series*, Reg. No. 3013, Vol. 131, p. 221) ; Article III of the Treaty of Friendship, Commerce and Navigation concluded at Paris between Persia and Norway on 8th May 1930 (ratifications exchanged 4th October 1932, *League of Nations Treaty Series*, Reg. No. 3089, Vol. 134, p. 155) ; Article IV of the Treaty concluded at Moscow between Persia and Estonia on 3rd October 1931 (ratifications exchanged 21st February 1933, *League of Nations Treaty Series*, Reg. No. 3155, Vol. 137, p. 183) ; Article IV of the Treaty of Friendship concluded at Moscow between Persia and Finland on 12th December 1931 (ratifications exchanged 21st February 1933, *British and Foreign State Papers*, Vol. 134, p. 769) ; Article XVI of the Treaty of Friendship, Establishment and Commerce concluded at Tehran between Persia and Denmark on 20th February 1934 (ratifications exchanged 6th March 1935, *League of Nations Treaty Series*, Reg. No. 3640, Vol. 158, p. 299) ; Article IV of the Treaty of Friendship and Arbitration concluded at Berne between Persia and Switzerland on 25th April 1934 (ratifications exchanged 1st June 1935, *League of Nations Treaty Series*, Reg. No. 3666, Vol. 159, p. 239).

It does not appear from the provisions of these treaties that at or around 2nd October 1930 (the date of the declaration) the Persian Government had in mind the considerations which are now alleged by the Iranian Government to have impelled it at that date. Moreover, the fact that the Persian Government took the initiative in using such language in these arbitration treaties shows that it had present to its mind the question of which treaties should be covered by the arbitration provisions. The Court is here confronted with a long series of arbitration treaties which provide with unusual emphasis and clarity that the jurisdiction of the arbitral tribunal shall embrace disputes arising out of all the treaties and conventions, past, present and future, to which Persia is a party. It is almost inconceivable that the intention of the Persian Government, when it accepted the Optional Clause, should not have been the same.

The treaties and conventions relied upon by the United Kingdom

22. For the reasons given in paragraphs 17 to 21 above, the United Kingdom Government submits that the word "postérieurs" in the Persian acceptance of the Optional Clause governs the words "situations ou faits" and the Court has jurisdiction over disputes arising after 19th September 1932, concerning situations and facts

subsequent to 19th September 1932, and relating directly or indirectly to treaties or conventions concluded by Iran at any time. Before turning to the second Persian reservation, namely domestic jurisdiction, it will be convenient if the United Kingdom Government now replies to the Preliminary Observations of the Iranian Government on the subject of the treaties and conventions upon which the Government of the United Kingdom relies. As is shown in paragraph 9 of Annex 2 to the Memorial, these fall into three groups, namely :

(1) Certain treaties between Persia and third States upon the provisions of which the United Kingdom is entitled to rely by virtue of most-favoured-nation clauses in the Treaties of 1857 and 1903 between the United Kingdom and Persia.
(2) An exchange of notes between the United Kingdom and Persia dated 10th May 1928, and
(3) The international engagement between Persia and the United Kingdom to observe the terms of the Concession Convention of 1933.

The Government of the United Kingdom would remark at this point that, although it is confident that in paragraphs 17-21 above it has demonstrated that the interpretation of the Persian declaration which it puts forward is the correct and proper interpretation and the one which the Court should adopt, none the less, there are, in fact, among the treaties and conventions relied upon certain treaties and conventions which came into force after 19th September 1932, and accordingly the United Kingdom Government contends that, even if the interpretation now put forward by the Iranian Government were correct, these treaties and conventions still bring the present case within the terms of the declaration. They are the following :

(i) the treaties with Denmark, Switzerland and Turkey upon which the United Kingdom is entitled to rely by reason of the most-favoured-nation clause. The Iranian Government does not comment on this point, and it is unnecessary therefore to do more than to refer to paragraph 39 of Annex 2 to the Memorial where these treaties are discussed ;
(ii) the international engagement between Persia and the United Kingdom to observe the terms of the Concession Convention of 1933.

The effect of the most-favoured-nation clauses in the Treaties of 1857 and 1903

23. The Government of the United Kingdom proposes to deal now with the comments contained in paragraph 20 of the Iranian

Government's Preliminary Observations with reference to most-favoured-nation clauses:

(a) The remark of the Iranian Government in paragraph 20 of its Preliminary Observations that the most-favoured-nation clauses relied on by the United Kingdom are irrelevant to the question of the jurisdiction of the Court, is difficult to understand. The Persian declaration is (as the Government of the United Kingdom recognizes) limited to disputes arising out of treaties and conventions, and the two treaties between the United Kingdom and Persia containing most-favoured-nation clauses are, of course, among the treaties and conventions relied on by the Government of the United Kingdom as bringing the dispute within the terms of the Persian declaration, together with treaties with other States binding Iran to treat their nationals in accordance with the principles of general international law.

(b) The further observation in the same paragraph that "on voit mal comment elle pourrait invoquer cette dernière pour faire échec au droit commun international qui régit l'indemnisation due à la suite de mesures de nationalisation" seems to relate to the question of merits and not to the question of jurisdiction. As paragraphs 9 to 12 of Annex 2 to the Memorial show, the United Kingdom relies on the most-favoured-nation clauses in two treaties between the United Kingdom and Persia as entitling the United Kingdom to claim in respect of the treatment of British nationals in Iran any treaty rights which are in force between Iran and third States, and, in reliance on these clauses, invokes a large number of treaties with third States by which Iran has undertaken by treaty to treat the nationals of those States in accordance with general international law. The United Kingdom Government does indeed contend that the actions of Iran towards the Anglo-Iranian Oil Company, a British national, are in conflict with general international law for the reasons set forth in the Memorial and summarized in paragraph 7 thereof. Iran may dispute the validity of these grounds, but that is a question which arises on the merits and has nothing to do with jurisdiction.

The international engagement of 1933

24. The United Kingdom Government will now proceed to reply to the comments which the Iranian Government makes in paragraphs 21 to 24 of its Preliminary Observations about the international engagement between Persia and the United Kingdom to observe the terms of the Concession Convention of 1933. Before doing so the United Kingdom Government wishes again to make

it clear that the contention of the United Kingdom based on this engagement is not (as the Iranian Government alleges on p. 308 of its Preliminary Observations) "la base essentielle de ses prétentions" ; on the contrary, as stated in paragraph 6 of the Memorial, neither in the matter of jurisdiction nor in the matter of the merits is it an indispensable part of the United Kingdom case, though it is a contention in the soundness of which the United Kingdom Government has every confidence.

25. The United Kingdom Government maintains that the Concession Convention of 1933 had a hybrid character :

1) It was an agreement between the Persian Government and the Anglo-Persian Oil Company ;
2) It was a Persian law[1]; and
3) It embodied the terms of the settlement of an international dispute between the United Kingdom and Persia which both Governments were bound by an obligation of a treaty character to observe and accept in the future.

The United Kingdom arguments on this issue are contained in paragraphs 6-6C of the Memorial, which are concerned with establishing the existence of the international conventional engagement, and in paragraphs 9, 14A, 21, 28, 38 *(b)* and 40 of Annex 2 to the Memorial, where the arguments relating to jurisdiction resulting from this international conventional engagement are presented. In paragraphs 21-24 of its Preliminary Observations the Iranian Government contests these arguments of the United Kingdom Government, principally *(a)* in regard to the existence of the conventional obligation under international law, which of course is a question which goes to the merits as well as jurisdiction, but also *(b)* with regard to jurisdiction, where Iran contends (contrary to the argument in paragraph 40 of Annex 2 to the Memorial) that the terms of its acceptance of the Optional Clause do not cover this conventional obligation even if it is held to exist.

26. The Government of the United Kingdom will here reply to these Iranian arguments, though not necessarily in the same order as they are presented in the Iranian Preliminary Observations. The observations submitted here, however, are supplementary to those made in the Memorial itself, and in Annex 2 to that Memorial.

[1] In a footnote to paragraph 6 of the Memorial, the United Kingdom cited the case of the *Interpretation of the Statute of Memel Territory* (Series A/B, No. 49) *solely* for the negative proposition that the fact that an instrument is, for internal purposes, a municipal law does not prevent it from also having the character of a treaty and imposing an international obligation. The case was not relied upon, as the Iranian Government appears to suppose, as authority for the positive proposition that the Concession Convention of 1933 does embody the terms of an international agreement but merely to forestall an ill-founded objection to this proposition. No analogy between the facts of the two cases was drawn. Perhaps no authority was needed for the well-known negative proposition, since in many countries treaties are embodied in municipal laws or decrees.

It will be convenient to take first those Iranian observations which relate to *(a)* (i.e. the existence of the obligation) and, before doing so, to summarize briefly the contentions of the United Kingdom Government as set forth in paragraphs 6-6C of the Memorial. The United Kingdom Government contends

(I) that the 1933 Concession Convention was accepted by the Governments of the United Kingdom and Persia as embodying the terms of a settlement of an international dispute arising out of the purported cancellation of the D'Arcy Concession which the United Kingdom had brought before the Council of the League of Nations ;

(II) that the negotiations which led to it were conducted under the supervision of the Rapporteur of the Council of the League of Nations (M. Beneš), and that, on the conclusion of these negotiations, the Concession Convention was embodied in the report of M. Beneš to the Council, and this report was accepted by the Governments of the United Kingdom and Persia and the dispute removed from the agenda of the Council of the League of Nations when the Concession Convention had been ratified by the Persian Parliament and entered into force. (These contentions (I) and (II) are contentions of fact) ;

(III) that *(a)* it is a principle of international law that, when there has been an international dispute between two governments which is settled on certain terms, there arises under international law an international obligation binding the two governments to observe the terms of the settlement, and this obligation has the character of a treaty stipulation (paragraph 6 *(a)* of the Memorial), and *(b)* therefore, having regard to (I) and (II) above, an international obligation of this character arose between the United Kingdom and Persia with regard to the 1933 Concession Convention ;

(IV) *(a)* that there is another rule of international law that a resolution of the Council of the League of Nations accepted by the contesting parties creates an international obligation on the contesting parties to observe the resolution, and *(b)* the removal of the dispute from the agenda of the Council in the circumstances indicated in (II) above was the equivalent of a resolution of the Council accepted by both contesting parties that the dispute should be settled by the putting into force and observance of the Concession Convention of 1933, and that this implied resolution created an international obligation on the United Kingdom and Persia to observe it.

27. In paragraph 21 of its Preliminary Observations the Iranian Government puts forward as an argument against the existence

of the obligation having the character of a treaty stipulation for which the United Kingdom Government contends (see III *(b)* of paragraph 26 above) the objection that, if it existed, it was an obligation which bound Iran only and not the United Kingdom. The objection is ill-founded because there arose from the settlement of the international dispute obligations binding both Governments ; both were obliged to continue to respect the settlement made ; neither could make claims or take action inconsistent with it. In the same paragraph the Iranian Government observes that it is elementary law that international engagements can come into existence otherwise than through treaties in solemn form. The United Kingdom Government agrees that it is elementary law and therefore it was perhaps superfluous to have cited a portion of the *Eastern Greenland* case (Series A/B, No. 53) in support of such an elementary proposition. As the United Kingdom Government only cited the case for this sole purpose, it is unnecessary to comment on the Iranian observations on this case in paragraph 24.

28. The United Kingdom Government cited in paragraph 6 *(a)* of its Memorial the case of the *Free Zones of Upper Savoy and the District of Gex* (Series A, No. 24) and the case of *Access to German Minority Schools in Upper Silesia* (Series A/B, No. 40) as authorities for the legal principle mentioned in III *(a)* of paragraph 26 above that, when an international dispute is settled, there arises an international obligation of a treaty character binding both governments to observe the terms of the settlement. In paragraph 22 of its Preliminary Observations the Iranian Government observes that in both these cases the dispute between the parties was a dispute arising out of a treaty and seems to contend that the principle is applicable only to settlement of disputes arising out of treaties. But there is no reason why the principle should apply to this class of dispute and not to other international disputes relating to the application of the principles of general international law, and, indeed, it is clear that the Court in both affairs was applying a principle of general application to particular disputes arising out of treaties. The Iranian Government in its observations on the *Free Zones* case clearly misinterprets the ground of the decision. The fundamental point of that decision upon which the United Kingdom Government relies is that the Manifesto of the Royal Sardinian Court of Accounts was *not* (as the Iranian Government suggests) simply "la mesure d'application interne du traité de Turin du 16 mars 1816", or "l'acte d'application *in foro domestico* d'une obligation internationale préexistante, le traité de Turin". On the contrary, as the quotation from the judgment in paragraph 6 of the Memorial clearly shows, there was an international dispute between Sardinia and the Canton of Valais ; the King of Sardinia, in order to settle the dispute, assented to and agreed to accept the claim put forward by the Canton, though not admitting that it was well-founded in law ; by this assent and agreement the inter-

national dispute was terminated; the Manifesto embodied and interpreted *that agreement and assent* and "laid down in a manner binding upon the Kingdom of Sardinia, what the law was to be between the Parties" as a result, *not* of the Treaty of Turin, but of that same agreement and assent, which (in the words of the Court) "confers on the creation of the zone of Saint-Gingolph *the character of a treaty stipulation....*". The Treaty of Turin is mentioned only because it was as to the interpretation of that treaty that the international dispute arose; but the fact is quite irrelevant to the principle enunciated by the Court, or to its application to the present case.

In the present case there was an international dispute between the United Kingdom and Persia, and, in order to settle the dispute, both States assented to and agreed to accept the new Concession Convention negotiated between the Company and the Persian Government. By this assent and agreement the international dispute was terminated. Thus the Concession Convention, ratified by the Persian Parliament and assented to by His Imperial Majesty the Shah, embodied the terms of settlement between the two Governments, terms which thenceforth both Governments became obliged to each other to respect. (The Concession Convention also, though this is not material to the present argument, applied *in foro domestico* the international obligation imposed on Persia by the assent and agreement.)

29. The United Kingdom Government also cited in paragraph (6) *(b)* of its Memorial the cases of *Access to German Minority Schools in Upper Silesia* (Series A/B, No. 40) again, and *Railway Traffic between Lithuania and Poland* (Series A/B, No. 42) in support of the legal proposition set out in IV *(a)* of paragraph 26 above—that a resolution of the Council of the League of Nations accepted by the contesting parties creates an international obligation on the contesting parties to observe the resolution. The Iranian Government in paragraph 22 of its Preliminary Observations observes that in both these cases the dispute between the opposing States arose out of treaties. But again there is nothing in the pronouncements of the Permanent Court of International Justice in either case to suggest that a resolution effecting a compromise in an international dispute arising out of an alleged breach of a treaty has this effect, but that a resolution effecting a compromise in an international dispute arising out of an alleged breach of general international law would not have this effect, and it is difficult to see that there can be any rational basis for this distinction. In the *German Minority Schools* case there was an international dispute between Poland and Germany which was settled or compromised by an agreed resolution without the dispute having been investigated or determined upon the merits by the Council. The arrangement embodied in the resolution, in the words of the Court quoted in paragraph 6 *(a)* of the Memorial, was valid or binding for both

countries *either* as a compromise between them adopted by the Council *or* by virtue of this participation in the vote of the Council. So, in the present case, the terms on which the international dispute between the United Kingdom and Persia was settled or compromised in 1933, namely the terms of the Concession Convention of that year, are valid and binding for both countries.

The Iranian Government suggests that that case can be distinguished from the present case on the ground that the international dispute which was settled in the earlier case was "né de l'application d'un traité". One can only suppose (though it is an absurd assertion) that the Iranian Government intends to assert that a dispute between two States is not an international dispute unless it arises from the application of a treaty, and that a dispute between two States arising out of the application of rules of customary international law is not an international dispute. The fact that the dispute between Poland and Germany, which was settled on the terms of the Council's resolution, related to the Convention of 15th May 1922 is quite irrelevant to the principles enunciated by the Court or their application to the present case. It is to be noted that the resolution of the Council introduced a régime (which was binding on both countries, as stated above) entirely different from, and inconsistent with, that imposed by the Convention.

30. Turning to the facts of the present case, the Iranian Government, at the bottom of page 103 and in the first half of page 104 of its Preliminary Observations, makes certain observations which bear particularly on I and II of the United Kingdom contentions set out in paragraph 26 above. The Iranian Government submits :

(i) that there were two quite separate and distinct disputes in 1933, one between the Anglo-Persian Oil Company and the Persian Government and the other between the Government of the United Kingdom and the Persian Government ;

(ii) the first of these disputes was dealt with and settled at Tehran by the signature of the Concession Convention of 1933 and the second was dealt with at Geneva by the Council of the League ;

(iii) that at no moment did the Council of the League involve itself in the solution of the first dispute and that this is shown by two letters of M. Beneš which are Appendices Nos. 14 and 15 to Annex 3 to the United Kingdom Memorial ;

(iv) that in these circumstances there could be no question of a pseudo-novation in the nature of the dispute and that international practice offers no precedents for such a transformation of the nature of the dispute ;

(v) that there was never any resolution of the Council of the League ;

(vi) that the Council of the League simply dropped the second dispute from its agenda when the Concession Convention was concluded at Tehran.

31. The Iranian Government, in making these submissions, in particular that set out as (iv) paragraph 30 above, appears to be accusing the United Kingdom of misunderstanding what occurs when a State in the exercise of the right of diplomatic protection takes up the case of an injury to one of its nationals. Such cases always begin with conduct or action on the part of a foreign government towards a national of the State taking up the case, the legitimacy of which the national disputes. There is thus always in the first place a dispute between the national and the foreign government. The next stage is that, the national having no means of redress, or having exhausted without success the available means of redress, in the municipal law of the foreign State, the national's own government, believing that its national has been treated in a manner which is a breach of international law or treaty, takes up the case and in so doing is (in the words used by the Permanent Court of International Justice in the case of the *Mavrommatis Palestine Concessions*, Series A, No. 2, page 12) "in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law". There is then a dispute between the two States, arising out of the same facts as the dispute between the national and the foreign State, but with different parties. What happens in such cases was described by the Permanent Court of International Justice in the *Mavrommatis* case *(loc. cit.)* as follows:

> "In the case of the Mavrommatis concessions it is true that the dispute was at first between a private person and a State—i.e. between M. Mavrommatis and Great Britain. Subsequently the Greek Government took up the case. The dispute then entered upon a new phase; it entered the domain of international law, and became a dispute between two States."

So in the case concerning the *Payment of various Serbian Loans issued in France* (Series A, No. 20), the Court said at page 18:

> "As from this point, therefore (i.e. the intervention of the French Government), there exists between the two Governments a difference of opinion which, though fundamentally identical *(au fond identique)* with the controversy already existing between the Serb-Croat-Slovene Government and its creditors, is distinct therefrom; for it is between the Governments of the Serb-Croat-Slovene Kingdom and that of the French Republic, the latter acting in the exercise of its right to protect its nationals."

Since the second dispute (that between the two States) arises out of the same facts as the first and is (in the words of the Court) fundamentally identical with it, it generally happens that, if the disputes are settled, the same terms of settlement will settle both

disputes. The settlement may be negotiated *either* between the two Governments *or* (with the consent of the plaintiff government) between the injured national and the defendant government. (A settlement negotiated between the national and the defendant government does not *ipso facto* settle or bring to an end the dispute between the governments or debar the plaintiff government from continuing to press for an indemnity; the inter-governmental dispute is settled only if the plaintiff government agrees to the settlement of the inter-governmental dispute on the basis of the terms agreed between the national and the defendant government)[1]. By whichever method the settlement is arrived at, in the contention of the United Kingdom Government, there arises, upon the settlement of the dispute between the two governments, an international obligation of a treaty character between the governments to continue to accept and observe the terms on which the inter-governmental dispute is settled, whether those terms were negotiated between the governments or between the national and the defendant government. There is never any such "pseudo-novation" as the Iranian Government wrongly alleges the United Kingdom Government to have suggested (see (iv) of paragraph 30 above). The United Kingdom Government has never contended, and does not need to contend, that any such pseudo-novation took place in the present case.

32. In the present case the method adopted for the settlement both of the inter-governmental dispute between the United Kingdom and Persia and the dispute between the Persian Government and the Anglo-Persian Oil Company was that of negotiation between the Persian Government and the Company. These negotiations were begun in Geneva and Paris and, with the consent of M. Beneš, the Rapporteur, were continued and completed in Tehran. (The Persian submission set out as (ii) in paragraph 30 above is therefore not quite accurate.) This form of negotiation resulted from the "provisional agreement" between the Persian and the United Kingdom Governments which was reported to the Council of the League by M. Beneš (Annex 3 to the Memorial, paragraph 28), and from the resolution of the Council (*loc. cit.*, paragraph 29). The relevant portion of M. Beneš's report is as follows:

(i) "The two parties agree to suspend all proceedings before the Council until the session of May 1933, with the option of prolonging, if necessary, this time-limit by mutual agreement."

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[1] When the settlement is negotiated between the two governments, it is commonly stipulated as part of the settlement that the national shall renounce all further claim; similarly, if the settlement is negotiated between the injured national and the defendant State, there is commonly an exchange of communications between the two governments recording that the dispute between them is settled on the terms so negotiated.

(ii) "The two parties (i.e. the two Governments) agree that the Company should immediately enter into negotiations with the Persian Government...."

(iii) ".... If the negotiations for the new concession remain without result, the question will come back before the Council, before which each party remains free to resume the defence of its case."

The dispute between the Persian Government and the Company was settled when, as a result of the negotiations, the course of which is described in paragraphs 31 and 32 of Annex 3 to the Memorial, the 1933 Concession Convention was signed at Tehran and ratified by the Persian Parliament. The dispute between the two Governments was settled on 12th October 1933, when M. Beneš made a report to the Council, to which the new Concession Convention was annexed, in which he stated that he had been informed by the Persian Government of the ratification of the new Concession and that, in the circumstances, the Council might take it that the dispute between the two Governments was now finally settled; the representatives of the two Governments announced their entire approval of his report. In these circumstances there arose an obligation upon both Governments towards each other to continue to respect the terms of the settlement, as alleged in III of paragraph 26 above. The United Kingdom Government further submits in the alternative (IV in the same paragraph) that the Council's action in taking note of M. Beneš's report and removing the dispute from the agenda in these circumstances was the equivalent of a resolution of the Council accepted by both parties that the dispute between them should be settled by the putting into force and observance of the Concession Convention of 1933, and that this implied resolution created an international obligation between the United Kingdom and Persia to observe that Convention.

33. It will appear from the description given above of the course of events that the Iranian Government's submission set out as (iii) in paragraph 30 above is not correct. The negotiations between the Persian Government and the Company were the condition upon which the Council agreed to suspend consideration of the inter-governmental dispute, and the further course of the proceedings before the Council in relation to the inter-governmental dispute was dependent on the success or failure of those negotiations. The two letters written by M. Beneš (Appendices Nos. 14 and 15 to Annex 3 to the Memorial) make it clear that, since these negotiations were being conducted in accordance with a resolution of the Council, he, as its Rapporteur, was bound to interest himself in them and that both he and the Secretariat of the League had a continuing function in relation to the negotiations. It further appears that the Iranian contention set out as (vi) in paragraph 30 above is incorrect. It is clear from the provisional agreement referred

to above (paragraph 28 of Annex 3 to the Memorial) that the United Kingdom Government was insisting that, if the negotiations failed, the inter-governmental dispute must come back before the Council for decision on the merits, and would not agree to its removal from the agenda unless the negotiations were successful. In fact the inter-governmental dispute was not removed from the agenda until both parties had formally stated in October 1933 that they accepted the Concession Convention as a settlement of the dispute between them.

34. It is now necessary to deal shortly with the Iranian contention referred to as *(b)* in paragraph 25 above[1] that the international obligation created by this settlement (or alternatively by the implied resolution of the Council) does not fall within the terms of the Persian acceptance of the Optional Clause, by reason of the fact that (so Iran alleges) it cannot be described as a "traité ou convention". The United Kingdom Government has already put forward its argument on this point in paragraph 40 of Annex 2 to the Memorial. In paragraph 21 of its Preliminary Observations the Iranian Government relies on the argument of restrictive interpretation which has been dealt with already in paragraph 37 of Annex 2 to the Memorial. In the footnote on page 297 of its Preliminary Observations, the Iranian Government argues that, if Iran had meant by her declaration to include every sort of *conventional* obligation, she would have accepted letter *(c)* of Article 36 (2) of the Court's Statute and not merely letter *(a)*. The answer is, of course, that the letter *(c)* covers breaches of international obligations which are not *conventional* at all, as well as breaches of conventional obligations.

The exception of "domestic jurisdiction"

35. The second limitation in the Persian acceptance of the Optional Clause which has to be considered in this case is that of "domestic jurisdiction". The relevant words of the limitations on this point made by Persia and the United Kingdom are:

(By Persia) "les différends relatifs à des questions qui, d'après le droit international, relèveraient exclusivement de la juridiction de la Perse".

(By the United Kingdom) "disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom".

In paragraph 13 of its Preliminary Observations the Iranian Government appears to be arguing that, although the limitation made by

[1] The Iranian contention is made in sub-paragraphs 3 and 4 of paragraph 21 of its Preliminary Observations and in a footnote at the bottom of page 297. This footnote, however, appears to be misplaced and probably relates to paragraph 21.

Persia was in the words quoted above and although Article 36 (5) of the Statute of the Court provides that :

> "Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and *in accordance with their terms*",

none the less the Persian declaration must be regarded as in some way modified by some supposed change since 1932 in international law. If, as perhaps paragraph 7 of its Preliminary Observations suggests, the Iranian Government is referring to a change in the rules of general international law, a change which widens the sphere of domestic jurisdiction (or in other words the sphere of the discretionary power of a State) so that in some respect that sphere is wider to-day than it was in 1932, it is for Iran to convince the Court that that change has taken place. The United Kingdom denies that any such change in the general rules of international law has taken place. The Iranian Government in its Preliminary Observations has not demonstrated that any change in the general rules of international law, which are relied upon by the United Kingdom in its Memorial and which are summarized in paragraph 7 thereof, has taken place. If the Court will look at the legal contentions in the United Kingdom Memorial, it will see that these contentions are in no way affected by the fact that, since 1932, the nationalization of industry has been practised on a large scale in a large number of countries, which is all that Iran cites as authority in favour of the alleged change in the law, since in its Memorial the United Kingdom admitted that, in general and subject to conditions which are set forth in the Memorial, States may nationalize industry in their territories. Nothing in the Iranian Preliminary Observations in support of an alleged change of international law in any way touches on the United Kingdom contention, based on the existence in the Concession Convention of 1933 of an article, the terms of which in effect contain an express obligation on Iran not to nationalize the enterprise of the Anglo-Iranian Oil Company, or indeed on any other contentions on the merits which the United Kingdom Government makes [1].

36. It is, however, thought that the main argument of the Iranian Government is that based on Article 2 (7) of the Charter. Article 2 (7) of the Charter is, of course, not a rule of general international law but an important provision in the constitution of the United Nations, preserving intact (except where Chapter VII is involved) the discretionary power of a State in accordance with

[1] In any event the Iranian arguments in regard to nationalization are arguments going to the merits of the case and are not relevant to the question of jurisdiction except to the extent indicated in paragraph 43 below.

the rules of general international law which define that discretion. If the Iranian Government argument is that declarations under the Optional Clause must now be read as subject to Article 2 (7) of the Charter, this is merely another and less plausible version of the argument (that Article 2 (7) affects the jurisdiction of the Court) which the United Kingdom has dealt with in paragraphs 9 to 14 of these Observations and Submissions. It is difficult to understand how it can be argued that Article 2 (7) of the Charter modifies the terms of an acceptance of the Optional Clause of the Statute of the Court. It is true that the provisions of the Charter override all treaty obligations between Members which are inconsistent with the terms of the Charter (Article 103). But there is no conflict between a provision in the Charter, which provides that the United Nations is not to intervene in a certain class of matters, and a reservation to a declaration under the Optional Clause, which excepts from the jurisdiction given to the Court by the declaration, a smaller class of matters than that designated by Article 2 (7) of the Charter as the limitation on the action of the United Nations. (The United Kingdom Government does not admit that the class of matters covered by the words "exclusively within the domestic jurisdiction" of a State is smaller than that covered by the words "essentially within the domestic jurisdiction" of a State, but assumes for the purposes of this argument that the Iranian Government contends that it is smaller.)

37. It appears sufficiently clearly from paragraphs 9 to 14 above and from the comments just made that, just as the express terms of Article 36 of the Statute are not limited by Article 2 (7) of the Charter, so the express terms of the Persian declaration are not affected by that Article. The words which the Court has to consider are those of the Persian and United Kingdom declarations, and it is to those words that these observations will be directed [1]. The Iranian Government's contentions on this point (which are contained in paragraphs 7-12, 15 and 16 of its Preliminary Observations) are directed rather to the words "essentially within the domestic jurisdiction" which occur in Article 2 (7) of the Charter. For the reasons already given [2], it is submitted that Article 2 (7) of the Charter is not relevant to the question before the Court ; but, if the Court should decide that it has some relevance, the

[1] It has been pointed out in paragraph 6 above that, in so far as in dealing with this point the Court elucidates the meaning of the expressions "jurisdiction" (of the United Kingdom) and *"juridiction" (de la Perse)*, it will incidentally offer some assistance to the Security Council, which may have to decide on its own jurisdiction having regard to Article 2 (7) of the Charter, in which the words "domestic jurisdiction" *(compétence nationale)* appear. The United Kingdom Government submitted in paragraph 18 of Annex 2 to the Memorial that the words "jurisdiction" *("juridiction")* and "domestic jurisdiction" *("compétence nationale")* have the same meaning ; what is said in the succeeding paragraphs as to "jurisdiction" *(juridiction)* applies equally to "domestic jurisdiction" *(compétence nationale)*.

[2] See paragraphs 9-14 above.

United Kingdom Government would contend that, even on that hypothesis, the jurisdiction of the Court to deal with the merits of the present case would not be affected. The United Kingdom Government has, therefore, included, as Annex 4 to these Observations and Submissions, an outline of its arguments on this point, in case they should become relevant.

38. The arguments here submitted by the United Kingdom Government are supplementary to those contained in paragraphs 18-26 of Annex 2 to the Memorial. It may be as well at the outset to summarize the submissions which the United Kingdom Government there put forward on the subject of "domestic jurisdiction":

(a) An act is not within the "jurisdiction" ("domestic jurisdiction", *"juridiction"*, *"compétence nationale"*) of a State if it relates to a matter as to which the discretionary power of the State is limited, at the time when the act is done[1], by rules of international law or treaty obligations, and, in performing the act, the State infringes any of those rules or obligations.

(b) The question whether a matter is one as to which the discretionary power of the State is limited by rules of international law or treaty obligations, can never be a question within the jurisdiction ("domestic jurisdiction", *"juridiction"*, *"compétence nationale"*) of the State, but must be determined objectively.

(c) The question whether the State, when performing the act, did or did not infringe any rule of international law or any treaty obligation, cannot be a question within the "jurisdiction" ("domestic jurisdiction", *"jurisdiction"*, *"compétence nationale"*) of the State, but must be determined objectively.

The case of the Tunis and Morocco Nationality Decrees

39. The main authority, on which the United Kingdom Government relied in Annex 2 to the Memorial in support of these propositions, was the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4). Despite the comments made by the Iranian

[1] It has often been observed by writers, some of whom are quoted in paragraph 42 below, that the question of domestic jurisdiction is a relative one in the sense that it depends on the state of international law at the time in question and the treaty obligations which may be in force at that time. Also, the Permanent Court of International Justice itself, in the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4), said: "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. Thus, in the present state of *international law*, questions of nationality are, in the opinion of the Court, *in principle within this reserved domain" (p. 24). An act which, done in the year* 1880, might have been within the domestic jurisdiction of the State, may not be so in 1930, because, in the interval, either the rules of international law have developed or the State in question has entered into treaty obligations which were not in force in 1880. There is no rule of international law which traces once and for all the limits of a State's domestic jurisdiction, since those limits depend on the development of international law and of treaty obligations.

Government in paragraph 15 of its Preliminary Observations, the Government of the United Kingdom still contends that that case is still accepted as the leading judicial pronouncement on domestic jurisdiction, and that (for the reasons given in paragraph 18 of Annex 2 to the Memorial) the principles laid down in that case apply exactly to the declarations in the present case. The comments of the Iranian Government on that case (like its comments on other cases cited by the United Kingdom Government) appear to be based on a misunderstanding of the reasons for which the United Kingdom Government cited the case. The fact that Article 15 (8) of the Covenant is no longer in force in no way detracts from the value of the case as an authority for the interpretation of words (in the Persian and United Kingdom declarations) identical with, or synonymous with, those used in Article 15 (8). The fact that the *Tunis and Morocco Nationality Decrees* case related to the nationality legislation of two protected States does not detract from the universal applicability of the general principles laid down by the Court in the Opinion ; no two cases are exactly alike in their facts, and the United Kingdom Government does not suggest that there is any similarity between the *facts* of the *Tunis and Morocco Nationality Decrees* case and the present case ; but the principles enunciated in the Opinion are general principles of international law, and are applicable whenever an international court has to determine (in whatever circumstances) a question as to domestic jurisdiction. In fact (in the first sub-paragraph of paragraph 15 of its Observations) the Iranian Government admits (as of course, in the light of the Opinion, it has no option but to do) the validity of the principle laid down in the case and on which the United Kingdom relies. Its only comment—"nous verrons seulement que dans l'affaire de l'ex-A. I. O. C. ces engagements n'existent pas"—totally ignores the engagements set out in paragraphs 9-14A of Annex 2 to the Memorial on which the United Kingdom Government relies. Moreover, the principle applies equally to obligations of general international law. The Iranian Government indeed quotes, with approval, a part of the Court's Opinion to the effect that the "mere fact that a State brings a dispute before the League of Nations does not suffice to give the dispute an international character calculated to except it from the application of paragraph 8 of Article 15" and that "the mere fact that one of the parties appeals to engagements of an international character in order to contest the exclusive jurisdiction of the other is not enough to render paragraph 8 inapplicable". The Government of the United Kingdom (as Annex 2 to its Memorial shows) fully approves this passage, which must of course be read in conjunction with the immediately succeeding passage, which is of equal importance :

> "But when once it appears that the legal grounds *(titres)* relied on are such as to justify the provisional conclusion that they are of juridical importance for the dispute submitted to the Council,

> and that the question whether it is competent for one State to take certain measures is subordinated to the foundation of an opinion with regard to the validity and construction of these legal grounds *(titres)*, the provisions contained in paragraph 8 of Article 15 cease to apply and the matter, ceasing to be one solely within the domestic jurisdiction of a State, enters the domain governed by international law."

The question for the Court now is whether the legal grounds *(titres)* relied on by the United Kingdom Government are, or are not, of juridical importance for the dispute submitted to the Court.

The Electricity Company case

40. The next case relied on by the United Kingdom Government was that of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77). In paragraph 23 of Annex 2 to the Memorial, the United Kingdom Government quoted two passages from pages 77-78 and 83 of the Court's judgment in that case, to the effect: *(a)* that, by alleging that Bulgaria had committed violations of her international obligations, Belgium had raised a point of an international character; and *(b)* that the question of the existence or non-existence of the alleged international obligations amounted "not only to encroaching on the merits, but to coming to a decision in regard to one of the fundamental factors in the case", and could not therefore be regarded as preliminary in character. The Iranian Government does not attempt to deny the correctness of these statements of principle; instead, it attempts to argue (in paragraph 16 of its Preliminary Observations) that they are not applicable to the present case because of some supposed distinction (which the United Kingdom Government does not understand, and for which no authority whatever is quoted) between "nationalisation" and "expropriation en vue de l'établissement d'un service public". Even if such a distinction existed (which the United Kingdom Government does not admit), it would not in the least affect the universal applicability, in cases where domestic jurisdiction is in issue, of the general principles laid down in the *Electricity Company* case by the Permanent Court of International Justice.

The Peace Treaties case

41. In addition to these two pronouncements by the Permanent Court of International Justice, which are in themselves desicive, and the applicability of which the Iranian Preliminary Observations have not succeeded in placing in any doubt, a more recent authority, which may be advanced in support of the submissions in paragraph 38 above, is to found in the case of the *Interpretation of Peace Treaties with Bulgaria, Hungary and Roumania* (*I.C.J. Reports 1950*, page 65), where the Court said (at pages 70-71):

"It [i.e. the Request for an Advisory Opinion] is directed solely to obtaining from the Court certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes by the Commissions provided for in the express terms of Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary and Article 38 of the Treaty with Roumania. *The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law, which, by its very nature, lies within the competence of the Court.*"

And again at page 74: "*Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence.*"

Similarly, in the present case, the questions whether the rules of international law and the conventional obligations alleged by the United Kingdom exist or not, and whether the facts alleged by the United Kingdom (if true) constitute violations of them, are "questions of international law which, by their very nature, lie within the competence of the Court", and are "matters for objective determination".

The views of writers

42. Support for the submissions of the United Kingdom Government is to be found in the works of writers as well as in judicial decisions. Thus, M. Politis, after enumerating some of the matters which, according to a resolution before the United States Senate in 1920, were undoubtedly within the domain of domestic jurisdiction, said that

"parmi les questions énumérées, il en est qui sûrement échappent, au moins en partie, à la compétence exclusive du pays intéressé, car elles ont fait l'objet de traités qui leur donnent un incontestable caractère international. Il ne suffit pas en effet pour qu'une affaire soit traitée comme domestique qu'elle n'ait pas été réglée par le droit international général. Il faut encore qu'elle soit restée en dehors des prévisions du droit conventionnel." (*Recueil des Cours de l'Académie de Droit international*, 6 (1925) (i), pp. 49-50.)

Referring to the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4), M. Politis said,

"C'est un point important qu'il convient de retenir. On peut, avec la Cour, le formuler ainsi : les matières non réglées par le droit international peuvent cesser d'être comprises dans le domaine réservé d'un pays, si celui-ci a consenti à restreindre à cet égard sa liberté par des engagements envers autrui." (*Loc. cit.*, p. 50.)

M. Politis went on to say that :

"Il est une autre règle qui doit être suivie dans la détermination du contenu du domaine réservé. Si, dans l'appréciation du caractère domestique d'une question, il y a doute, il doit profiter plutôt au

droit international qu'à la compétence exclusive de l'État intéressé, car, dans le droit international moderne, le domaine de la liberté limitée l'emporte sur le domaine réservé." *(Ibid.)*

Similarly Professor Basdevant in *Recueil des Cours de l'Académie de Droit international 58* (1936) (iv), page 603 at pages 606-607, wrote :

> "Enfin, la compétence d'un État peut être envisagée comme exclusive face au droit international. On entend alors dire que la compétence de cet État est exclusive quand aucune règle de droit international ne détermine comment ledit État devra exercer sa compétence : la compétence exclusive apparaît alors comme étant celle que l'État exerce discrétionnairement. S'il existe, au contraire, des règles de droit international positif déterminant dans quel sens la compétence doit être exercée, la compétence devient une compétence liée ; elle n'est plus exclusive face au droit international. Sous cet aspect, le domaine de la compétence exclusive se rétrécit singulièrement. Il ne suffit pas de considérer l'objet de cette compétence : une affaire d'ordre interne ou de caractère domestique échappe à la compétence exclusive dès qu'elle a fait l'objet d'une règle de droit international touchant l'exercice de cette compétence."

Again, at pages 610-611, Professor Basdevant wrote :

> "En effet, dès qu'une règle de droit international existe pour déterminer comment la compétence d'un État sera exercée, cet exercice comporte, au moins implicitement, interprétation et application de cette règle. Logiquement, cette interprétation et application ne peut relever du seul État dont la compétence est réglementée. La position que prend celui-ci touchant cette interprétation et application, et qu'il est compétent pour prendre, il la prend sous sa responsabilité politique et juridique envers les États qui ont titre à demander l'exacte application de ladite règle et à critiquer, le cas échéant, l'interprétation qui en a été donnée et l'application qui en a été faite. Face à ces États, l'État dont la compétence est liée ne peut plus revendiquer celle-ci comme exclusive sous cet aspect et dans cette mesure."

Alternative submission of the United Kingdom Government that, if the Court decides not to reject the Preliminary Objection, it should join the question of jurisdiction to the merits

43. In paragraphs 35-42 above the United Kingdom Government has put forward reasons why the Court should hold that the present case does not fall within the reservation of domestic jurisdiction in the Persian declaration and should reject the Preliminary Objection lodged by the Iranian Government. If, however, the Court should not be disposed to dismiss the Preliminary Objection, then, in the submission of the United Kingdom Government, it must join the question of jurisdiction to the merits. Where a State has included in its declaration under Article 36 of the Statute an express reservation of domestic jurisdiction, it is indeed open to it to put

forward "domestic jurisdiction" not only as a defence on the merits—as a defence on the merits it is always available—but also as a preliminary objection to the jurisdiction. As a general rule, however, a preliminary objection based on domestic jurisdiction, though it may be rejected, cannot be upheld without going into the merits of the case. As explained in Annex 2 to the Memorial, and in particular in paragraphs 18 to 26 thereof, and in paragraph 38 above, a State which has committed a breach of an international obligation (whether one arising from general international law or treaty) cannot have been acting within its domestic jurisdiction. The question whether the actions of a State do or do not constitute a breach of an international obligation can therefore never be a question falling within the exception of domestic jurisdiction; for the question on the merits (i.e. the question whether the State has committed a breach of an international obligation) is the same as the question whether or not the State was acting within its domestic jurisdiction; and, therefore, the decision on the question of jurisdiction arising on the domestic jurisdiction reservation depends on the decision on the merits. Where the dispute relates to the existence or non-existence of a breach of an international obligation, it is only possible to decide in favour of a preliminary objection based on the domestic jurisdiction reservation, before examining the merits, *if it is plain on a summary view that the alleged international obligation does not exist or that the facts alleged by the applicant State, if true, do not constitute a breach* (paragraph 22 of Annex 2 to the Memorial). Where it is not possible to hold this on a summary view, the Court must either dismiss the preliminary objection or join it to the merits.

44. In the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77), the Court adopted the latter course [1], whereas in the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4) it felt able, without going into the merits of the case, to advise the Council of the League of Nations to reject the plea of domestic jurisdiction.

45. The arguments advanced in paragraph 43 above are supported by the views of prominent writers. Thus, M. Georges

[1] The Court also adopted this course in the case concerning *The Administration of the Prince von Pless* (Series A/B, No. 52), where it said (at p. 15): "Whereas the claim thus made raises a question regarding the Court's jurisdiction, and as this question is connected with another, namely, whether, on the basis of Article 72, paragraph 3, of the Geneva Convention, a State, in its capacity as a Member of the Council, may claim that an indemnity be awarded to a national of the respondent State, who is a member of a minority; and *as the latter question*—which the Court feels called upon to raise *proprio motu—concerns the merits, the Court cannot pass upon the question of jurisdiction until the case has been argued upon the merits....*" In the same case (at p. 16), the Court gave its actual decision in the following form: "The Court .... joins the preliminary objection raised by the Polish Government to the merits of the suit .... in order to pass upon the objection and, if the latter is overruled, upon the merits, by means of a single judgment."

Scelle, in *Recueil des Cours de l'Académie de Droit international*, 46 (1933) (iv), page 331, at pages 417-418 wrote :

> "Il en résulte que, pour juger de la validité des situations juridiques résultant de l'utilisation d'une compétence discrétionnaire (soi-disant compétence exclusive), il est nécessaire de juger l'affaire *au fond*, ou, comme dit la jurisprudence anglo-saxonne, « on its merits ». Par conséquent, la question de domaine réservé ou de compétence exclusive *ne peut jamais faire l'objet d'une exception d'incompétence opposée « in limine litis »* [1]. Ni le Conseil de la Société des Nations, ni un tribunal international ne peuvent jamais savoir à première vue si l'on est dans un domaine de compétence exclusive, pour cette bonne raison que ces domaines n'existent pas comme tels, qu'il n'y a que des catégories de rapports internationaux où la compétence est particulièrement discrétionnaire et que, pour savoir dans quelles limites elle l'est, et si les gouvernants assignés devant le Conseil ou devant la Cour ont ou non dépassé ces limites, il n'y a pas d'autre moyen que d'examiner l'affaire au fond."

46. In the present case, it is clear beyond argument that no Court could decide on a summary view whether or not the international obligations relied on by the United Kingdom exist, or whether or not the facts alleged by the United Kingdom, if true, constitute a breach of them. Indeed, when the Court in its Order dated 5th July 1951 said :

> "Whereas the complaint made in the Application is one of alleged violation of international law by the breach of the agreement for a concession of April 29th, 1933, and by a denial of justice which, according to the Government of the United Kingdom, would follow from the refusal of the Iranian Government to accept arbitration in accordance with that agreement, and whereas it cannot be accepted *a priori* that a claim based on such a complaint falls completely outside the scope of international jurisdiction." *(I.C.J. Reports 1951*, p. 89, at pp. 92-93.)

no other conclusion from its words is possible than that the preliminary objection as to domestic jurisdiction must (if not rejected) be joined to the merits.

47. This conclusion becomes irresistible when one reads the Preliminary Observations of the Iranian Government. There are several pages of those Observations which contain nothing but argument on the merits. This is indeed scarcely appropriate in an objection relative to the jurisdiction, but the mere fact that the Iranian Government has thought it necessary in such a pleading to indulge in this extended argument on the merits indicates that it is far from self-evident that the United Kingdom's contentions on the merits are wrong. To put the matter at its lowest, there is room for controversy. In fact, of course, the matter can be put

[1] Professor Scelle here puts the point even more categorically than the United Kingdom Government.

much higher : in paragraphs 7 to 47 of its Memorial, the United Kingdom Government addressed to the Court a series of closely reasoned arguments, supported by citations from judgments of international tribunals and writers of repute ; to these arguments the Iranian Government in paragraphs 6-12 of its Preliminary Observations presented in most cases mere contradictions, unsupported for the most part by any relevant authority, and in many cases lacking even argument in support of its contentions ; in addition, the Iranian Government fails to deal in terms with most of the arguments of the United Kingdom Government, or even to refer to the authorities cited by the United Kingdom Government. The Iranian Government can scarcely ask the Court to hold, on the strength of the cursory treatment which it has accorded to the matters in issue, that the United Kingdom contentions on the merits can be rejected *on a summary view*, without the proper consideration which the ordinary procedure on the merits is designed to afford. To paraphrase what the Court said in the *Peace Treaties* case (*I.C.J. Reports 1950*, page 74) : "The mere denial of the existence of an international obligation does not prove its non-existence." The Iranian arguments have, however, served to show that the matters in issue between the two Governments are not susceptible of decision on a summary view. A glance at the Memorial and at the Iranian Preliminary Observations indicates clearly that there are here a number of difficult and important questions at issue. One of these, namely the issue as to the legitimacy in international law of the cancellation of a concession by legislative action *in violation of an express renunciation of the right to terminate the concession unilaterally even by legislative action*, involves a legal question which, so far as the United Kingdom Government is aware, has never arisen before and which certainly cannot be determined without a full consideration on the merits. Further, a reading of paragraphs 26-34A of the Memorial together with the references to compensation in paragraphs 7, 11 and 12 of the Iranian Preliminary Observations reveals that there is a complicated issue not only of law but of fact, depending on figures and possibly even requiring an enquiry or an expert opinion under Article 50 of the Statute of the Court, which even the Iranian Government has admitted "pourrait donner lieu à litige" (page 287 of the Iranian Preliminary Observations) and which could certainly not be determined on a summary view on a preliminary objection.

48. Instances could be multiplied, but the United Kingdom Government considers that it would be improper at this stage to enter into arguments on points which go solely to the merits : it is sufficient for the present purpose to show that there are issues raised on the merits of the case which cannot be decided on a summary view. The United Kingdom Government wishes, however, to reserve its position entirely, and to make it clear that it accepts none of the arguments put forward on the merits in the Preliminary

Observations of the Iranian Government, and is confident that it will have little difficulty in rebutting them when the proper time arrives. The United Kingdom Government cannot, however, refrain from commenting at this stage on the strange allegation made by the Iranian Government in paragraph 7 of, and Annex VI to, its Preliminary Observations, namely that the United Kingdom Government has recognized irrevocably and for all purposes the nationalization of the Anglo-Iranian Oil Company's concession; this is an allegation with which the United Kingdom Government has not previously had an opportunity to deal; it has therefore thought it right to present the true facts to the Court, and to make certain comments: these are to be found in Annex 5 to these Observations and Submissions.

Comments of the United Kingdom Government on certain miscellaneous points raised by the Iranian Government in its Preliminary Observations

The Eastern Carelia case

49. It remains to dispose of certain subsidiary arguments put forward by the Iranian Government which do not fall within any of the headings under which these Observations and Submissions are arranged. The first of these is the one precedent which the Iranian Government has seen fit to cite in support of its case, namely the case of the *Status of Eastern Carelia* (Series B, No. 5). (See paragraph 26 of the Iranian Preliminary Observations.) In that case a dispute had arisen between Finland and Russia (which at that date was not a member of the League of Nations) as to whether certain provisions, contained in the Treaty of Dorpat between the two countries and in a declaration annexed thereto, imposed an international obligation upon Russia. Finland asked the League of Nations to take the matter up and the Council of the League caused an enquiry to be made of Russia whether she would consent to submit the question in issue to the examination of the Council on the basis of Article 17 of the Covenant. Russia refused to agree to this course, and the Council thereupon requested the Permanent Court of International Justice to give an advisory opinion upon the question at issue between Finland and Russia. The Iranian Government has made the remarkable suggestion that the position of Iran in the present case is comparable to the position of Russia in the *Eastern Carelia* case. It is hard to imagine two cases which are less properly comparable. The Iranian Government has ignored the fundamental differences which render the *Eastern Carelia* case quite useless as an authority in the present case.

In the earlier case, not only had Russia *not* signed a declaration accepting the compulsory jurisdiction of the Permanent Court, but she was not a member of the League of Nations or a party to

the Court's Statute at all. Moreover, as stated above, when asked to submit her dispute with Finland to the Council of the League in conformity with Article 17 of the Covenant (the only means by which a non-member State could become justiciable by an organ of the League of Nations) she declined the request. It was in relation to that state of facts that the Court said (page 27) that "it is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or arbitration or to any other kind of pacific settlement", and it was in those circumstances that the Court in that case declined jurisdiction. Iran, on the other hand, is a Member of the United Nations, and as such has accepted the principles and obligations contained in the Charter and, in particular, in Article 1 (1), Article 33 (1) and Article 36 (3) thereof, and has accepted with the Charter the Court's Statute. Unlike Russia in the earlier case, Iran has, by its acceptance of the Charter, undertaken "to submit its disputes with other States either to mediation or to arbitration or some other kind of pacific settlement". (This form of acceptance of jurisdiction is referred to by the Court in the passage of its judgment in the *Eastern Carelia* case which immediately follows that quoted above when it says : "Such consent can be given once and for all in the form of an obligation freely undertaken, but it can, on the contrary, also be given in a special case apart from any existing obligation. The first alternative applies to the Members of the League who, having accepted the Covenant, are under the obligation resulting from the provisions of this pact dealing with the pacific settlement of international disputes.") Moreover, Iran has given her consent to the jurisdiction of the International Court of Justice by her declaration under Article 36 (2) of the Statute of the Permanent Court of International Justice, that is, she has committed herself in advance to a particular peaceful means, namely judicial settlement *(règlement judiciaire)* by the International Court of Justice for the solution of legal disputes falling within the terms of her declaration, and it is that acceptance of jurisdiction which is now invoked by the United Kingdom. The sole question now before the Court is whether the present case falls within the Persian declaration. If the Court answers this question in the affirmative, it is absurd to suggest that Iran is being "compelled without her consent to submit a dispute with another State either to mediation or to arbitration or to any other kind of pacific settlement".

Even if the *Eastern Carelia* case were at all comparable to the present case, it must now be read subject to a more recent pronouncement of the present Court. In the case of the *Interpretation of Peace Treaties with Bulgaria, Hungary and Roumania* (First Phase), *I.C.J. Reports 1950*, page 65, the International Court of Justice gave an advisory opinion at the request of the General Assembly upon the interpretation of those treaties. Bulgaria, Hungary and Roumania were not members of the United Nations,

nor had they accepted the Court's Statute; moreover, they contested the jurisdiction of the Court to give an advisory opinion. None the less the Court felt able in that case to give the advisory opinion which had been requested of it.

The alleged abuse of the right of diplomatic protection

50. In paragraph 25 of the Iranian Government's Preliminary Observations, the remarkable proposition is put forward that, although a State may "en utilisant la procédure diplomatique, faire surgir à son gré un litige de caractère international" between itself and another State, none the less "ce qui est impossible juridiquement c'est de transformer ce litige en une affaire judiciaire relevant de la compétence obligatoire de la Cour". The passage in which this curious allegation occurs appears to suggest that the United Kingdom Government has done something improper in bringing before the Court under the Optional Clause the case of an injury done to one of its nationals. The Iranian Government has even delved into history and made reference to a case in which, in the early years of the century, the French Government found it necessary, in order to obtain redress for an injury committed to French nationals by the Government of Turkey, to invade and occupy for a period part of the island of Mitylene, an island lying within the Turkish dominions. The United Kingdom Government can see no reason for the introduction of this ancient incident other than that the Iranian Government wishes to suggest that in some way the United Kingdom Government has acted in a comparable manner. In fact, the difference between the courses adopted by the United Kingdom Government in this case and the French Government in that case demonstrates in a most significant manner the development, during the 50 years which have intervened, of international organs and of means for settling international disputes without recourse to the use of force. What greater contrast can there be between the course which the French Government, lacking any other means of obtaining redress, was forced to adopt in 1901, and the recourse which the United Kingdom Government has had in the present case to judicial settlement under Article 36 of the Court's Statute? It is perhaps pertinent to remark that this peaceful procedure is one which is available to the smallest as well as to the greatest of nations, and is a procedure by which the United Kingdom itself has been brought before the Court on more than one occasion by small nations. It is sufficient to refer to the well-known case of the *Mavrommatis Concessions* and to the case at present pending before the Court in the matter of *Ambatielos* (Greece *v.* United Kingdom).

What is almost more remarkable than the proposition put forward by the Iranian Government in paragraph 25 of its Preliminary Observations is the fact that it cites as authority for it the *Mavrom-*

matis case. It is impossible to understand how the Iranian Government can suppose that that case supports its contention. In that case the Greek Government alleged that the dispute between itself and the Government of the United Kingdom concerning the *Mavrommatis Concessions* fell within the terms of Article 26 of the Palestine Mandate (the instrument by which the United Kingdom Government as Mandatory had accepted the compulsory jurisdiction of the Permanent Court of International Justice over disputes relating to the interpretation or the application of the provisions of the Mandate), and the United Kingdom was contesting the jurisdiction of the Court (as Iran is now) and was alleging that the dispute did not fall within the terms of that Article. The decision of the Court was that, as to certain of the concessions, the dispute did fall within the terms of the Mandate and that the Court therefore had a compulsory jurisdiction over the dispute. In that case the dispute was certainly "un litige de caractère international", which the Greek Government had caused to arise "en utilisant la procédure diplomatique" on behalf of M. Mavrommatis, and the Court's decision clearly shows that an international dispute arising out of the exercise by a State of the right of diplomatic protection on behalf of its subject can fall within the compulsory jurisdiction of the Court.

The Iranian Government also relies on the case concerning the *Payment of various Serbian Loans issued in France* (Series A, No. 20) and on the case concerning *Payment in Gold of the Brazilian Federal Loans issued in France* (Series A, No. 21). In each of these cases there was a *compromis* (special agreement), and the sole question of jurisdiction which arose was whether, on the true construction of the *compromis*, there was a dispute falling within the jurisdiction of the Court under Article 34 of the Statute of the Permanent Court of International Justice, which provided that only States or Members of the League of Nations could be parties in cases before the Court. The Court decided that there was such a dispute even though the *compromis* (perhaps by an error in drafting) defined the disagreement brought before the Court as one between the Serbian Government and the French bondholders. In the present case, there is no comparable question and no issue arises under Article 34 of the Statute of the International Court of Justice. What is before the Court is not the dispute between the Anglo-Iranian Oil Company and the Iranian Government (for which the proper forum is the arbitral tribunal provided for in Article 22 of the Concession Convention), but the dispute between the United Kingdom and Iranian Governments. The cases of the Serbian and Brazilian loans are therefore of no assistance as precedents.

The "local remedies" rule

51. The next subsidiary argument of the Iranian Government is that in paragraph 12 of its Preliminary Observations to the effect that "l'accusation de déni de justice ne pourrait donc intervenir conformément au droit international général qu'après épuisement préalable des instances internes". With this expression of general principle no one could disagree, but the implication that in the present case the Anglo-Iranian Oil Company should have had recourse to the Iranian municipal courts, so far from being a legitimate application of the principle, is quite obviously untenable. The United Kingdom Government has indicated in paragraphs 7 (7) and 47 of the Memorial, and paragraph 17 of Annex 2 thereto, the several reasons which conclusively contradict any such implication: briefly summarized, they are that the requirement of international law that municipal remedies should first be exhausted does not apply in a case where there are no local remedies to exhaust; that, in the present case, the action of which the United Kingdom Government complains consists of Iranian *legislation*, and that no redress for an injury inflicted by Iranian legislation can be obtained in the Iranian municipal courts; that the Convention of 1933 provided for arbitration and that, on any view, therefore, the Company was not obliged or even permitted to have recourse to the Iranian municipal courts; and that the Iranian Government rejected the arbitral procedure so provided, and so denied to the Company the remedy to which it was entitled. Before leaving the point, however, it is necessary to draw attention to the disingenuous manner in which the Iranian Government have dragged from its context and quoted in support of their argument the following passage from the exchange of notes of 10th May 1928: "A l'exclusion de toute autre juridiction, seuls les cours et tribunaux relevant du ministère de la Justice seront compétents dans le cas où une des parties est de nationalité britannique." When one reads this passage in its context (see Appendix No. 2 to Annex 2 to the Memorial, pages 176-179), it will be seen that, so far from excluding the jurisdiction of international or arbitral tribunals in favour of Iranian municipal courts generally, on the contrary the purpose of the passage was to indicate that the jurisdiction of the Iranian municipal courts was to be limited, in cases in which one party was a British national, by removing such cases from the jurisdiction of all Iranian courts other than "les cours et tribunaux *relevant du ministère de la Justice*".

Article 22 of the Concession Convention

52. In paragraph 27 of the Iranian Government's Preliminary Observations, there is a very far-fetched argument which is hardly consistent with the contention just dealt with. The argument

appears to be this : that, by providing in the Concession Convention for arbitration, the parties must have intended to exclude the jurisdiction of the Court and the Court therefore has no jurisdiction to decide the present case. This argument rests on a misconception : Article 22 of the Concession Convention relates to disputes between the Company and the Iranian Government, and has no application to a dispute between the United Kingdom and Iranian Governments. The International Court of Justice could not in any event have jurisdiction over a dispute between the Company and the Iranian Government (see Article 34 of the Statute of the Court, and the *Serbian Loans* case referred to in paragraph 50 above). Apart from this, however, the argument is a singular attempt on the part of the Iranian Government both to eat their cake and have it ; for they are here seeking to rely on an arbitration clause which they themselves have repeatedly declared to be null and void, and which they have in relation to the present dispute expressly refused to observe[1]. The Court will recall that, by letter dated 8th May 1951, the Anglo-Iranian Oil Company, relying on Articles 22 and 26 of the 1933 Concession Convention, requested arbitration and notified the Iranian Government that it had appointed the Right Honourable Lord Radcliffe, G.B.E., as its arbitrator and that he had consented to act ; and that on 20th May 1951, the Iranian Government, in a letter to the representative of the Company, stated that the nationalization of the oil industry was not subject to arbitration, and that the Iranian Government had no other duty except the enforcement of the articles of the Oil Nationalization Act and that it did not agree whatsoever with the contents of the letter of the "former oil company" regarding reference to arbitration. (See paragraphs 5 and 6 of, and Annexes D and E to, the Application Instituting Proceedings dated 26th May 1951.) Further, in order that it might not be said that they had failed in any respect to have recourse to the arbitral procedure provided for in the Convention, the Company (despite the categorical rejection of arbitration by the Iranian Government in its letter of 20th May 1951), by letter dated 25th May 1951 (a copy of which is annexed hereto as Annex 6 (1)), requested the President of the Court, in accordance with Article 22 of the Concession Convention of 1933, to appoint an Arbitrator. By letter dated 28th May 1951 (a copy of which is annexed hereto as Annex 6 (2)), the President of the Court replied that, as the Company's request

[1] As stated by the Court in the case concerning *The Factory at Chorzów (Claim for Indemnity), Jurisdiction*, Series A, No. 9 (at p. 31) : "It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question or from having recourse to the tribunal which would have been open to him."

had certain points in common with the United Kingdom Application, he was unable for the present to deal with it. It is hardly credible that, after its total rejection of arbitration, and its repudiation of the articles of the Concession Convention which provide for it, the Iranian Government should now suggest that those articles constitute a bar to the jurisdiction of the Court. The Anglo-Iranian Oil Company, and the Government of the United Kingdom in these proceedings, have consistently maintained that the Company was entitled to have the questions in issue settled by the arbitral procedure laid down by the Concession Convention, and are complaining of the Iranian Government's refusal to go to arbitration as a denial of justice. It is a novel answer to an accusation of denial of justice to say that the jurisdiction of the International Court to hear the accusation at the suit of a government is ousted by the exclusive jurisdiction of that very tribunal to which access to the national has been wrongfully and unjustly denied. Its absurdity is so patent that the United Kingdom Government does not consider it necessary to devote any further argument to it, save to remark that the allegation that the rôle accepted by the President and Vice-President of the Permanent Court of International Justice has not been transferred to the President and Vice-President of the International Court of Justice (an allegation which the United Kingdom Government does not accept) would seem, if true, to weaken rather than to support the Iranian argument. Moreover, it is hard to see how the conferring of these powers on the President and Vice-President in the Concession Convention can have any effect, limiting or otherwise, on the jurisdiction of the Court.

The Iranian claim that proceedings before the Court should be suspended

53. The next argument to be dealt with is that contained in paragraph 2 of the Iranian Government's Preliminary Observations. In that paragraph the Iranian Government relies on the reservation in the Persian declaration to the effect that "toutefois, le Gouvernement impérial de Perse se réserve le droit de demander la suspension de la procédure devant la Cour pour tout différend soumis au Conseil de la Société des Nations". It is not easy to understand exactly the effect of this Iranian argument since, despite its reference to this reservation and its allegation that the Government of the United Kingdom has "submitted the dispute" to the Security Council and that consequently the procedure before the Court is suspended, the Iranian Government none the less appears to desire and to request that the Court shall proceed to consider the question before it, namely the question of its jurisdiction to decide the present case on the merits. It may therefore be that this is an academic point on which no time need be expended, but since the

Iranian Government has thought fit to bring it forward, the Government of the United Kingdom considers it necessary to deal with it. It is in fact based on a misconception as to the nature of the United Kingdom's application to the Security Council. The United Kingdom has not submitted to the Security Council the *merits* of the present dispute between itself and Iran at all. What the United Kingdom did in September 1951 was to bring to the notice of the Security Council the failure of the Iranian Government to comply with the Court's Order dated 5th July 1951 indicating Interim Measures of Protection (see paragraph 4 of these Observations and Submissions and Annexes 1, 2 and 3 thereto). This is an entirely different matter and clearly cannot on any view amount to a submission of the dispute to the Security Council such as would bring into force the reservation in the Persian declaration [1].

Of course, even if it were open to the Iranian Government to suspend the present proceedings by virtue of the reservation in the Persian declaration, that could not affect the Court's duty to decide the question of its own jurisdiction. The proceedings on the merits are in any event already suspended under Article 62 (3) of the Rules of Court by reason of the Preliminary Objection filed by the Iranian Government, and the question of the Court's jurisdiction to decide the merits of the case cannot be affected by a temporary suspension of the proceedings. Moreover, if (contrary to the contention here advanced) the proceedings before the Court were suspended while the Security Council was considering the United Kingdom resolution, that suspension cannot continue now that the Security Council has suspended its own consideration of the matter until the Court has passed upon its (the Court's) competence.

The purported withdrawal of the Persian declaration of 1930

54. The final point with which it is necessary to deal is the reference in paragraph 2 of the Preliminary Observations of the

[1] Even if the United Kingdom did bring the merits of the present dispute between itself and Iran to the attention of the Security Council under Article 35 (1) of the Charter, it is doubtful whether the Persian reservation would apply even then. The declaration refers to the Council of the League of Nations, a body which has not the same continuity with the Security Council as the Permanent Court of International Justice has with the International Court of Justice. Moreover, the words used in the Persian declaration are those appropriate to Articles 12 and 15 of the Covenant of the League of Nations which refer to "submitting disputes to the Council"; it is reasonable to suppose that it was action under those Articles which the Persian Government intended should involve suspension of the proceedings before the Court. The terms of its reservation are not apt to include action under Article 11 of the Covenant or Article 35 of the Charter, both of which refer merely to bringing matters to the attention of the Council and of the Security Council respectively, and the Government of the United Kingdom reserves the right to argue that the reservation does not apply to such cases and that, since there is no provision in the Charter as there was in Articles 12 and 15 of the Covenant for the submission of disputes to the Council, the reservation therefore no longer has any application.

Iranian Government to the fact that, on 10th July 1951, in a telegram to the Secretary-General of the United Nations, the Iranian Government purported to withdraw the Persian declaration of 1930. It is not thought that any lengthy comment is necessary, since the Iranian Government does no more than mention this fact and do not go on to allege that this deprives the Court of jurisdiction in the present case. The reason why the Iranian Government does not do this presumably is that such an argument is, upon the face of it, quite untenable and further is effectively disposed of by the dictum of Judge Hudson in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77), quoted in footnote 1 on page 148 of Annex 2 to the Memorial. The attitude of the Iranian Government in this case towards the submission of disputes to the Court is in sad contrast with the attitude of the Iranian Delegation at the General Assembly of the United Nations in 1947, when that Delegation put forward the resolution set forth in Annex 7 to these Observations and Submissions.

Conclusions of the Government of the United Kingdom

55. Having disposed in paragraphs 49-54 above of certain subsidiary arguments raised in the Iranian Preliminary Observations, the United Kingdom Government refers to the arguments and precedents contained in the main body of these Observations, and submits in conclusion :

(a) that the present dispute is covered by the terms of Article 36 of the Statute of the Court and the declarations made by Persia and the United Kingdom under the Optional Clause, being a dispute arising in 1951 in relation to situations and facts occurring in that year and relating to the application of treaties or conventions accepted by Persia (paragraphs 8, 15 and 22 above) ;

(b) that the objections to the jurisdiction of the Court raised by the Iranian Government in its Preliminary Observations have been shown in these Observations to be groundless, in particular :

(i) that the present dispute does not fall within the exception of domestic jurisdiction made in the Persian declaration (paragraphs 35-48 above) ;

(ii) that neither Article 36 of the Statute of the Court nor the Persian declaration made under the Optional Clause are in any way limited in scope by Article 2 (7) of the Charter of the United Nations (paragraphs 9-14 and 36-37 above);

(iii) that, even if Article 2 (7) of the Charter is in any way relevant to the question of the jurisdiction of the Court in the present case, the present dispute is not "essentially within the domestic jurisdiction" of Iran (Annex 4 of these Observations) ;

(iv) that the present Iranian interpretation of the Persian declaration of 1930 under the Optional Clause has been shown to be incorrect (paragraphs 17-21 above) ;

(v) that, even if it were correct, the present dispute would still fall within the jurisdiction of the Court for the reasons given in paragraph 22 above ; and

(vi) that the Iranian Government's arguments concerning the treaties and conventions relied on by the United Kingdom are unfounded (paragraphs 23-34 above) ; and

(c) that, for all these reasons, the Court has jurisdiction to determine the present case on the merits.

56. 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 to fix the time-limits for the further written proceedings.

(Signed) W. E. BECKETT,
Agent for the Government of the United Kingdom.

24th March 1952.

ANNEXES

LIST OF ANNEXES

Annex 1

DRAFT RESOLUTION SUBMITTED BY THE UNITED KINGDOM DELEGATION TO THE SECURITY COUNCIL ON 29th SEPTEMBER 1951 (S/2358)

Whereas the International Court of Justice acting under Article 41, paragraph 2, of its Statute notified the Security Council of the provisional measures (the text of which is annexed hereto) indicated by the Court on 5th July 1951, at the request of the Government of the United Kingdom in the Anglo-Iranian Oil Company case ; and

Whereas the United Kingdom's request to the Court for the indication of provisional measures was based on the contention that the actions of the Iranian authorities threatened to bring the whole process of oil production and refining to a standstill in the circumstances calculated to cause irreparable damage to the oil producing and refinery installations and seriously to endanger life and property and cause distress to the areas concerned and the findings of the Court constituted an implicit recognition of the accuracy of this contention ; and

Whereas the United Kingdom Government at once publicy proclaimed their full acceptance of the Court's findings and so informed the Government of Iran, but the Government of Iran rejected these findings and have persisted in the course of action (including interference in the Company's operations) which led the United Kingdom Government to apply to the Court for interim measures ; and

Whereas the Government of Iran have now ordered the expulsion of all the remaining staff of the Company in Iran and this action is clearly contrary to the provisional measures indicated by the Court :

The Security Council,

Concerned at the dangers inherent in this situation and at the threat to peace and security that may thereby be involved :

1. Calls upon the Government of Iran to act in all respects in conformity with the provisional measures indicated by the Court and in particular to permit the continued residence at Abadan of the staff affected by the recent expulsion orders or the equivalent of such staff ;

2. Requests the Government of Iran to inform the Security Council of the steps taken by it to carry out the present resolution.

ANNEX TO DRAFT RESOLUTION SUBMITTED BY THE UNITED KINGDOM DELEGATION ON 29th SEPTEMBER 1951

Provisional Measures indicated by the International Court of Justice on 5th July 1951

The Court

Indicates, 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, the following provisional measures which will apply on the basis of reciprocal observance:

1. That the Iranian Government and the United Kingdom Government should each ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of any decision on the merits which the Court may subsequently render;

2. That the Iranian Government and the United Kingdom Government should each ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;

3. That the Iranian Government and the United Kingdom Government should each ensure that no measure of any kind should be taken designed to hinder the carrying on of the industrial and commercial operations of the Anglo-Iranian Oil Company, Limited, as they were carried on prior to May 1st, 1951;

4. That the Company's operations in Iran should continue under the direction of its management as it was constituted prior to May 1st, 1951, subject to such modifications as may be brought about by agreement with the Board of Supervision referred to in paragraph 5;

5. That, in order to ensure the full effect of the preceding provisions, which in any case retain their own authority, there should be established by agreement between the Iranian Government and the United Kingdom Government a Board to be known as the Board of Supervision composed of two Members appointed by each of the said Governments and a fifth Member, who should be a national of a third State and should be chosen by agreement between these Governments, or, in default of such agreement, and upon the joint request of the Parties, by the President of the Court.

The Board will have the duty of ensuring that the Company's operations are carried on in accordance with the provisions above set forth. It will, *inter alia*, have the duty of auditing the revenue and expenses and of ensuring that all revenue in excess of the sums required to be paid in the course of the normal carrying on of the operations and the other normal expenses incurred by the Anglo-Iranian Oil Company, Limited, are paid into accounts at banks to be selected by the Board on the undertaking of such banks not to dispose of such funds except in accordance with the decisions of the Court or the agreement of the Parties.

Annex 2

REVISED DRAFT RESOLUTION SUBMITTED BY THE UNITED KINGDOM DELEGATION TO THE SECURITY COUNCIL ON 12th OCTOBER 1951 (S/2358/Rev. 1)

Whereas a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security, and

Whereas the efforts to compose the differences between the United Kingdom Government and the Government of Iran regarding the installations have not succeeded, and

Whereas the Government of the United Kingdom requested the International Court of Justice for an indication of provisional measures, and

Whereas the International Court of Justice, acting under Article 41, paragraph 2, of its Statute, notified the Security Council of the provisional measures indicated by the Court on 5th July 1951, pending its final decision as to whether it had jurisdiction in the proceedings instituted on 26th May 1951 by the United Kingdom Government against the Government of Iran, and

Whereas the United Kingdom Government accepted the indication of the provisional measures and the Government of Iran declined to accept such provisional measures;

The Security Council,

Concerned at the dangers inherent in the dispute regarding the oil installations in Iran and the threat to international peace and security which may thereby be involved;

Noting the action taken by the International Court of Justice on 5th July 1951, under Article 41, paragraph 2, of its Statute;

Conscious of the importance, in the interest of maintaining international peace and security, of upholding the authority of the International Court of Justice;

Calls for:

1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the Parties in accordance with the principles of the provisional measures indicated by the International Court of Justice, unless mutually agreeable arrangements are made consistent with the purposes and principles of the United Nations Charter;

2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the rights, claims or positions of the Parties concerned.

Annex 3

SECOND REVISED DRAFT RESOLUTION SUBMITTED BY THE UNITED KINGDOM DELEGATION TO THE SECURITY COUNCIL ON 17th OCTOBER 1951 (S/2358/Rev. 2)

Whereas a dispute has arisen between the Government of the United Kingdom and the Government of Iran regarding the oil installations in Iran, the continuance of which dispute is likely to threaten the maintenance of international peace and security, and

Whereas the efforts to compose the differences between the United Kingdom Government and the Government of Iran regarding the installations have not succeeded, and

Whereas the Government of the United Kingdom requested the International Court of Justice for an indication of provisional measures, and

Whereas the International Court of Justice, acting under Article 41, paragraph 2, of its Statute, notified the Security Council of the provisional measures indicated by the Court on 5th July 1951, pending its final decision as to whether it had jurisdiction in the proceedings instituted on 26th May 1951 by the United Kingdom Government against the Government of Iran, and

Whereas the United Kingdom Government accepted the indication of the provisional measures and the Government of Iran declined to accept such provisional measures;

The Security Council,

Concerned at the dangers inherent in the dispute regarding the oil installations in Iran and the threat to international peace and security which may thereby be involved;

Calls for:

1. The resumption of negotiations at the earliest practicable moment in order to make further efforts to resolve the differences between the Parties in accordance with the purposes and principles of the United Nations Charter;

2. The avoidance of any action which would have the effect of further aggravating the situation or prejudicing the positions of the Parties concerned.

Annex 4

SUBMISSION OF THE UNITED KINGDOM GOVERNMENT THAT, EVEN IF THE COURT HOLDS ARTICLE 2 (7) OF THE CHARTER OF THE UNITED NATIONS RELEVANT TO THE CASE, THE CASE IS NOT A MATTER "ESSENTIALLY WITHIN THE DOMESTIC JURISDICTION" OF IRAN

1. The arguments in this Annex are submitted upon the hypothesis (which the Government of the United Kingdom contends to be com-

pletely erroneous for the reasons given in paragraphs 9 to 14 of these Observations and Submissions) that Article 2 (7) of the Charter is in some way relevant to the jurisdiction of the Court. The arguments here are supplementary to those in paragraph 26A of Annex 2 to the Memorial. As the United Kingdom Government understands the Iranian contention, if Article 2 (7) of the Charter were relevant to the jurisdiction of the Court, the position would be as if *either* there was in the Statute of the Court a provision to the effect that the Court shall not exercise jurisdiction in any case where the dispute submitted to the Court relates to a matter which is essentially within the jurisdiction of a State, *or* as if the Persian and United Kingdom declarations accepting the Optional Clause contained exceptions, not worded as they are in fact worded, but using the expressions of Article 2 (7) of the Charter "essentially within the domestic jurisdiction of Iran" (or "essentially within the domestic jurisdiction of the United Kingdom" as the case may be).

2. The United Kingdom Government submits that it is at any rate clear that it is for the Court to determine whether a dispute does or does not relate to a matter essentially within the domestic jurisdiction of Iran and that it is not for Iran to decide unilaterally what matters are and are not essentially within her jurisdiction. The provisions of Article 2 (7) of the Charter have been invoked in matters brought before the United Nations in a number of cases, namely the *Indonesian Question* [1], the complaint of India regarding the *Treatment of Indians in South Africa* [2], the question of the *Franco Government in Spain* [3] and the case relating to *The Observance in Bulgaria, Hungary and Roumania of Human Rights and Fundamental Freedoms* [4]. In not a single one of these cases did the General Assembly or the Security Council of the United Nations take the view that the Member invoking Article 2 (7) had the right to decide whether the matter came within Article 2 (7) or not, so that its decision had to be accepted by the United Nations.

3. The second point which becomes clear from a glance at these cases before the General Assembly or the Security Council when Article 2 (7) has been so far invoked is that in none of them did the plea of "essentially within the domestic jurisdiction" succeed as a preliminary objection. In none of them was a plea based on Article 2 (7) accepted as a reason for removing the matter from the agenda before there had been any discussion on the merits to see whether the plea was well founded or not. In this respect the plea based on Article 2 (7) of the Charter has been dealt with by the United Nations in the same manner as pleas relating to domestic jurisdiction have been dealt with by the Permanent Court of International Justice or by the present Court. Either the plea has been rejected as a preliminary objection or it has, so to speak, been treated as linked with the merits and discussed together with the merits [5].

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[1] *Official Records of the Security Council, First Year, First Series.*

[2] See, for example, *Official Records of the General Assembly, Joint First and Sixth Committees: Summary Records of Meetings*, November 1946, and the *Official Records of the General Assembly* of its first and subsequent sessions.

[3] *Journal of the Security Council, First Year*, and *Journal of the General Assembly*, No. 75.

[4] *Official Records of the General Assembly* of its third and fourth sessions.

[5] It is not intended to assert that "domestic jurisdiction" can never be upheld as a preliminary objection before the United Nations. It may be upheld if, having regard to the complaint brought before the United Nations, it is clear, on a summary view, that no breach of an international obligation can possibly be involved.

4. It is indeed not clear from an examination of the records of the meetings of the General Assembly or of the Security Council in the affairs mentioned above, whether, in the consideration of those cases on the merits, the plea of "essentially within the domestic jurisdiction" ever affected the decision, and if it did not affect the decision, exactly what was the ground on which it was held inapplicable to the particular case. This is because, before the organs of the United Nations, each delegation speaks and gives its own views and the reasons therefor. In the end, a resolution is passed by a majority, with some delegations opposing and others abstaining. Delegations in favour of the resolution, and therefore in favour of the rejection of the plea of domestic jurisdiction, are found in the minutes to give quite different reasons for the view which they respectively take. As a rule, one cannot say with any degree of certainty, as one can in the case of a judgment or advisory opinion of the Court, what was the actual ground or grounds on which the General Assembly (or the Security Council) decided by a majority to take the course which it in fact took. The United Kingdom Government does not therefore propose in this Annex to go into the details of these affairs before different organs of the United Nations. It will content itself with observing that, in three of these cases where Article 2 (7) of the Charter was invoked, an alleged breach of treaty obligations was mentioned by some delegations supporting the resolution as a ground for rejecting the plea of domestic jurisdiction. This was the case in the *Indonesian Question*, where breaches of the Linggadjati Agreement were invoked; in the case of the *Treatment of Indians in South Africa*, where a certain Cape Town Agreement was invoked; and in the case relating to the *Observance in Bulgaria, Hungary and Roumania of Human Rights and Fundamental Freedoms* [1], where provisions of the Peace Treaties were invoked. In all these three cases alleged breaches of alleged treaties clearly influenced at any rate a number of delegations supporting the resolutions to take the view that Article 2 (7) of the Charter dit not apply. It is not appropriate here to go further into the merits of these cases before the United Nations or to discuss whether in fact in all the cases the documents invoked as treaties were in fact treaties or whether the allegations of breaches of such treaties were or were not true. It is sufficient to draw the conclusion that the practice of the General Assembly and of the Security Council up to date in relation to Article 2 (7) of the Charter supports the view that, when a breach of a treaty is alleged, a *preliminary* objection based on Article 2 (7) of the Charter cannot (or is unlikely to) succeed and the merits of the case must be examined. The Court itself has applied the same principle as, for instance, in the case of the *Interpretation of Peace Treaties with Bulgaria, Hungary and Roumania* (*I.C.J. Reports 1950*, p. 65, at p. 71). [See paragraph 41 of these Observations at page 355 and Submissions.]

5. The Iranian Government in paragraph 8 of its Preliminary Observations makes some mention of the preparatory work at San Francisco relating to Article 2 (7) of the Charter, but it gives no reference to the passage to which it is referring, and the United Kingdom Government has not found the passage in question nor has it been able to understand at all what is meant by these sentences of the Iranian Preliminary Observations. The United Kingdom Government doet not propose in

[1] For the references to these cases, see paragraph 2 of this Annex.

this Annex to discuss or consider the minutes of the San Francisco Conference relating to Article 2 (7) of the Charter at all. It considers that this is a case where, under the Court's Advisory Opinions on *Conditions of Admission of a State to Membership in the United Nations* (*I.C.J. Reports 1948*, p. 57, at p. 63) and on the *Competence of the General Assembly for the Admission of a State to the United Nations* (*I.C.J. Reports 1950*, p. 4, at p. 8), no recourse should be had to the preparatory work in order to ascertain the meaning of Article 2 (7). If, on the other hand, the Court considers that it needs some assistance in interpreting Article 2 (7) of the Charter, the United Kingdom Government submits that it should rather seek such assistance in the actual conduct of the United Nations in applying the Charter, since this conduct is of much greater value in ascertaining the meaning of Article 2 (7) than the minutes of the San Francisco Conference.

6. The Court, on the hypothesis on which this Annex is written, has to interpret the words "essentially within the domestic jurisdiction of (Iran)". The expression "domestic jurisdiction" is a legal term of art which was interpreted by the Permanent Court of International Justice in the case of the *Tunis and Morocco Nationality Decrees* (Series B, No. 4) and also considered by the Permanent Court of International Justice in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77). It does not appear that the fact that the Court in the *Tunis* case had to apply the expression "*solely* within the domestic jurisdiction" had any effect on the Opinion or that the Opinion would not have been exactly the same if there had merely been the words "within the domestic jurisdiction". That is also the view of writers of great reputation, for instance Professor Georges Scelle, who writes: "Le qualificatif d'exclusive joint au mot compétence ne signifie absolument rien. Une compétence est toujours et nécessairement exclusive, si l'on se place du point de vue de son exercice, car elle ne peut être exercée que par son titulaire, si réglementée soit-elle.... A l'inverse, si toute compétence est exclusive en ce qui concerne son exercice, aucune ne l'est en ce qui concerne son attribution." (*Recueil des Cours de l'Académie de Droit international*, 46 (1933) (iv), p. 415.)

7. When once the proper meaning of the expression "domestic jurisdiction" is ascertained, and it is submitted that the correct meaning is given in paragraph 38 of the United Kingdom Government's Observations and Submissions, it would appear that the adverb "essentially", like the abverb "solely" in Article 15 (8) of the Covenant of the League, makes no material difference to the sense at all. A matter is either within the domestic jurisdiction of Iran or it is not. As Professor Scelle says, "Le droit international, comme toute discipline juridique, nous le savons, *ne présente pas d'hiatus*" (*op. cit.*, p. 416). If a matter is within the domestic jurisdiction of Iran, it is "essentially" within her domestic jurisdiction. If it is not within the domestic jurisdiction of Iran, it cannot be "essentially" within her domestic jurisdiction.

In any case, the adverb "essentially" cannot be held to give to Article 2 (7) of the Charter such a vague meaning that what is intended to be a clause protecting Members of the United Nations from excessive interference with their independence is reduced to a formula of which the application can only be arbitrary—dependent upon purely political considerations and personal views. If Article 2 (7) were such a formula, it would fail entirely in its main object. Article 2 (7) must express some

definite principle, some criterion which can be applied to all conceivable cases and which makes it possible to decide whether these cases do or do not fall within the proper sphere of United Nations action.

8. It is clear from the practice of the United Nations that the word "essentially" has not been regarded as "greatly enlarging"—as Iran would have it (see paragraph 13 of the Iranian Preliminary Observations) —the sphere reserved to the domestic jurisdiction of a State, still less as justifying the view put forward—though with no great confidence—by the Iranian Government (also in paragraph 13) that the question whether a matter is within the domestic jurisdiction of a State depends upon its importance for that State as determined by that State [1]. If anything, the practice of the United Nations to date, in the cases referred to in paragraphs 2 and 4 of this Annex, suggests that the United Nations have—rightly or wrongly—regarded Article 2 (7) of the Charter as a provision of narrower application than Article 15 (8) of the Covenant. The Iranian attempt, therefore, to argue that, because of the inclusion of the word "essentially" in Article 2 (7), the whole "portée" of the domestic jurisdiction exception has become enlarged, seems to be entirely without foundation.

9. The United Kingdom Government submits, therefore, that it is clear that a State is not acting essentially within its domestic jurisdiction if it commits a breach of treaty or convention, and that the practice of the United Nations in the cases referred to above, and the opinion of the Court in the case of the *Interpretation of Peace Treaties with Bulgaria, Hungary and Roumania* (*I.C.J. Reports 1950*, p. 65), strongly supports this view. In the case now before the Court, because of the terms of the Persian acceptance of the Optional Clause, the United Kingdom Government contends that the Court has jurisdiction on the footing that the Iranian action in regard to the Anglo-Iranian Oil Company, Limited, is a breach of treaty and convention.

Finally, the United Kingdom Government repeats here what it has said in paragraphs 5-14 of these Observations and Submissions, that it does not consider that the Court in this case has been called upon to interpret Article 2 (7) of the Charter at all, though the opinion which the Court may give on the meaning of the expression "domestic jurisdiction" in the Persian acceptance of the Optional Clause and its application to the facts of the present case may assist the Security Council if and when the Security Council has to decide upon its own jurisdiction.

Annex 5

COMMENTS OF THE UNITED KINGDOM GOVERNMENT ON THE ARGUMENTS CONTAINED IN ANNEX VI OF THE IRANIAN PRELIMINARY OBSERVATIONS RELATING TO THE RECOGNITION BY THE UNITED KINGDOM GOVERNMENT OF "THE PRINCIPLE OF THE NATIONALIZATION OF THE OIL INDUSTRY IN IRAN"

1. In Annex VI to its Preliminary Observations, the Iranian Government contends that the Government of the United Kingdom, by

[1] For a discussion of United Nations practice in this respect, see paragraph 2 of this Annex.

paragraph 3 of a note of 3rd August 1951 addressed by Mr. G. H. Middleton, its Chargé d'Affaires at Tehran, to the Iranian Government, *(a)* accepted, in a manner which committed it irrevocably and for all purposes, the nationalization of the Anglo-Iranian Oil Company's Concession, so that it is not possible for the Government of the United Kingdom to contest this nationalization in the future, and *(b)* that, in so doing, the Government of the United Kingdom committed itself to the application not merely of the Iranian law of 20th March 1951, which merely states that the oil industry in Iran should be nationalized, but also to the Iranian Act of 1st May 1951, which laid down the manner in which this nationalization was to be effected.

2. The Government of the United Kingdom maintains that both these propositions are entirely ill-founded and that the position was simply as follows. The Government of the United Kingdom was, in August 1951, ready to endeavour to settle the dispute out of court by agreement. It had declared itself ready to endeavour to make such a settlement from the beginning of the dispute, and in fact it still remains ready to endeavour to do so. It accepted the mediation of Mr. Harriman, who endeavoured to find a basis, upon which negotiations between the two Governments for the purposes of arriving at a settlement out of court could take place, and part of the basis of negotiations was the acceptance by the United Kingdom, *for the purpose of these negotiations*, of "the principle of the nationalization of the oil industry in Iran".

3. The Government of the United Kingdom accepted as the basis for these negotiations this principle, and the Iranian law of 20th March 1951 in which this principle is enshrined, but it did not accept even for this purpose the Iranian Act of 1st May 1951, and indeed the Harriman formula, with its express reference to the law of 20th March, and its omission of any reference to the Act of 1st May, would seem to make this abundantly clear. The Harriman formula, which is quoted in French in the second paragraph of the Iranian Annex VI, was given in English in Appendix No. 2 to Annex 1 B of the Memorial at page 137, and the Government of the United Kingdom submits that the account given in paragraphs 2 and 2 (A) of the Memorial is correct in fact and in law.

4. It is true, as stated in the first paragraph of the Iranian Annex VI, that Mr. Harriman's rôle was that of a mediator who was endeavouring to find a formula which could be used as the basis of negotiations for the settlement of the dispute by agreement. It is also true that the Iranian Government was not willing to enter into negotiations on the basis of any formula, which did not make it clear that the principle of nationalization was the basis on which the negotiations should be conducted. But it is quite untrue to suggest that the Government of the United Kingdom accepted this principle for any other purpose except as the basis for these negotiations. It is also quite untrue to suggest that the Government of the United Kingdom, when it accepted this principle merely as the basis for negotiations in which an endeavour to settle the dispute out of court would be made, committed itself to the nationalization of the enterprise of the Anglo-Iranian Oil Company as something which it admitted and accepted as lawful, except when forming part of an agreed settlement, so that the Government of the United Kingdom was committed to this even if (as in fact turned out to be the case) the negotiations were unsuccessful.

5. The correctness of the contention in the preceding paragraph is indeed evident from the note of 3rd August 1951 from the British Chargé d'Affaires, which is quoted on pages 314 and 315 of the Iranian Preliminary Observations. The second paragraph of this note reads that "His Majesty's Government are desirous of availing themselves of this formula (i.e. the Harriman formula) and are prepared to negotiate in accordance with it", and then follows paragraph 3, which says: "His Majesty's Government recognize on their own behalf and on that of the Company the principle of the nationalization of the oil industry in Iran", thus complying with point (2) in the Harriman formula, which reads that, "before sending representatives to Tehran, the British Government should make a formal statement of its consent to the principle of the nationalization of the oil industry on behalf of the former Company".

6. Paragraph 2 of Mr. Middleton's note, and its reference to the Harriman formula, shows clearly that this principle was recognized for the purposes of the negotiations, so that negotiations could be held on the basis of the Harriman formula. It is common, when efforts are made to settle a dispute, both in the case of international disputes (and in the case of disputes arising under municipal law between private persons) for the parties to the dispute, either through a mediator or between themselves, first of all, before negotiations for settlement are held, to try and agree to certain principles which shall be accepted for the basis of these negotiations. In such cases it is always understood that the principles agreed for the purposes of the negotiations (as indeed also detailed proposals for settlement put forward by one party or the other during the negotiations, and indeed tentative agreements during the negotiations) are all without prejudice to the position of the parties, if the negotiations do not lead to a final agreement. Indeed, if this principle were not accepted, it would be seldom, if ever, that disputes could be settled by agreement at all. Nothing is more reprehensible from the point of view of the friendly settlement of disputes between nations—a matter which is of general international interest—than that a party to a dispute should, after an effort to effect a friendly settlement has failed, endeavour to use the principles accepted for the purposes of negotiations (or proposals put forward in negotiations for the purposes of settlement) as prejudicing the legal position of the other party. The Government of the United Kingdom can only express great regret that the Iranian Government has in the present case endeavoured to abuse the Harriman formula [1].

7. Equally extraordinary, in the submission of the United Kingdom Government, is the apparent Iranian contention which appears at the

[1] In this connection, see the case concerning *The Factory at Chorzów (Claim for Indemnity) (Jurisdiction)*, Series A, No. 9, where the Court said (at p. 19): "Before proceeding to set out the reasons for which it must overrule the preliminary objection taken by Poland to its jurisdiction to deal with these submissions, the Court would observe that, for the purposes of this statement of reasons, as also for the purposes of its future judgment on the merits, it cannot take account of declarations, admissions or proposals which the Parties may have made in the course of direct negotiations which have taken place between them, declarations which, moreover, have been made without prejudice, in the event of the points under discussion forming the subject of judicial proceedings. For the negotiations in question have not, as acknowledged by the representatives before the Court of the Parties themselves, led to an agreement between them."

bottom of page 316 and on page 317 of the Iranian Preliminary Observations, that the Government of the United Kingdom committed itself to accept the Iranian Act of 1st May 1951, even for the purposes of these negotiations. That this Act was not involved by the Harriman formula is indicated with almost crystal clearness by paragraph 3 of that formula, which says: "By the principle of nationalization of the oil industry is meant the proposal which was approved by the special oil committee of the Majlis and confirmed by the law of 20th March 1951", which paragraph 3 then proceeds to quote. Now, if the principle of nationalization was understood to include the Iranian Act of 1st May, it is impossible to suppose that the law of 20th March would have been mentioned expressly and that no reference should be made to the Act of 1st May. If there ever was a case where the principle of interpretation *expressio unius est exclusio alterius* applied, this seems to be one.

8. Point 4 of the Harriman formula reads: "The Iranian Government is prepared to negotiate on the manner in which *the law* will be carried out so far as affects British interests." Can there be any doubt that the words *"the law"* in this paragraph referred to the law of March only (i.e. the law just referred to in the preceding paragraph 3)? Moreover, by its own terms the Iranian Act of 1st May describes itself as "concerning the procedure for the enforcement of the law concerning the nationalization of the oil industry" (Article 1). It is an act which, according to its own terms, settles the manner in which the law of 20th March shall be carried out. Yet, under point 4 of the Harriman formula, the manner in which the law of 20th March is to be carried out (in so far as it affected British interests) was to be the very subject of the negotiations in Tehran, and therefore for this reason too it is impossible to interpret the Harriman formula as making the Act of 1st May also one of the agreed bases of the negotiations.

9. The fact that Mr. Stokes at the beginning of the negotiations in Tehran put forward proposals which accepted the principle of nationalization but which were inconsistent with the Iranian Act of 1st May, shows that the Government of the United Kingdom never had any doubt as to what the Harriman formula meant on this point, and it is submitted that the Iranian Government by its action, when the negotiations started, in maintaining that the Act of 1st May must also be accepted as an agreed basis of the negotiations and rejecting any proposals which did not comply with that Act, was departing from the formula with which it had agreed and on the faith of which alone the Government of the United Kingdom had sent the Stokes Mission to Tehran.

10. The Iranian Government did, in a note of 12th January 1952 to the British Embassy in Tehran, which it published, put forward the contention now made by Iran before the Court that the Government of the United Kingdom had, as a result of entering into the negotiations on the basis of the Harriman formula, committed itself for all purposes and for all time to the principle of the nationalization of the Iranian oil industry. In an answer dated 19th March 1952 by the British Embassy in Tehran to this note, the Government of the United Kingdom has refuted this contention. Copies of these two notes, as well as copies of two earlier notes, which preceded the notes here referred to, are given as Appendices Nos. 1-4 to this Annex.

Appendix No. 1 to Annex 5

NOTE, DATED 12th DECEMBER 1951, FROM THE PRIME MINISTER OF IRAN TO THE BRITISH EMBASSY IN TEHRAN

[Translation]

For the enforcement of Article 7 of the law setting forth the method for the execution of the law concerning the nationalization of the oil industry throughout the country, dated 10th Urdibihisht 1330 (1st May 1951), stating that all customers of the products of the wells taken over from the ex-Anglo-Iranian Oil Company could purchase in future any quantity of oil which they used to purchase annually from the Company between 1st January 1948 and 20th March 1951, at a fair international price and that for the surplus quantity they should have priority, other terms and conditions being equal, the Temporary Board of Directors of the National Iranian Oil Company, on instructions from the Oil Mixed Commission and the Council of Ministers, brought the matter to the notice of the former customers of Iranian oil through the representatives of the Imperial Government abroad on 10th Tir 1330 (2nd July 1951). Whereas, until the expiry of the prescribed date, none of them made any offer or proposals, and although in such circumstances they are not entitled to such a right in accordance with the law, nevertheless, in order to show further good will, the Imperial Government thought it necessary to bring the matter once more to the notice of His Majesty's Embassy, so that they might inform their Government that in the absence of an application for the purchase of oil from private individuals or companies of (British) nationality within ten days from the receipt of this note, the Imperial Government will be free to sell oil to any customer offering to buy. In this case, the priority given to the former customers on the basis of equal terms and conditions will no longer obtain.

With sincere sentiments,

(Signed) DR. MOHAMMAD MUSADDIQ,
Prime Minister.

Appendix No. 2 to Annex 5

NOTE, DATED 22nd DECEMBER 1951, FROM THE BRITISH EMBASSY IN TEHRAN TO THE PRIME MINISTER OF IRAN

I have the honour to acknowledge Your Excellency's note of 12th December regarding Article 7 of the 9-point law for the implementation of the nationalization of the oil industry in Iran, the contents of which have been communicated to my Government.

I am instructed to refer to this Embassy's note No. 60 of 27th May, in which His Majesty's Ambassador informed the Imperial Minister for Foreign Affairs that His Majesty's Government had felt themselves obliged to institute proceedings against the Imperial Government in the International Court of Justice at The Hague. As was pointed out in this Embassy's note No. 82 of 30th June, it is the view of His Majesty's Government that until this case has been heard the matter must be

regarded as being *sub judice*. In the absence therefore of an agreement with the Imperial Government about the operation of the oil industry in Iran, His Majesty's Government cannot agree to the purchase of Iranian oil by British nationals and do not recognize the Imperial Government's legal right to dispose of the oil.

I avail myself, etc.

(Signed) G. H. MIDDLETON.

Appendix No. 3 to Annex 5

NOTE, DATED 12th JANUARY 1952, FROM THE IRANIAN MINISTER FOR FOREIGN AFFAIRS TO THE BRITISH EMBASSY IN TEHRAN

[*Translation*]

In reply to letter dated 30th Azar 1330 (22nd December 1951), addressed to His Excellency Dr. Musaddiq, the Prime Minister, by Mr. Middleton, Chargé d'Affaires of His Majesty's Embassy, I have to state under instructions from Prime Minister that,

Firstly, as has already been pointed out on repeated occasions, the Imperial Government has no issue with His Majesty's Government over the nationalization of the oil industry, and that the nationalization of the said industry throughout the country is an internal matter relating solely to national sovereignty. The Imperial Iranian Government have consistently announced the incompetence of the International Court of Justice to intervene in any way in this matter and therefore the question is not one to be regarded as being *sub judice*.

Secondly, whereas His Majesty's Government have in a letter No. 100 from the Embassy, dated 11th Murdad (3rd August 1951), officially recognized on their own behalf and on behalf of the former Oil Company the nationalization of the oil industry throughout Iran, including all exploration, extraction and exploitation, the Imperial Government note with great surprise the latter part of the letter of 30th Azar 1330 (22nd December, 1951), stating that "His Majesty's Government cannot agree to the purchase of Iranian oil by British nationals and do not recognize the Imperial Government's legal right to dispose of the oil", and add that the Imperial Government considers itself legally entitled and authorized to take any steps in connection with the country's natural resources and the nationalized oil industries.

I avail myself, etc.

(Signed) BAQIR KAZEMI.

Appendix No. 4 to Annex 5

NOTE, DATED 19th MARCH 1952, FROM THE BRITISH EMBASSY IN TEHRAN TO THE IMPERIAL GOVERNMENT OF IRAN

M. le Ministre,

I have the honour, under instructions from Her Majesty's Principal Secretary of State for Foreign Affairs, to refer to Your Excellency's

note No. 6362 of 18th January 1952 (21st Dai 1330), and to address you as follows.

Her Majesty's Government observe that in their note of 12th January 1952, the Imperial Government repeat earlier arguments to the effect that the nationalization of the oil industry in Iran is an internal matter solely connected with the sovereignty of Iran, that it is of no concern to Her Majesty's Government in the United Kingdom and that, despite the reference of the matter to the International Court of Justice by Her Majesty's Government in the United Kingdom, the Court has no competence to adjudicate upon it. Her Majesty's Government in the United Kingdom have, however, on many occasions made clear to the Imperial Government that, in taking up the case of the Anglo-Iranian Oil Company when the Company was divested of its concession in a manner contrary to the principles of international law and contrary to the treaty obligations undertaken by Iran towards the United Kingdom, Her Majesty's Government were not interfering in a matter solely connected with the sovereignty of Iran but were proceeding in virtue of the right, which all States claim, to accord diplomatic protection to their nationals when their nationals are treated in a manner contrary to the principles of international law. On 26th May 1951, Her Majesty's Government instituted proceedings by means of an Application before the International Court of Justice, and on 10th October 1951 filed a Memorial with the Court setting out the reasons why they maintained that the enforcement of the Iranian Oil Nationalization Act of the 1st May 1951 is not a matter within the exclusive domestic jurisdiction of Iran but is an international matter on which the Court is competent to adjudicate. The Imperial Government may contend that the Court is not competent to adjudicate upon the merits of this question. The Imperial Government cannot deny, however, that the Court is competent to decide the question of its own competence in the matter, as this is expressly provided for in Article 36 (6) of the Statute of the Court, which is an annex of the Charter of the United Nations. Her Majesty's Government wish therefore to place firmly on record that they cannot accept the contention of the Imperial Government, made in their note of 12th January 1952, that this question is not one to be regarded as under judicial consideration. In the view of Her Majesty's Government, it follows from Article 36 of the Court's Statute that, until the Court has given its decision, the whole matter must necessarily be regarded as *sub judice*.

The Imperial Government in their recent note also state that they view with great surprise that in their note of 22nd December 1951 Her Majesty's Government expressed their inability to agree to the purchase of Iranian oil by British nationals and also their refusal to recognize that the Imperial Government had any legal right to sell the said oil, having regard to the fact that, in a note dated 3rd August 1951, Her Majesty's Government officially recognized on their own behalf and on behalf of the Anglo-Iranian Oil Company the nationalization of the oil industry throughout Iran. The Imperial Government will recall, however, that this recognition by Her Majesty's Government of the principle of the nationalization of the oil industry in Iran was made for the purposes of negotiation only. This is made quite clear in the first two paragraphs of the note of 3rd August 1951, which read as follows :

"I have the honour to inform Your Excellency, on instructions from my Government, that they have received through Mr. Harriman *the Imperial Governments' formula for negotiations* between the Imperial Government and His Majesty's Government on behalf of the Anglo-Iranian Oil Company and for discussion on matters of mutual interest to the two Governments.

His Majesty's Government are desirous of availing themselves of this formula and *are prepared to negotiate in accordance with it*, but it will be appreciated by the Imperial Government that *negotiations* which His Majesty's Government for their part will enter into with the utmost goodwill cannot be conducted in a satisfactory manner unless the present atmosphere is relieved. On the assurance that the Imperial Government recognize this fact and will enter into discussions in the same spirit, a mission headed by a Cabinet Minister will immediately set out."

Neither in their note of 3rd August 1951 nor on any other occasion have Her Majesty's Government ever recognized that the oil industry in Iran has been lawfully nationalized or that the enforcement of the Iranian Oil Nationalization Act of 1st May 1951 represented a lawful exercise of Iranian sovereignty. As the Imperial Government well know, Her Majesty's Government have always challenged, and continue to challenge in proceedings before the International Court of Justice—proceedings in which the Imperial Government are now taking part—the validity in international law of the unilateral abrogation by Iran of the 1933 agreement negotiated between the two countries under the auspices of the League of Nations. In their note of 3rd August 1951, Her Majesty's Government did no more than place on record their readiness to negotiate with the Imperial Government on the basis that the oil industry, operated in Iran by the Anglo-Iranian Oil Company, should be nationalized in a manner acceptable to them and to the Company. As the Imperial Government are aware, the acceptance of a certain formula as a basis for negotiations in no way constitutes a binding acceptance of the provisions of that formula regardless of the outcome of the negotiations. In interpreting the note of 3rd August 1951 as an acceptance by Her Majesty's Government of the *fait accompli* brought about in Iran by the unlawful enforcement of the Iranian Oil Nationalization Act of 1st May 1951, the Imperial Government have therefore completely misrepresented the position.

Her Majesty's Government remain ready to settle the dispute by negotiation, and for the purpose of further negotiations to accept the same formula as a basis of discussion, but must emphasize that they accept it as a basis for negotiation only which does not prejudice the rights of either side if the negotiations are not successful.

I avail myself, etc.

(Signed) G. H. MIDDLETON.

Annex 6 (1)

LETTER, DATED 25th MAY 1951, FROM SIR WILLIAM FRASER, CHAIRMAN OF THE ANGLO-IRANIAN OIL COMPANY, LIMITED, TO HIS EXCELLENCY JUDGE JULES BASDEVANT, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

His Excellency Judge Jules Basdevant,
The President,
International Court of Justice,
Peace Palace, The Hague.

25th May 1951.

Your Excellency,

I have the honour to refer to an Agreement (a copy of which is annexed to this letter as Annex A [1]) dated 29th April 1933, and concluded between the Imperial Government of Persia (now the Imperial Government of Iran) and the Anglo-Persian Oil Company, Limited (now the Anglo-Iranian Oil Company, Limited), which, after being ratified by the Persian Majlis on 28th May 1933, and after receiving the Imperial Assent on 29th May 1933, came into force on 29th May 1933.

By this Agreement (hereinafter referred to as "the Convention"), the Imperial Government of Persia granted to the Company certain concessionary rights to search for and extract petroleum within certain territory in Persia and to refine or treat in any other manner and render suitable for commerce the petroleum obtained by it.

Article 22 of the Convention provides as follows:

> "(A) Seront tranchés par la voie d'arbitrage tous différends de nature quelconque entre les parties et spécialement tous différends résultant de l'interprétation de cette convention et des droits et obligations y contenus, ainsi que tous différends d'opinion pouvant naître à l'égard de questions pour la solution desquelles, d'après les dispositions de cette convention, l'accord des deux parties est nécessaire.
>
> (B) La partie qui demande l'arbitrage doit le notifier par écrit à l'autre. Chaque partie désignera un arbitre, et les deux arbitres, avant de procéder à l'arbitrage, désigneront un tiers arbitre. Si les deux arbitres ne peuvent pas, dans les deux mois, se mettre d'accord sur la personne du tiers arbitre, ce dernier sera nommé à la demande d'une partie ou de l'autre, par le Président de la Cour permanente de Justice internationale. Si le Président de la Cour permanente de Justice internationale appartient à une nationalité ou à un pays qui n'a pas, en vertu de l'alinéa (C), qualité pour fournir le tiers arbitre, la nomination sera faite par le Vice-Président de ladite Cour.
>
> (C) Le tiers arbitre sera d'une nationalité autre que persane ou britannique ; en outre, il ne sera pas en étroite relation avec la

[1] Not printed here. See Annex A of the Application Instituting Proceedings filed by the United Kingdom Government on 26th May 1951, or Appendix No. 16 to Annex 3 of the Memorial filed by the United Kingdom Government on 10th October 1951.

Perse ou avec la Grande-Bretagne comme appartenant à un dominion, un protectorat, une colonie, un pays de mandat ou autre administré ou occupé par un des deux pays précités ou comme étant ou ayant été au service d'un de ces pays.

(D) Si l'une des parties ne désigne pas son arbitre ou n'en notifie pas la désignation à la partie adverse dans les soixante jours après avoir reçu notification de la demande d'arbitrage, l'autre partie aura le droit de demander au Président de la Cour permanente de Justice internationale (ou au Vice-Président dans le cas prévu à la finale de l'alinéa (B)) de nommer un seul arbitre, à choisir parmi des personnes qualifiées comme il est mentionné ci-dessus, et dans ce cas le différend sera tranché par ce seul arbitre.

(E) La procédure de l'arbitrage sera celle qui sera suivie au moment de l'arbitrage, par la Cour permanente de Justice internationale. Le lieu et le temps de l'arbitrage seront déterminés, selon le cas, par le tiers arbitre ou par l'arbitre unique visé à l'alinéa (D).

(F) La sentence se basera sur les principes juridiques contenus dans l'article 38 des Statuts de la Cour permanente de Justice internationale. La sentence sera sans appel.

(G) Les frais d'arbitrage seront supportés de la façon déterminée par la sentence."

On 15th March 1951 and 20th March 1951, the Iranian Majlis and the Iranian Senate respectively approved a Single Article enunciating the principle of the nationalization of the oil industry in Iran, and this Single Article subsequently received the Imperial assent on 1st May 1951. On 26th April 1951, the Majlis Oil Committee prepared a draft bill "for carrying out oil nationalization", and this Bill was passed by the Majlis on 28th April 1951, and, after being passed by the Senate on 30th April 1951, received the Imperial assent on 1st May 1951.

This Act provides for the establishment of a "mixed Board composed of five Senators and five Deputies, elected by each of the two Houses, and of the Minister of Finance or his deputy" (Article 1). It also obliges the Imperial Government of Iran "to dispossess at once the former Anglo-Iranian Oil Company under the supervision of the mixed board" (Article 2). The Act further states that "Whereas with effect from 29th Isfand 1329 (20th March 1951), when nationalization of the oil industry was sanctioned also by the Senate, the entire revenue derived from oil and its products is indisputably due to the Iranian nation, the Government is bound to investigate, with the supervision of the Mixed Committee, the account of the Company. Also the Mixed Committee must supervise carefully matters concerning exploitation, as from the date of the execution of this law and until the appointment of the Managing Board."

On 28th April 1951, the Anglo-Iranian Oil Company, Limited, protested to the Imperial Government of Iran without effect.

The Anglo-Iranian Oil Company, Limited, considers that the Act of 1st May 1951 amounted to an attempt by the Iranian Government unilaterally to annul or alter the terms of the Convention contrary to the express terms of Articles 21 and 26 thereof, and accordingly, on 8th May 1951, the Company sent a notice (a copy of which is Annex B hereto) to the Iranian Government pursuant to Article 22 of the

Convention requesting arbitration, appointing an arbitrator and requesting the Iranian Government to appoint its arbitrator.

On 20th May 1951, the Company received a communication (a copy of which is Annex C hereto) from the Iranian Minister of Finance acting on behalf of the Prime Minister, in which the Company's request to have the dispute referred to arbitration was rejected and in which the Iranian Government asserted that the matter was one with which no international authority was competent to deal.

In view of the categorical rejection of the Company's request for arbitration contained in this communication, the Company considers that it is entitled to proceed in accordance with Article 22 (D) notwithstanding that the period of sixty days therein mentioned has not yet elapsed.

I have therefore the honour to request Your Excellency to nominate a sole arbitrator in accordance with Article 22 (D) for the purposes set out in the Company's request for arbitration (Annex B), and in view of the gravity of the situation respectfully to ask that the nomination be made at Your Excellency's earliest convenience.

I avail myself of this opportunity, etc.

(Signed) W. FRASER,
Chairman,
Anglo-Iranian Oil Company, Limited.

ANNEX B TO SIR WILLIAM FRASER'S LETTER OF 25th MAY 1951

No. Z.22/29619.
His Excellency The Prime Minister

Tehran, 8th May 1951.

Your Excellency,

I am instructed by Sir William Fraser, Chairman of the Anglo-Iranian Oil Company Limited, to submit to you the following notification on his behalf:

"Your Excellency,

The measures recently introduced in respect of the oil industry in Iran clearly have the object of either bringing the Concession held by the Anglo-Iranian Oil Company, Limited, to an end, or annulling it before the date provided therein for its termination, by a unilateral act of the Imperial Iranian Government in breach of Articles 26 and 21 of the Concession Agreement or unilaterally altering the terms therein contained in breach of Articles 21 and 1 of that Agreement.

Therefore, I, on behalf of the Company and in accordance with the rights reserved to it by Articles 22 and 26 of the Concession Agreement, beg to notify the Government that the Company requests arbitration for the purpose of determining whether, in so attempting to annul, or terminate, the Concession or to alter

the Concession Agreement, the Government has acted in accordance with the terms of the Concession Agreement and for the purpose of establishing the responsibility for and determining the consequences of the breach above referred to.

I further beg to state that the Company has appointed the Right Honourable Lord Radcliffe, G.B.E., as its arbitrator and that he has given his consent to act.

Finally, the Company, in view of the gravity of the situation brought about by the measures above referred to, expresses the hope that the Government will appoint its arbitrator at the Governments' earliest convenience."

I shall be glad if Your Excellency will kindly acknowledge receipt of the above notification from Sir William Fraser.

With the assurance of our highest esteem,

For Anglo-Iranian Oil Company Limited,
(Signed) N. R. SEDDON.

Copy to His Excellency the Minister of Finance.

ANNEX C TO SIR WILLIAM FRASER'S LETTER OF 25th MAY 1951

No. 9582, of 20th May 1951.

From Ministry of Finance to Mr. Seddon, "Representative of the former Anglo-Iranian Oil Company"

His Excellency the Prime Minister has instructed me to convey the following reply to your letter No. 22/29619 dated 8th May 1951 adressed to him:

In accordance with the Acts of 15th and 20th March 1951 and 30th April 1951, copies of which are enclosed herewith, the petroleum industry throughout Iran has been nationalized, and the Imperial Government is required to undertake itself the exploration for and production, refining and exploitation of petroleum resources.

It perhaps needs no explanation that:

Firstly, the nationalization of industries derives from the right of sovereignty of nations, and other governments, among them the British Government and the Mexican Government, have in various instances availed themselves of this same right;

Secondly, private agreements, even supposing their validity is established, cannot hinder the exercise of this right which is founded on the indisputable principles of international law;

Thirdly, the fact of nationalization of the petroleum industry which derives from the exercise of the right of sovereignty of the Iranian nation is not referable to arbitration, and no international authority has the competence to deal with this matter.

In view of these premises, the Iranian Government has no duty in the existing circumstances other than implementing the articles of the above-mentioned Acts and does not agree in any way with the contents of the letter of the former Oil Company on the subject of reference of the matter to arbitration.

You are meanwhile notified that, in accordance with Articles 2 and 3 of the Act of April 1951, the Iranian Government is prepared to examine the just claims of the former Oil Company.

In conclusion, the former Oil Company is hereby invited to nominate immediately its representatives with a view to making arrangements concerning the matter and carrying out the above-mentioned law, so that the day, hour and place of their attendance should be notified.

(Signed) MOHAMMED ALI VARASTEH,
Minister of Finance.

Annex 6 (2)

LETTER, DATED 28th MAY 1951, FROM HIS EXCELLENCY JUDGE JULES BASDEVANT, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, TO SIR WILLIAM FRASER, CHAIRMAN OF THE ANGLO-IRANIAN OIL COMPANY, LIMITED

13691/12255

28th May 1951.

Sir,

I have the honour to acknowledge the receipt of your letter of 25th May 1951, in which, in reference to Article 22 of the Concession Agreement entered into on 29th April 1933 between the Imperial Iranian Government and the Anglo-Iranian Oil Company, Limited, you have requested me to proceed to the nomination of a sole arbitrator to decide on the dispute existing between that Government and the said Company.

I should bring to your notice that, a few hours after your letter was placed in my hands, the Registrar of the Court duly received from the Government of the United Kingdom of Great Britain and Northern Ireland a preliminary petition to the International Court of Justice praying, in effect, that the Court should declare and pronounce that the Imperial Government of Iran is under a duty to submit to arbitration, under the provisions of Article 22 of the Concession Agreement, the dispute existing between that Government and the Company.

Without prejudice to any action that the Court may take regarding the petition submitted by the Government of the United Kingdom and regarding any objections that the Imperial Government of Iran might raise against it, I should draw your attention to the fact that each of these requests has certain points in common and that, consequently, I am unable to deal at present with that which you have submitted to me.

I must, therefore, confine myself to a formal acknowledgement of your request without entering into a further examination thereof.

I beg you, etc.

The President of the Court,
(Signed) JULES BASDEVANT.

Sir William Fraser,
Anglo-Iranian Oil Company, Limited,
Britannic House,
Finsbury Circus, E.C. 2.

Annex 6 (3)

LETTER, DATED 1st AUGUST 1951, FROM SIR WILLIAM FRASER, CHAIRMAN OF THE ANGLO-IRANIAN OIL COMPANY, LIMITED, TO HIS EXCELLENCY JUDGE JULES BASDEVANT, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

His Excellency Judge Jules Basdevant,
The President,
International Court of Justice,
Peace Palace, The Hague.

1st August 1951.

Your Excellency,

I have the honour to refer to Your Excellency's letter of 28th May 1951. The Company has noted that as, in the opinion of Your Excellency, the application of the Government of the United Kingdom and the request of the Company have certain points in common, Your Excellency is at present unable to deal with the request submitted by the Company.

Your Excellency will have noted that the period of sixty days provided for in Article 22 (D) of the Concession Agreement has now elapsed. The Company attaches importance to stating that it is fully confident that, if and when such action is deemed appropriate, Your Excellency will be prepared to undertake the function envisaged in Article 22 of the Concession Agreement and accepted by the Court in its communication to the Government of the United Kingdom of 21st October 1933.

I avail myself of this opportunity, etc.

(Signed) W. FRASER,
Chairman,
Anglo-Iranian Oil Company, Limited.

Annex 6 (4)

LETTER, DATED 7th AUGUST 1951, FROM THE REGISTRY OF THE INTERNATIONAL COURT OF JUSTICE TO SIR WILLIAM FRASER, CHAIRMAN OF THE ANGLO-IRANIAN OIL COMPANY, LIMITED

14287. 7th August 1951.

Sir,

I have the honour to acknowledge receipt of your letter of 1st August 1951, addressed to the President of the Court, which has been forwarded to him for his attention.

I have the honour, etc.

(Signed) S. AQUARONE,
Acting Registrar.

Sir William Fraser,
Anglo-Iranian Oil Company, Limited,
Britannic House,
Finsbury Circus, London, E.C. 2.

Annex 7

PROPOSAL SUBMITTED BY THE DELEGATION OF IRAN TO THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 8th OCTOBER 1947 (A/C. 6/164)

[Translated from the French]

SIXTH COMMITTEE

Need for greater use by the United Nations and its Organs of the International Court of Justice

Proposal submitted by the Delegation of Iran

The Iranian Delegation has the honour to submit to the Sixth Committee the following draft resolution, in connection with the item of the agenda on the need for greater use for the United Nations and its organs of the International Court of Justice:

Considers that differences of an international character are always liable to lead to a rupture of peace and security;

Considers that the solutions to be found to the differences of an international character should be in conformity with the principles of justice and law;

Considers that such solutions could be insured by recourse to the International Court of Justice;

Considers that the Members of the United Nations have not yet availed themselves of the services of the International Court of Justice as could have been expected;

Considers that there are yet States who have not deposited declarations in accordance with Article 36 of the Statute of the Court ;

The General Assembly recommends :

1. to the Member States who have not yet deposited the declarations provided for in paragraph 2 of Article 36 of the Statute of the Court, to do so as soon as possible ;

2. to the Member States to submit their differences of a juridical character to the International Court of Justice ;

3. to the Security Council to refer to the International Court of Justice not only disputes of a legal character but also legal aspects that certain differences and situations could present.