

SECTION C.—MEMORIAL; WRITTEN DOCUMENTS
CONCERNING THE PRELIMINARY OBJECTION

SECTION C. — MÉMOIRE; PIÈCES ÉCRITES
RELATIVES A L'EXCEPTION PRÉLIMINAIRE

1. MEMORIAL SUBMITTED BY THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

TABLE OF CONTENTS

	<i>Paragraph</i>
Introductory	1-4
Summary of salient facts	5
The double character of the Concession Convention of 1933	6-6B
General obligation to observe the terms of concessions granted to foreigners	6C
State sovereignty is not absolute but may be limited by inter- national customary law and by obligations of a treaty or contractual character.	6D
Summary of the legal submissions of the Government of the United Kingdom with regard to the cancellation of the Anglo- Iranian Oil Company's Concession	7

SECTION I

The principle of respect for vested rights applies to concessions granted to foreigners	8-11
A concession is a vested right protected by international law	8
Concessions and State succession	9
Legality of nationalization of concessions subject to con- ditions	10
Conclusions of Section I.	11

SECTION II

Cancellation of the Concession Convention of 1933 in violation of an express renunciation of the right of unilateral ter- mination	12-18
Article 21 of the Concession Convention of 1933	12
The consequences of the renunciation of the right of unilateral termination	13-14
Limitation of legislative freedom by treaty or contract	15-17
Conclusions of Section II	18

SECTION III

Paragraph

Unlawfulness of the Iranian Oil Nationalization Act of 1st May 1951 as directed exclusively against a foreign national and as not shown to be required to protect any vital public interest	19-25
The Iranian Oil Nationalization Act of 1st May 1951 is directed exclusively against the Anglo-Iranian Oil Company	19
The expropriation of the property of foreigners is unlawful unless public interests of vital importance necessitate such expropriation	20-20A
Views of writers that expropriation is unlawful if directed exclusively against foreigners	20B
A measure, ostensibly general in character, will be illegal as directed against foreigners if in fact it operates in a discriminatory manner	21
Evidence that the Iranian Oil Nationalization Act of 1st May 1951 is directed exclusively against the Anglo-Iranian Oil Company and is not justified on the ground of the necessity of protecting a vital public interest.	22
Nationalization as a disguise for confiscation	23
Absence of good faith on the part of the Iranian Government	24
Conclusions of Section III	25

SECTION IV

Confiscatory nature of the Iranian Oil Nationalization Act of 1st May 1951	26-34A
Having regard to the terms of compensation which it provides, the Iranian Oil Nationalization Act of 1st May 1951 is essentially confiscatory	26
International rules regarding compensation in case of nationalization. The practice of States	27
International rules regarding compensation in case of nationalization. The practice of international tribunals	28
International rules regarding compensation in case of nationalization. The views of writers.	29
The meaning of "prompt" compensation	30
The meaning of "effective" compensation	30A
The provisions for compensation in the Oil Nationalization Act of 1st May 1951 do not satisfy the requirements of international law	31
The provisions of the Oil Nationalization Act of 1st May 1951 relative to compensation	32
Reasons why Article 3 of the Oil Nationalization Act of 1st May 1951 does not satisfy the requirements of international law	33
Article 2 of the Oil Nationalization Act of 1st May 1951 as an indication of the maximum compensation which the Iranian legislators would be prepared to allow	34
Conclusions of Section IV	34A

SECTION V

	<i>Paragraph</i>
The legal remedies for unlawful expropriation	35-42A
The relief for unlawful expropriation distinguished from compensation in cases of lawful expropriation. Decision of the Permanent Court of International Justice in the <i>Chorzów Factory (Claim for Indemnity) (Merits)</i> case, Series A, No. 17	35
International rules regarding relief for unlawful expropriation. The practice of international arbitral tribunals	36
International rules regarding relief for unlawful expropriation. The views of writers	37
Restitution in kind. The practice of international tribunals	38
Restitution in kind. The views of writers	39
Restitution in kind and the solvency of the defendant State	40
Conclusion of this portion of Section V	40A
Compensation to be awarded if a restitution in kind is not awarded ; such compensation to consist of "payment of a sum corresponding to the value which a restitution in kind would bear"	41-42
These observations on the subject of compensation have at present only a general character	42A

SECTION VI

The Arbitration Clause and the question of restitution and compensation	43-46
Even if the Imperial Government of Iran is entitled to terminate the Convention of 1933 unilaterally, such right of unilateral termination does not extend to Article 22 of the Convention	43
Reasons why the right of unilateral termination of the Convention of 1933, even if such right existed, would not extend to Article 22 of the Convention	44
The refusal of the Imperial Government of Iran to have recourse to arbitration constitutes a denial of justice	45
Conclusions of Section VI	46

SECTION VII

The direct international responsibility of the Imperial Government of Iran, arising out of the fact that in this case there were no local remedies to exhaust	47
Final Conclusions of the Government of the United Kingdom	48

Introductory

1. This Memorial is submitted to the Court in pursuance of an Order of the Court dated 5th July 1951 (I.C.J. Reports 1951, p. 100), the time specified in that Order for its delivery having been extended at the request of the Government of the United Kingdom to 10th October 1951, by an Order of the President of the Court dated 22nd August 1951 (I.C.J. Reports 1951, p. 106). Also on 5th July 1951, the Court made an Order relating to interim measures of protection (I.C.J. Reports 1951, p. 89). The United Kingdom Government announced at the first opportunity its attitude to the latter Order, the Secretary of State for Foreign Affairs saying in the House of Commons on 9th July :

“The Court's findings have been reproduced in the press and I do not think I need say more about them here, save that His Majesty's Government accept them in full and have informed the Persian Government accordingly. We are urgently considering whom we should nominate to the Board of Supervision recommended by the Court, and are also considering what suggestions we should make regarding the fifth member of the Board, whose name is to be agreed upon between the two Governments.” (*Hansard, Parliamentary Debates, House of Commons*, Vol. 490, No. 136, columns 34-35, 9th July 1951.)

Up to the present time, however, the Imperial Government of Iran¹ has taken no steps to comply with the measures indicated by the Court. Annex 1A to this Memorial contains a note (dated 7th July 1951) illustrating the attempt made by the United Kingdom Government, through the diplomatic channel, to obtain the co-operation of the Iranian Government in carrying out the terms of the Court's Order (Appendix No. 1 to Annex 1A). It also contains a note (dated 12th July 1951) from the Iranian Government to His Britannic Majesty's Ambassador in Tehran explaining the reasons for the Iranian Government's refusal to comply with the Court's Order (Appendix No. 2 to Annex 1A), as well as a long telegram (dated 9th July 1951) from the Iranian Minister for Foreign Affairs to the Secretary-General of the United Nations (Appendix No. 3 to Annex 1A) which is referred to in the Iranian note of 12th July. This telegram, which contains some observations by the Iranian Government on the subject of the Court's Order, is referred to again in paragraph 3 below and in Annex 2 to this Memorial.

2. In an effort to settle the dispute between the Government of the United Kingdom and the Imperial Government of Iran,

¹ Before 1935, Iran was known as Persia. Generally speaking, in this Memorial, the words “Persia” and “Persian” are used of the pre-1935 period and the words “Iran” and “Iranian” of the post-1935 period. See note at beginning of Annex 3 to this Memorial.

the President of the United States despatched his Special Representative, Mr. Harriman, to Tehran to discuss this dispute with the Iranian Government. As a result of Mr. Harriman's efforts and on the invitation of the Imperial Government of Iran, a mission headed by the Right Hon. Richard Stokes, M.P., Lord Privy Seal, was despatched on 4th August 1951 by the Government of the United Kingdom to Tehran in an endeavour to settle the dispute between the two Governments. This mission proceeded on the understanding that negotiations were to be held on the basis of the following formula agreed between the Government of the United Kingdom and the Imperial Government of Iran :

"In the case of the British Government, on behalf of the former Anglo-Iranian Oil Company, recognizing the principle of nationalization of the oil industry in Persia, the Iranian Government would be prepared to enter into negotiations with representatives of the British Government on behalf of the former Company." (See paragraph 1 of the Iranian Cabinet minute quoted at the end of Appendix No. 2 to Annex 1B of this Memorial.)

Further, the Iranian Government had agreed to negotiate on the basis of the law of 20th March 1951¹ (see paragraph 3 of the Iranian Cabinet minute referred to above), and therefore the Government of the United Kingdom understood that the Iranian Government would not insist on the application of the Oil Nationalization Act of 1st May 1951.

Following preliminary discussions with the delegation representing the Imperial Government of Iran, the Stokes Mission presented, without prejudice to the legal rights of any of the parties to the dispute, proposals of which the outline is given in Appendix No. 1 to Annex 1B to this Memorial. The Iranian Government replied to these proposals by issuing a statement in which it announced that the proposals did not conform to the formula on the basis of which negotiations with the Stokes Mission had begun (for this formula see above) and contended that the only problems which could be discussed according to this formula were :

- (a) the purchase of oil meeting the United Kingdom's own requirements ;
- (b) examination of the claims of the Iranian Government and of the Anglo-Iranian Oil Company ;
- (c) the employment of British technicians in the oil industry in future.

Further discussions between the United Kingdom and Iranian delegations revealed no hopes of an agreement, principally because

¹ I.e. the law which merely enunciated the principle of nationalization of the oil industry in Iran (see paragraph 4 of the Application instituting proceedings of 26th May 1951, and paragraph 82 of Annex 3 to this Memorial).

(as explained in detail in the official statement issued by the Foreign Office on 23rd August 1951—Appendix No. 2 to Annex 1B to this Memorial) the Iranian Government would not countenance any form of operation and management control which would satisfy the reasonable demands of the Company's British staff. The Iranian Government, in fact, advanced no proposals or suggestions of its own which involved any departure from the Oil Nationalization Act of 1st May 1951 (for the text of this Act see Annex C of the Application instituting proceedings of 26th May 1951, or Appendix No. 25 to Annex 3 to this Memorial; see also Appendix No. 2 to Annex 1B to this Memorial). As a result of the failure of the negotiations, the Stokes Mission was withdrawn to London on 23rd August 1951, and the United Kingdom Government announced that the negotiations had been suspended.

2A. On 5th September Dr. Musaddiq, the Iranian Prime Minister, in a speech to the Iranian Senate said that, if the Government of the United Kingdom did not return a satisfactory answer within two weeks to what he referred to as his "proposals" (which did not involve any departure from the Oil Nationalization Act of 1st May 1951), the residence permits of the British members of the Anglo-Iranian Oil Company's staff in Iran would be cancelled. As a result the Government of the United Kingdom announced that negotiations were now broken off. (See Appendix No. 1 to Annex 1C of this Memorial.)

On 10th September, the Government of the United Kingdom was reluctantly compelled, as a measure of protection of the United Kingdom economy, to withdraw the special benefits previously accorded to Iran because oil supplies from Iran were of assistance to the United Kingdom economy. (See also paragraph 69 of Annex 3 of this Memorial.) In this connection His Britannic Majesty's Ambassador in Tehran presented a note to the Imperial Government of Iran on 11th September (a copy of this note is given as Appendix No. 2 to Annex 1C of this Memorial).

On 19th September, the Iranian Prime Minister caused to be transmitted to the United Kingdom Government certain suggestions concerning a settlement of the dispute which he characterized as "proposals". These suggestions, which did not differ in their essence from those which Dr. Musaddiq sent to Mr. Harriman for transmission to the Government of the United Kingdom in his letter of 12th September (the text of which is at Appendix No. 3 to Annex 1C of this Memorial) and which were rejected by Mr. Harriman in his reply of 15th September (the text of which is given as Appendix No. 4 to Annex 1C of this Memorial) were considered by the Government of the United Kingdom to constitute no advance on Dr. Musaddiq's previous attitude and to provide no basis on which negotiations could be resumed¹.

¹ It was necessary to send this Memorial to the printer on this date and consequently it has not been possible to continue this recital of events any further.

3. The Government of the United Kingdom understands that the Order of 5th July for the delivery of a Memorial is an Order for the delivery of a written pleading with regard to the merits of the case, and not an Order for the delivery of observations on the question of jurisdiction. Accordingly, this Memorial is directed to the merits of the case. However, the Imperial Government of Iran has in two communications to the Court (a telegram of 28th May and a long message dated 29th June) and a third communication to the Secretary-General of the United Nations dated 9th July (Appendix No. 3 to Annex 1A to this Memorial) contended that the Court has no jurisdiction, and the Court, in its Order relating to the delivery of the Memorial, refers to the first of these communications and refers to the second in its Order indicating interim measures of protection. Consequently, the Government of the United Kingdom, being of the opinion that it may be convenient to the Court to receive at this time the written observations of the Government of the United Kingdom on the question of jurisdiction in amplification of the succinct statement given in the Application of 26th May, submits in Annex 2 to this Memorial its written observations on the question of jurisdiction, in which account is taken in particular of the points made in the three above-mentioned Iranian communications. The Government of the United Kingdom, however, requests (and indeed has submitted the observations in Annex 2 of this Memorial on the supposition) that, before the Court decides the question of jurisdiction, it will give the Government of the United Kingdom a further opportunity to make observations on the question of jurisdiction. In view of the fact that it has now submitted written observations in Annex 2 of this Memorial, the Government of the United Kingdom will be content if this further opportunity is limited to the making of oral observations before the Court.

4. For the convenience of the Court a statement of the relevant facts up to 1st May 1951 (the date on which the Iranian Oil Nationalization Act received the Imperial assent), in so far as these have not already been covered by the Application filed on 26th May, is contained in Annex 3 to this Memorial. The Government of the United Kingdom, however, considers it appropriate at this early stage of the Memorial, to stress some of the salient facts contained in Annex 3 and to indicate the inferences which, in its view, should be drawn from these facts.

Summary of salient facts

- 5.—(a) The original Concession was granted to Mr. D'Arcy in 1901 and continued until the purported cancellation of it by the Persian Government in 1932. There were from time to time disputes between the Company and the Persian Government arising out of that Concession and

the operations carried on under it. It is unnecessary to mention them here because Article 23 of the 1933 Concession provided for a payment by the Company "in full settlement of all the claims of the Government of any nature in respect of the past until the date of coming into force of the Agreement" except in regard to Persian taxation as to which special provision was made.

- (b) The 1933 Concession was accepted by the Governments of the United Kingdom and Persia as a settlement of the dispute between the two countries arising out of the purported cancellation of the D'Arcy Concession, which had been referred by the United Kingdom to the Council of the League of Nations. The negotiations which led up to it were conducted under the supervision of a Rapporteur appointed by the Council of the League, and upon their conclusion the new Concession Convention was embodied in the Rapporteur's report to the Council, and the representatives of both Persia and the United Kingdom at the Council expressed their Government's acceptance of the report. The Concession Convention was ratified by the Persian Majlis and Senate, became a Persian law and entered into force. No question can therefore arise as to the validity of the Convention under Iranian law since all the provisions required under Iranian law were satisfied. The dispute was removed from the agenda of the Council of the League, when, but not until, the Concession had entered into force.
- (c) Particular attention should be directed to the following Articles of the Concession Convention :
- (i) Article 21, which provides that the Concession shall not be annulled by the Government and that the terms therein contained shall not be altered either by general or special legislation in the future or by administrative measures or any other acts whatever of the executive authorities ;
 - (ii) Article 22, which provides that any disputes between the parties of any nature whatever shall be referred to a tribunal presided over by an umpire to be appointed by the President of the Permanent Court of International Justice (unless the parties themselves agree on the selection of a neutral umpire) whose award shall be based on the juridical principles contained in Article 38 of the Statutes of the Permanent Court of International Justice ; and

- (iii) Article 26, which provides that the Concession is granted for a period ending on 31st December 1993, and that before that date the Concession can come to an end only in the event of surrender by the Company or if the Arbitration Court should declare it annulled on the ground of certain specified defaults by the Company.
- (d) Following upon the conclusion of the 1933 Concession and in reliance upon the provisions of it, particularly those quoted in sub-paragraph (c) above, the Company has invested enormous capital sums in Iran and has vastly extended and developed the installations and the production of oil. The Iranian Government has at all times encouraged this development and has accepted the payments due to it under the Concession and the other benefits conferred on it by the Concession. Apart from this acceptance of the benefits of the Concession, spokesmen of the Iranian Government have, as lately as 1949, stated that the Iranian Government in no way challenges the validity of the Concession Convention of 1933.
- (e) The operation of the 1933 Concession, and of its predecessor the D'Arcy Concession, together with the activities voluntarily carried out by the Company above and beyond its obligations under the Concessions, have been of the greatest benefit to Iran. The Company has created out of barren desert a plant and an organization capable of producing 35 million tons of oil products per annum. The Iranian Government has borne none of the risks which are inevitably associated with such an enterprise and has provided none of the capital required. None the less the Iranian Government has derived from the operations of the Company an income which has been constantly increasing and which forms a large part of the revenue of the State. In addition, the people of Iran have been provided with the opportunity of employment in conditions superior to those existing elsewhere in Iran and amenities and services have been provided for employees and their families such as are found nowhere else in Iran.
- (f) The Iranian Government has very recently complained that the Company was guilty of breaches of the Concession Convention. The Government of the United Kingdom does not admit that there were such breaches, but, even if the Iranian Government's complaints were true, the Convention itself provided a remedy, namely,

arbitration under Article 22. The Iranian Government has never sought recourse to that remedy.

(g) From time to time and, in particular, in the years following the second world war, the Iranian Government has suggested that the Concession Convention did not afford to it a return in accordance with the greatly increased scale of the Company's operations which had taken place since the conclusion of the second world war. The Company has at all times shown itself willing to meet the Iranian Government and to consider favourably a modification of the Concession which would give to the Iranian Government the right to an increased payment. Negotiations to this end were conducted in 1948 and 1949, and in 1949 a Supplemental Agreement was signed by representatives of the Company and the Iranian Government which would have increased considerably the sums payable to the Iranian Government under the 1933 Concession. This Supplemental Agreement, however, was never ratified by the Majlis or even given a reasonable consideration by the Majlis. The Company, on the other hand, expressed its willingness to go even further than the terms to which it had agreed in the Supplemental Agreement: in January 1951 the Company offered to negotiate a new agreement on the basis of an equal sharing of the profits arising from its operations in Iran or of any other reasonable proposal.

(h) Despite these offers, the Iranian Government showed itself unwilling to consider any reasonable accommodation with the Company and, under the influence of violent nationalist feelings, which had shown themselves in the assassination of the Prime Minister, M. Ali Razmara, the Majlis proceeded in March 1951 to approve the proposal of its oil committee (headed by Dr. Musaddiq, the present Prime Minister) that the oil industry throughout the country should be nationalized. This measure was, in fact, directed solely against the Anglo-Iranian Oil Company which alone conducts the operations of producing oil in Iran, and it was followed, after a campaign of increasing propaganda against the Company, by an Oil Nationalization Act which became law on 1st May 1951 (Annex C of the Application and Appendix No. 25 to Annex 3 of this Memorial); and which contains provisions appointing a Mixed Board to dispossess at once "the former Anglo-Iranian Oil Company", provides that the entire revenue derived from oil and its products is indisput-

ably due to the Persian nation and makes no satisfactory provision for compensation to the Company.

The double character of the Concession Convention of 1933

6. The circumstances in which the 1933 Concession came to be concluded, as described in paragraph 5 (*b*) above, had the result of investing the Concession Convention of 1933 with a double character. It is convenient to deal with this point at this stage because it is relevant both in connection with the question of jurisdiction (see Annex 2) and with the question of the merits (see the subsequent paragraphs of this Memorial). However, neither in the matter of jurisdiction, nor in the matter of the merits, is the argument which the United Kingdom Government submits on the basis of the double character of the Concession Convention of 1933 an indispensable part of the United Kingdom case.

On the one hand, the Concession Convention of 1933 is the concessionary Convention operating between the Anglo-Iranian Company and the Iranian Government, or, in other words, a contract between two parties, one of which is a State and the other of which is not a State but a national of the United Kingdom. On the other hand, it also embodies the substance of an implied agreement between the Government of the United Kingdom and the Iranian Government because there was an implied agreement between these two Governments (fully operative as creating an obligation in international law) to the effect that the Iranian Government undertook to observe the provisions of its concessionary Convention with the Company¹. This contention of the United Kingdom rests on two grounds, namely :

(*a*) There had been an international dispute between the two Governments, arising from the fact that the Government of the United Kingdom, in the exercise of its right of diplomatic protection of its nationals, had taken up the case of the Anglo-Persian Oil Company when Persia purported to cancel the D'Arcy Concession of 1901, the Government of the United Kingdom alleging that this purported cancellation was an act contrary to international law. This dispute was settled by the conclusion of

¹ The Convention also had the character of an Iranian law, but that does not prevent it from having the character of a contract or treaty also. See, for instance, the judgment of the Permanent Court of International Justice in the case of the *Interpretation of the Statute of Memel Territory* (Series A/B, No. 49), where Lithuania argued that this Statute was not binding on her as it was a Lithuanian law. However, the Court said : "The contention of the Four Powers, on the other hand, is that while for internal purposes the Statute may perhaps be considered as forming part of the law of the Republic, it is for the Court *only a part of a treaty*." (I.e. the Paris Convention of 1924, to which the Statute was an Annex).... The Court feels no doubt that the Statute of Memel must be regarded as a conventional arrangement binding upon Lithuania, and that it must be interpreted as such (p. 300).

the new Concession Convention of 1933, and both Governments accepted this new Convention as settling that international dispute. The Government of the United Kingdom contends that, *when there has been an international dispute between two Governments which is settled on certain terms, there arises under international law an obligation binding the two Governments to observe the terms of settlement* and this obligation arises, even though the settlement takes the form of a concessionary contract between a State and a private company; in consequence, the obligation binding the two Governments to observe the terms of the settlement invests the concessionary contract in such a case with a double character as being

- (i) an agreement (possibly of a private law character) between the Government and the Company; and
- (ii) the embodiment of the terms of the settlement which the two Governments have agreed to accept and observe.

In the submission of the Government of the United Kingdom, support for this contention is to be found in the Order of the Permanent Court of International Justice of 6th December 1930, relating to the case of the *Free Zones of Upper Savoy and the District of Gex (Second Phase)*, Series A, No. 24, in which the Court held binding on Sardinia (and on France as successor in title) the act of the King of Sardinia (embodied in a direction to Sardinian customs authorities) in withdrawing the Sardinian customs line a certain distance from the Swiss Canton of Valais, this action having been taken following a demand by the Canton which claimed that Sardinia was bound to take this step as the result of a treaty obligation. Sardinia, without admitting the correctness of the Canton's interpretation of the treaty in question, took this action in order to settle an international dispute, and the action did settle it. The Court held that, thenceforth, Sardinia was bound to maintain the withdrawal of the customs line as, in the circumstances, the act which settled the dispute acquired "*the character of a treaty stipulation*" (*caractère conventionnel*). The relevant passage in the Court's Order reads as follows:

"Whereas, by the terms of Article 3 of the Treaty of Turin of 16th March 1816, the line of the Sardinian customs was to pass.... 'along the lake to Meillerie, to join up with and continue along the existing frontier at the post nearest to Saint-Gingolph'; as these expressions employed in the Treaty, being wanting in precision, gave rise to claims on the part of the Canton of Valais; as this Canton, invoking the provisions of Article 3 of the said Treaty, demanded that the customs post established in the village of Saint-Gingolph should be suppressed, and that the customs line should be withdrawn from this part of the frontier so as to constitute on this side a new zone comprising the territory of the said commune; as it was after this claim that His Majesty the King of Sardinia, though of opinion that this claim did not appear to him to be

well founded exactly in law, stated that he was willing to assent to it ; as this assent given by His Majesty the King of Sardinia, without any reservation, *terminated an international dispute* relating to the interpretation of the Treaty of Turin ; as, accordingly, the effect of the Manifesto of the Royal Sardinian Court of Accounts, published in execution of the sovereign's orders, laid down in a manner binding upon the Kingdom of Sardinia, what the law was to be between the Parties ; as the agreement thus interpreted by the Manifesto confers on the creation of the zone of Saint-Gingolph *the character of a treaty stipulation* which France is bound to respect, as she has succeeded Sardinia in the sovereignty over that territory" (p. 17).

Further, the Advisory Opinion in the case concerning *Access to German Minority Schools in Upper Silesia* (Series A/B, No. 40) seems to be authority for the proposition contended for in this sub-paragraph, and also for the proposition contended for in sub-paragraph (b) below, as the following passage shows :

"However, without going into the question whether the arrangement adopted by the Council's Resolution of 12th March 1927 was solely an agreement in the nature of a compromise between the two Governments concerned duly accepted by the Council, or whether the assent of the respective Governments resulted from their participation in the unanimous vote of the Council, so that the character of the Resolution as a Council resolution was not affected, it suffices to note that the arrangement was accepted by both sides. It was regularly adopted by the Council, no matter whether that body intended to act under Article 149 of the Convention, or in virtue of the general powers conferred on it by the Covenant. It is not disputed that the arrangement, as accepted, was valid and binding for both countries" (p. 16).

(b) The dispute between the two Governments had been brought before the Council of the League. The dispute was removed from the agenda of the Council of the League when, but not until, the Concession Convention entered into force on its ratification by the Persian Parliament and its promulgation by His Imperial Majesty the Shah. To the removal of the item from the Council's agenda on this footing both the two disputing Governments and the Council of the League agreed¹, and it is important to stress that, when the Council of the League was seised of a matter as a dispute between two Governments, it was not obliged to remove the matter from its agenda merely because the two disputing Governments desired it. The Council of the League in dealing with disputes had, like a court, a certain responsibility of its own, independent of the will of the contesting parties even if the parties were in agreement. In the circumstances, the removal

¹ See paragraphs 25 to 35 of Annex 3 of this Memorial for a fuller description of the history of the proceedings before the League of Nations and of the negotiation of the Concession Convention of 1933.

of the matter from the agenda of the Council was the equivalent of a resolution of the Council of the League accepted by both contesting parties (the United Kingdom and Persia) that the dispute should be settled by the putting into force and the observance of the Concession Convention of 1933. There is clearly authority for the view that *a resolution of the Council of the League of Nations accepted by the contesting parties creates an international obligation for these contesting parties to observe the resolution.*

Support for this view is to be found *inter alia* in the case of the *Railway Traffic between Lithuania and Poland* (Series A/B, No. 42). The Council of the League of Nations had adopted a Resolution on 10th December 1927, in which it had recommended "the two Governments to enter into direct negotiations as soon as possible....". The Permanent Court of International Justice gave the following opinion: "The representatives of Lithuania and of Poland participated in the adoption of this Resolution by the Council. *The two Governments concerned being bound by their acceptance of the Council's resolution*, the Court must examine the scope of this engagement" (p. 116).

The same principle also clearly follows from the Advisory Opinion in the case of the *Jaworzina Boundary* (Series B, No. 8), although that case related to a recommendation not of the Council of the League of Nations but of the Conference of Ambassadors.

6A. Of the two reasons given in sub-paragraphs (a) and (b) of paragraph 6 above the Government of the United Kingdom contends that Iran was and is under an international obligation to the United Kingdom to observe the Concession Convention of 1933. It is an international obligation of a contractual character and therefore may be described as an implied treaty or convention between two States concerned.

6B. It is well known that an obligation of a treaty or contractual character can arise under international law between two States without there being any signed or ratified instrument. It can arise from conduct. For this proposition, that part of the decision of the Permanent Court of International Justice in the case concerning the *Legal Status of Eastern Greenland* (Series A/B, No. 53), relating to what was referred to there as the Ihlen Declaration, is sufficient authority, although much more authority to the same effect could be cited¹. In that case a question arose

¹ For instance, Hall (*International Law*, 8th edition, 1924, section 109), writes :

"Usage has not prescribed any necessary form of international contract. A valid agreement is therefore concluded so soon as one party has signified his intention to do or to refrain from a given act, conditionally upon the acceptance of his declaration of intention by the other party as constituting an engagement, and so soon as such acceptance is clearly indicated. Between *the binding forces of contracts which barely fulfil these requirements*, and of those which are couched in solemn form, there is no difference. From the moment that consent on both sides is clearly established, by whatever means it may be shown, a treaty exists of which the obligatory force is complete."

concerning the effect of the so-called Ihlen Declaration. In a conversation (which was recorded in a minute) between the Norwegian Foreign Minister, M. Ihlen, and the Danish Minister at Christiania, the latter had said that Denmark had no special interests at stake in Spitzbergen and would raise no objection to Norway's claims to that archipelago. The Danish Minister had further referred to the efforts being made by Denmark to obtain the recognition of all the interested Powers of Denmark's sovereignty over the whole of Greenland, and in particular to a declaration by the Government of the United States that that Government would not oppose the extension of Danish political and economic interests over all Greenland. M. Ihlen replied eight days later (and the reply was likewise recorded in a minute): "To-day I informed the Danish Minister that the Norwegian Government would not make any difficulties in the settlement of this question." Norway contended that the Ihlen declaration was merely a provisional indication of intention, but Denmark argued that it was a definitive undertaking. The Court, however, considered it "beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs" (p. 71). Judge Anzilotti in his Dissenting Opinion said: "In my opinion, it must be recognized that the constant and general practice of States has been to invest the Minister for Foreign Affairs—the direct agent of the chief of the State—with authority to make statements on current affairs to foreign diplomatic representatives, and in particular to inform them as to the attitude which the Government in whose name he speaks, will adopt in a given question. Declarations of this kind are binding upon the State. As regards the question whether Norwegian constitutional law authorized the Minister for Foreign Affairs to make a declaration, that is a point which, in my opinion, does not concern the Danish Government: it was M. Ihlen's duty to refrain from giving his reply until he had obtained any assent that might be requisite under the Norwegian laws" (pp. 91-92).

General obligation to observe the terms of concessions granted to foreigners

6c. In addition to the obligation towards the concessionnaire, which may be primarily or exclusively a private law obligation, there is, the Government of the United Kingdom submits, always *prima facie* an international obligation upon a State to observe the terms of a concession granted to a foreigner—an obligation towards the State of which the latter is a national—and the international responsibility of the grantor State is engaged, if there is a breach of this obligation and if municipal remedies have been

exhausted without success. Moreover, in the present case, the general obligation of the Imperial Government of Iran to observe the terms of the 1933 Concession Convention is strengthened by the fact that in Article 21 of the Convention the parties declared that they based the performance of the Convention "on principles of mutual goodwill and good faith".

The existence of a general obligation to observe the terms of a concession granted to a foreigner seems to have been assumed in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77). Indeed, it is remarkable how many cases, which came before the Permanent Court of International Justice, related to concessions granted to foreigners, e.g., the *Mavrommatis* cases (Series A, Nos. 2, 5 and 11); the *Lighthouses* case (Series A/B, No. 62); the case of the *Lighthouses in Crete and Samos* (Series A/B, No. 71); and the case of the *Phosphates in Morocco* (Series A/B, No. 74); and the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, Nos. 77, 79 and 80). In some of these cases there were treaty obligations binding the State to observe the concessions; in others not.

The position with regard to concessions granted by a State to foreigners would therefore seem to be as follows:

- (i) there is *always* the obligation binding the State towards the concessionnaire to observe the concession: this is a contractual obligation and *as a rule* is one of a private law character, and
- (ii) there is *always* the obligation under the general rules of international law binding the State to observe the concession and restricting, within certain limits and subject to certain conditions, its right to nationalize or appropriate concessionary rights: breach of this obligation is an international tort against which the State, of which the concessionnaire is a national, may complain¹, and
- (iii) there is *sometimes*, in addition to (i) and (ii) above, a *contractual* obligation under international law to observe the concession, binding the State granting the concession towards the State of which the concessionnaire is a national. This contractual obligation under international law may arise under a signed and ratified treaty, or in other circumstances such as those indicated in paragraphs 6-6B above as applicable to the present case.

¹ The greater part of the subsequent paragraphs of this Memorial are devoted to a consideration of this question.

State sovereignty is not absolute but may be limited by international customary law and by obligations of a treaty or contractual character

6D. Since the Imperial Government of Iran has in its message to the Court of 29th June 1951 (considered in the Court's Order of 5th July 1951 indicating Interim Measures of Protection) laid such emphasis on sovereignty, the United Kingdom Government, though admitting that it is almost otiose to do so, ventures to refer briefly at this stage to the following authorities, which all exemplify the elementary point that the sovereignty of a State is not absolute, but is limited both by international customary law and by obligations of a treaty or contractual character entered into by that State :

- (a) Advisory Opinion concerning the *Treatment of Polish Nationals in Danzig* (Series A/B, No. 44, p. 24) : "a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force".
- (b) Case concerning *Certain German Interests in Polish Upper Silesia (Merits)* (Series A, No. 7, p. 19) : "from the standpoint of international law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures".
- (c) Case of the *Free Zones of Upper Savoy and the District of Gex* (Series A/B, No. 46, p. 167) : "... it is certain that France cannot rely on her own legislation to limit the scope of her international obligations....".
- (d) Case of the *Exchange of Greek and Turkish Populations* (Series B, No. 10, p. 20) : "... a principle which is self-evident, according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken". (And *a fortiori* to refrain from making such modifications as would conflict with such obligations.)
- (e) Case of the *Interpretation of the Convention between Greece and Bulgaria respecting reciprocal emigration, signed at Neuilly-sur-Seine on 27th November 1919* (Series B, No. 17, p. 32) : "it is a generally accepted principle of international law that in the relations between Powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty".
- (f) The *Wimbledon* case (Series A, No. 1, p. 25) : "No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a

certain way. But the right of entering into international engagements is an attribute of State sovereignty."

Summary of the legal submissions of the Government of the United Kingdom with regard to the cancellation of the Anglo-Iranian Oil Company's Concession

7. The remainder of this Memorial (except the conclusions in paragraph 48 below) is directed to substantiating seven submissions. It is convenient to preface the exposition by a summary of these submissions. A section of the Memorial is devoted to establishing each submission in turn.

(1) While a State possesses the right to nationalize and, generally, to expropriate property belonging to foreigners in its territory, it is entitled to do so only subject to conditions laid down by international law. Such property includes concessions granted by a State to foreign nationals. The nationalization (or expropriation) of concessions, as of other property rights, is governed by the general principle of international law obliging the State to respect the property and other vested rights of foreigners (paragraphs 8 to 11 below relate to this submission).

(2) The termination or cancellation for the purpose of nationalization—or generally any expropriation—of a concession granted to a foreign national is unlawful, if the State granting the concession has expressly undertaken, either in a contractual engagement with the State to which the foreign national belongs or in the particular concessionary contract, not to terminate it unilaterally. The concession of the Anglo-Iranian Oil Company contains such an express undertaking, and there was also, as explained in paragraphs 6-6B above, a contractual engagement between the Iranian Government and the Government of the United Kingdom that the provisions of the concession should be observed. The unilateral termination (or cancellation) of the concession by the Iranian Government is unlawful for this reason (paragraphs 12 to 18 below relate to this submission).

(3) A measure of expropriation or nationalization, even if not unlawful on any other ground, becomes unlawful under international law, if in effect it is exclusively or primarily directed against foreigners as such, and it cannot be shown that, but for the measure of expropriation or nationalization, public interests of vital importance would suffer. The mere fact that the State does not obtain as much financial profit from the concession as it expected, or as it considers it should obtain, is not such a vital interest. The action of the Iranian Government under the Oil Nationalization Act of 1st May 1951 is exclusively directed against a single foreign company, the Anglo-Iranian Oil Company, Limited, and is not justifiable on the ground that it is required for the protection of any vital public interest. Consequently, it is unlawful

for this further reason (paragraphs 19 to 25 below relate to this submission).

(4) Even in cases where the nationalization of the property of foreigners, including concessions granted to them, is not unlawful on any other ground, the taking of the property becomes an unlawful confiscation unless provision is made for compensation which is adequate, prompt and effective. The provisions of the Oil Nationalization Act of 1st May 1951 with regard to compensation, do not satisfy the requirements of international law with regard to compensation. The compensation provided for in that Act is neither adequate nor prompt nor effective (paragraphs 26 to 34 below relate to this submission).

(5) Where the nationalization is unlawful, the relief to be granted is governed by the principles formulated by the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity—Merits)* case (Series A, No. 17). According to these principles, the primary remedy is restitution in kind (or, where such restitution is impracticable, the payment of pecuniary compensation, instead of restitution, consisting of a sum "corresponding to the value which a restitution in kind would bear"), together with pecuniary damages for loss sustained which would not be covered by restitution in kind (or by payment in place of it). Since, for the reasons given in (2) to (4) above, the action taken by the Iranian Government against the Anglo-Iranian Oil Company is unlawful, there should be full restitution of its concessionary rights to the Company (or, in the alternative, if restitution is not granted, pecuniary compensation should be paid of an amount corresponding to the value which the restored concession would bear) together with pecuniary damages for all loss, occasioned by the acts of the Iranian Government between 1st May 1951 and the date of the restitution or of the payment of pecuniary compensation in lieu thereof (paragraphs 35 to 42 below relate to this submission).

(6) If it is otherwise lawful to nationalize the enterprise, which is covered by a contract of concession with a foreigner, and if that contract contains a provision for arbitration, the amount of compensation due must be decided by the Arbitration Court provided for in the concession. The Iranian Oil Nationalization Act of 1st May 1951 provided for the determination of the compensation by the Iranian Parliament and wrongfully excluded the Arbitration Court provided for in the concession (paragraphs 43 to 46 relate to this submission).

(7) A measure of confiscation or nationalization of a concession, which is contrary to international law, engages directly the international responsibility of the State, if it is the result of legislation or other action admitting of no recourse against the measure to local courts or the tribunals provided for in the concession agreement. In addition, the international responsibility of the State is directly engaged on the further ground of denial of justice, if such

a measure is put into force on the pretext of alleged defaults on the part of the concessionaire and if the correctness of such allegations is not proved, and the right to cancel the concession by reason thereof is not established, to the satisfaction of the appropriate judicial tribunal (in particular, to the satisfaction of the judicial tribunal provided for in the concession, if one is so specified). In the present case the international responsibility of Iran is directly engaged because :

- (a) the nationalization was unlawful for the reasons given in (2), (3) and (4) above ;
- (b) the Iranian laws of 20th March and 1st May 1951 admitted of no recourse against the operation of these laws, either to the local courts or to the Arbitration Court provided for in the concession ; and
- (c) allegations of default or misconduct by the Company were advanced as some of the reasons for its expropriation and the truth of these allegations was not proved, and the right to cancel the concession was not established, to the satisfaction of the Arbitration Court provided for in the concession or indeed even submitted to that or any other court (paragraph 47 below relates to this submission).

SECTION I

[While a State possesses the right to nationalize and, generally, to expropriate property belonging to foreigners in its territory, it is entitled to do so only subject to conditions laid down by international law. Such property includes concessions granted by a State to foreign nationals. The nationalization (or expropriation) of concessions, as of other property rights, is governed by the general principle of international law obliging the State to respect the property and other vested rights of foreigners.]

The principle of respect for vested rights applies to concessions granted to foreigners

A concession is a vested right protected by international law

8. The Government of the United Kingdom does not consider it necessary to elaborate the proposition that rights acquired by foreign nationals by virtue of concessionary contracts are property rights and that as such they are entitled to the same protection as international law grants to the property rights of foreigners. This proposition is generally recognized and, to the knowledge of the Government of the United Kingdom, has never been seriously challenged. Concessions, says a modern authority, are "acquired rights" (*droits acquis*) (Professor Verdross in *Recueil des Cours de*

l'Académie de Droit international, 37 (1931) (iii), p. 364)¹. In the *compromis* and in the Award of the *Delagoa Bay* Arbitration of 1981—an arbitration concerned with the cancellation of a concession (see footnote 2 on p. 113 below)—the concession was treated as an acquired right. The *compromis* instructed the Tribunal to fix “le montant de la compensation due par le Gouvernement portugais aux ayants droit”. In the *Oscar Chinn* case the Permanent Court of International Justice seemed to have no doubt that a concession created a vested right. The main question, to which it gave a negative answer, was whether the particular privileges claimed on behalf of Mr. Chinn were “anything in the nature of a genuine vested right” (Series A/B, No. 63, p. 88). As stated in a frequently quoted passage from the judgment of Chief Justice Marshall in *Soulard v. United States* (4 Peters, 511): “The term ‘property’ as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed.”

Concessions and State succession

9. The extent of the recognition of concessionary rights as “vested” or “acquired” rights is illustrated by the fact that, with slight exceptions, international practice in the matter of State succession has treated them as coming within the rule that acquired private rights must be respected by the successor State. By way of example, reference may be made to the award given in 1929 in the *Sopron Kőszeg Local Railway Company* case, where the Tribunal said:

“In principle, the rights which a private company derives from a deed of concession cannot be nullified or affected by the mere fact of a change in the nationality of the territory on which the public service conceded is operated; most authorities and the international judgments which conform most nearly to modern views of international law take this view.... The contract clauses under which the Sopron-Kőszeg Railway Company was working before the war can be pronounced neither wholly invalidated by the change of sovereignty affecting the territories on which its undertaking is situated, nor indeed wholly valid and enforceable according to their drafting and tenor up to the expiration of the concession; the arbitrators appointed by the Council of the League of Nations are called upon to make such changes in the position

¹ See also to the same effect Gidel, *Des effets de l'annexion sur les concessions* (1904), pp. 115, 118; Kaeckenbeeck in *British Year Book of International Law*, 17 (1936), p. 10; Scelle, *Précis de droit des gens*, II (1934), p. 120, who points out that respect for property implies respect for contracts and debts. Dr. Mosler, the author of the most recent work on concessions in relation to State succession, says: “The protection of concessionary rights has its roots in the protection of acquired rights of private persons” (*Wirtschaftskonzessionen bei Änderung der Staatshoheit* (1948), p. 92).

under the contracts as are rendered necessary by the events of the last fifteen years, which could not be anticipated in the joint intentions of the Parties when the concession was granted.... (*Annual Digest and Reports of Public International Law Cases, 1929-1930, Case No. 34.*)

If that is the position as between the successor State and its predecessor, then *a fortiori* the principle of respect for acquired rights in the matter of concessions must be regarded as binding upon the government or governments of the State granting them when there has been no change of sovereignty over the territory where the concession operates.

Legality of nationalization of concessions subject to conditions

10. The Government of the United Kingdom does not dissent from the proposition that a State is entitled to nationalize and, generally, to expropriate concessions granted to foreigners to the same extent as other property owned by foreigners. The exercise of that right, with regard to concessions and other property rights, is, however, subject to limitations clearly established by international practice and resting on well-recognized principles of international law. These limitations include, in particular, the principle that a State is not entitled to nationalize a concession if, by an international contractual obligation towards the government of the State of which the concessionaire is a national or by a provision in the contract of concession, it has expressly divested itself of the right to do so (*vide* Section II); the rule that the nationalization must be genuinely for vital interests and not discriminatory against aliens or exclusively or primarily directed against them (*vide* Section III); the requirement that nationalization, if not unlawful in principle, must be accompanied by compensation in accordance with international law (*vide* Section IV); and the requirement that, if a ground for the nationalization is alleged defaults on the part of the concessionaire, the truth of the allegations of default must be proved to the satisfaction of the appropriate judicial tribunal (in particular to the satisfaction of the judicial tribunal provided for in the concession, if one is so specified (*vide* Section VII)).

Conclusions of Section I

11. The conclusions of this section of the Memorial are that a concession granted to a foreigner is a "vested", "acquired", right protected by international law; that, while international law does not prohibit the nationalization or expropriation of a vested right, the lawfulness of such measures is conditioned by their compliance with the limitations imposed by international law. It is now proposed to consider the limitations which international law imposed upon the right of the State to nationalize concessions and the disregard of which renders nationalization unlawful.

SECTION II

[The termination or cancellation for the purpose of nationalization—or generally any expropriation—of a concession granted to a foreign national is unlawful, if the State granting the concession has expressly undertaken, either in a contractual engagement with the State to which the foreign national belongs or in the particular concessionary contract, not to terminate it unilaterally. The concession of the Anglo-Iranian Oil Company contains such an express undertaking and there was also, as explained in paragraphs 6-6B above, a contractual engagement between the Iranian Government and the Government of the United Kingdom that the provisions of the concession should be observed. The unilateral termination (or cancellation) of the concession by the Iranian Government is unlawful for this reason.]

Cancellation of the Concession Convention of 1933 in violation of an express renunciation of the right of unilateral termination

Article 21 of the Concession Convention of 1933

12. It is contended by the Government of the United Kingdom that, whatever may be the legal position—in other respects—with regard to the right of a State to nationalize a concession granted by it, in the present case the unilateral cancellation of the Concession Convention of 1933 amounts to a breach of international law inasmuch as it deprives the Anglo-Iranian Oil Company of a vested right in violation of an explicit undertaking of the Imperial Iranian Government contained in the concession itself, and also in violation of a contractual obligation to the Government of the United Kingdom, that the provisions of the concession should be observed¹. Article 21 of the Convention lays down that the "Concession shall not be annulled by the Government and the terms therein contained shall not be altered either by general or special legislation in the future, or by administrative measures or any other acts whatever of the executive authorities". That Article of the Convention was inserted with the specific object of making it legally impossible for the Government of Iran to put an end to the concession by some such measure of nationalization. Contrasted with the previous concession, which it replaced, it was a new provision calculated to remove, once and for all, the danger of contingencies such as gave rise to the situation which brought about an international crisis in 1932 and which caused the dispute between the United Kingdom and Persia to be brought before the League of Nations. A comparison of the terms of the two Conces-

¹ For details of this contractual obligation to the Government of the United Kingdom, see paragraphs 6-6B above.

sions illustrates this point. The D'Arcy Concession of 1901 merely provided that it was granted for a duration of 60 years from May 1901. It was an ordinary grant of a concession for a term of years and the events of 1932 demonstrated the view which the Persian Government took of the sanctity of such a grant. The negotiations in 1933 for a new concession were conducted under the shadow of the recent action of the Persian Government in purporting to cancel unilaterally the D'Arcy Concession. It was the view of the Company and of the Government of the United Kingdom at that time that the operations of the Company and the investment of enormous sums of capital in installations in Persia could only be securely based upon a concession containing a guarantee against premature cancellation. Article 21 was such a guarantee, coupled as it was with Article 26, which provides that the concession is granted to the Company for a period ending on 31st December 1993, and that before that date the concession can come to an end only in the event of surrender by the Company or of default by the Company in two particular specified respects. Article 26 expressly provided that the annulment of the concession as the result of such default can take place only as the result of a declaration of the Arbitration Court. This Arbitration Court is provided for in Article 22 of the Concession, and a neutral umpire has to concur in any decision of the Court.

The consequences of the renunciation of the right of unilateral termination

13. There is, in the submission of the Government of the United Kingdom, a fundamental difference between an ordinary concession, even if granted for a term of years, and a concession in which the State has expressly divested itself of the right to exercise the power of terminating it by unilateral sovereign action, whatever the ground for such action. It is arguable that normally a foreign national who obtains a concession from a government must realize that the vested right thus acquired is subject to the contingency of its being terminated by the exercise of the grantor State's sovereign powers of legislation and administration, on payment of compensation as prescribed by international law and provided that none of the other rules of international law limiting the exercise of this sovereign right are infringed. However, the position is quite different¹, as a matter of law and good faith, if the foreign company or national expressly stipulates in the contract—a stipulation formally accepted by the other contracting party—

¹ In stating above the special circumstances which take the Anglo-Iranian concession out of what may be the normal rule that a concession for a term of years may be lawfully terminated by nationalization in return for adequate compensation, it is not intended to imply that these are the only possible special circumstances which may take a concession granted to foreigners out of the normal rule. There may be other special circumstances which have that effect.

that the concession shall be immune from termination by legislative or other governmental action. It is on the strength of such express and formal stipulation that the concessionaire undertakes the risks and burdens of what may become a prodigious investment. He may have so stipulated because he thinks that no ordinary compensation, such as normally accompanies nationalization, can meet his case. As is pointed out in Annex 3 to this Memorial (paragraph 47), this is exactly the position with regard to the investments and the interests of the Anglo-Iranian Oil Company in Iran. If a government attempts, in relation to a concession of that nature, to proceed to nationalization, it becomes guilty of a breach of contract in relation to a matter, which the parties by an explicit provision removed from the orbit of any possible controversy and against which they provided what they intended to be an absolute safeguard. The question whether in any particular case a cancellation, for the purposes of nationalization, of a concession granted for a fixed term of years involves a breach of international law may be a matter of dispute, but there is, in the submission of the Government of the United Kingdom, no room at all for controversy in relation to a case in which the State in question has expressly renounced such power of legislative action.

14. Reference may be made here to the possible contention (which in the view of the Government of the United Kingdom is quite untenable) that the distinction which the Government of the United Kingdom is seeking to establish between these two instances of unilateral cancellation of concessions, i.e. between the unilateral cancellation of a concession containing a clause in which the grantor State has expressly divested itself of the right of unilateral termination and the unilateral cancellation of a concession containing no such clause, is only a matter of degree. According to that contention, there appears in both cases to have taken place a breach of contract and there is, therefore, no difference in kind between a breach of contract *simpliciter* and a breach of contract where one of the parties expressly bound itself not to break it. Consequently, it might be said, the undertaking of one of the parties to a contract not to break it is essentially redundant and without effect, seeing that, in the last resort, in every contract there is an implied undertaking against breaking it. However, in the submission of the Government of the United Kingdom, the difference between the nationalization of a concession containing an express clause forbidding such action and the nationalization of a concession having no such clause, far from being a matter of degree, is a difference of a most substantial and decisive character in the realm of international law, whatever may be the position in municipal law. According to a view which is widely accepted and which the Government of the United Kingdom does not challenge in the present proceedings,

the cancellation of a concession for the purpose of nationalization effected in accordance with international law—although *prima facie* constituting a breach of the contract in municipal law—is not necessarily unlawful under international law if certain conditions are fulfilled. Indeed, ordinary concessionary contracts with governments are normally lawfully determinable in that way, i.e. by lawful nationalization. An explicit undertaking not to terminate a concessionary convention unilaterally is directed to this very situation, namely, that the contract is normally subject to lawful nationalization, and the undertaking is plainly intended to produce a situation other than that which would exist if it were not inserted. It has the effect of rendering cancellation of the contract illegal in *all* circumstances, including those in which, apart from the explicit undertaking, cancellation would be legal. The Iranian Government can scarcely contend that the clause containing the explicit undertaking is redundant and meaningless, for, to its knowledge, it was a material consideration inducing the Company to enter into the Concession Convention of 1933, and if the clause is redundant and meaningless it would certainly have been inconsistent with good faith for the Persian Government to agree to its insertion and to permit such reliance upon it. Indeed, it may well be said that the Iranian Government is now in any event precluded from so contending, since it stood by and watched the Company invest large sums of money in Iran knowing that the Company were relying on the undertaking against cancellation. The same proposition may be put in a different manner. In the case of a concession containing no clause in which the grantor State has expressly divested itself of the right of unilateral termination, there may even be an *implied* term that the concession may be terminated by lawful nationalization. In the other case, however, such as the present one, where there is an express term that the concession shall not be so terminated, there is clearly no room for the implied term as stated above: *expressum facit cessare tacitum*.

Limitation of legislative freedom by treaty or contract

15. There is no warrant, in the submission of the Government of the United Kingdom, for the view that a specific undertaking given by a State not to exercise its legislative power for the purpose of the unilateral termination of a contract is a meaningless formula for the alleged reason that a State cannot fetter its future legislative action. States certainly assume some such obligation in the treaties which they conclude. As a matter of international law, most treaties concluded by the State—whether relating to the treatment of foreigners or otherwise—restrict *pro tanto* the

legislative freedom of the contracting parties¹. The position is the same with regard to contracts made with foreign nationals in which there is an express clause limiting the legislative freedom of the State. Municipal courts may be under a duty to give effect to legislation violative of the provisions of contracts made with a foreigner, even if the violation is contrary to international law, but that circumstance in no way affects the rule that such legislation is internationally unlawful and that it engages the international responsibility of the State. The right of expropriation for the purpose of nationalization or otherwise is admittedly an important right of sovereignty. Yet it does not follow that a State cannot for a defined period part with the exercise of that right in respect of any specific property or category of property or in relation to any class of persons. Thus, there is no doubt that State A may in a treaty concluded with State B bind itself not to nationalize in any circumstances the property in general of the nationals of State B or any particular property, right or concession belonging to the nationals of State B. It may, indeed, have good reason for doing so in order to induce the concessionaire to undertake tremendous investments, the full benefit of which cannot accrue prior to the completion of the concession. To give another example, the right to regulate immigration and the right to impose tariffs are important prerogatives of sovereignty. But a State may validly and with binding effect agree to a limitation or renunciation of these rights. The Government of the United Kingdom contends that, with regard to nationalization or any other legislative measure affecting the property of foreigners, it is irrelevant that the limitation of the legislative freedom of the State—such as is most clearly expressed in Article 21 of the 1933 Concession Convention—is provided not in a treaty proper² but in a contract with a foreign national³. For, although the contract in question may in the first instance be governed by the law of that State—it need not necessarily be so and in fact the Convention of 1933 was not so⁴—its fulfilment

¹ It is the contention of the Government of the United Kingdom that there was (for the reasons given in paragraphs 6-6B above) an implied international undertaking by the Government of Iran to the Government of the United Kingdom that Iran would observe the provisions of the concession, including, therefore, Article 21.

² As stated in the previous footnote, it is the contention of the Government of the United Kingdom that there was an implied inter-State obligation in this case: the argument here is, therefore, an additional or alternative one to the argument based on the existence of this inter-State obligation.

³ That contracts with foreign nationals may derive obligatory force from international law is shown by the Report on the Law of Treaties prepared for the International Law Commission by Professor J. L. Brierly (United Nations document A/CN.4/23 of 14th April 1950), where he writes: "it is not implied that agreements to which such entities (i.e. entities other than States or international organizations), in addition to States or international organizations, are parties, lack binding force, or that their obligatory force is not derived from international law" (p. 18).

⁴ *Vide* Article 22 of the Convention.

is placed in the last resort, through the right of diplomatic protection on the part of the concessionaire's State, under the protection of international law. It is not necessary to examine here the question whether, as in the matter of treaties (*e.g.*, the *rebus sic stantibus* doctrine), so also with regard to a concessionary contract, absolutely overriding reasons of State, *arising from a vital change of circumstances*¹, may justify the denunciation of the contract notwithstanding an express provision against unilateral denunciation. The Government of Iran has not brought—and has not attempted to bring—its action within the purview of any such justification. It has alleged no vital change of circumstances, and indeed no such change has taken place.

16. The considerations adduced in the preceding paragraph acquire particular significance if it is borne in mind that the Concession Convention of 1933 cannot be regarded as an ordinary contract, governed by municipal law, between Iran and a foreign company. In the first place, though the Convention of 1933 was indeed a contract between a State and a private party, it also (for the reasons given in paragraphs 6-6B above) embodied the substance of an inter-State treaty. In the second place, the Convention of 1933 was not—even as a contract between the Iranian Government and the Company—governed by Iranian municipal law, although, having been ratified by the Majlis and signed by the Shah, it had the force of law in Iran. Disputes as to the interpretation and application of the Convention are submitted to the jurisdiction not of the Iranian courts but of an Arbitration Court with a neutral umpire appointed, in the absence of agreement, by the President of the International Court of Justice. Moreover, the law to be applied in interpreting the articles of the Convention is not Iranian law but the law applied by the Court in virtue of Article 38 of its Statute. As recounted in paragraphs 6-6B above, the origin of the Convention, concluded as part of an international arrangement for the settlement of the dispute between the United Kingdom and Persia under the auspices of the League of Nations, was obviously international in character. Further, when in 1933 an enquiry was made of the Court whether its President would accept the exercise of the function conferred upon him by Article 22 of the Convention, the enquiry was addressed to the Court through official communications of the Governments of the United Kingdom (not the Company) and Persia (see Appendices 17-19 to Annex 2 of this Memorial). In view of all these facts, an assertion that the Persian legislature could not validly undertake not to

¹ The question of the right of termination on account of defaults by the concessionaire is dealt with in Section VII below. Another point which would be in a large measure relevant against any argument that there had been a vital change of circumstances—namely the absence in this case of any vital Iranian interest justifying the Iranian action—is dealt with in Section III below.

terminate the Convention unilaterally would amount to an assertion that the Government of Iran could not undertake any international obligation limiting the freedom of action of its legislature¹.

17. In submitting that a State can validly bind itself by treaty or by a contract with a foreign national not to interfere with concessionary rights, the Government of the United Kingdom is not unmindful of the circumstance that the courts of some States—including English courts—have made occasional pronouncements to the effect that the State cannot by contract fetter the freedom of its executive and legislative action. However, upon analysis, such statements resolve themselves into the proposition that in some contingencies municipal courts will decline to grant a remedy against a breach of contract or other action, in violation of an undertaking to the contrary, by the organs of the State. This is because municipal courts are bound by a municipal statute, even if the latter amounts to or results in the violation of a previous contractual or analogous undertaking. The true legal position in such cases is merely that, under the municipal law in question, there is no remedy against such action². It does not follow that there is not a remedy under international law for breach of contract ; as the extracts from the cases cited in paragraph 6D above show, a State cannot invoke its own municipal legislation to justify an act which is an international wrong. Moreover, as indicated in Section VII below, the very absence of such remedy may, in the international sphere, constitute an international wrong engaging the international responsibility of the State.

Conclusions of Section II

18. The following are the conclusions of this section of the Memorial: The first reason why the application of the Iranian Oil Nationalization Act of 1st May 1951 would constitute a violation of international law is that it is in breach of an express undertaking, in the Convention of 1933, not to terminate the Concession by unilateral action. That express undertaking was, for the Anglo-Iranian Oil Company, a most material consideration in concluding the Concession Convention. The violation of that undertaking, in addition to being a breach of the contract between the Iranian Government and the Company, is, from the point of view of international law and *vis-à-vis* the United Kingdom Government, a

¹ See paragraph 6D above.

² Where only nationals of the State are concerned, no question of international law arises and it is a purely doctrinal question of no practical importance to consider whether, on the plane of municipal law, the position is that there is a wrong for which there is no remedy or that, because there is no remedy, there is no wrong. Where foreigners are concerned, however, international law comes into play as well, and then, whatever the position in municipal law, there is an international tort and there is a remedy through the right of diplomatic protection exercised by the State of which the foreigner is a national.

tortious act on the part of the Iranian Government. It is also in breach of an international contractual obligation to the Government of the United Kingdom.

SECTION III

[A measure of expropriation or nationalization, even if not unlawful on any other ground, becomes unlawful under international law, if in effect it is exclusively or primarily directed against foreigners as such, and it cannot be shown that, but for the measure of expropriation or nationalization, public interests of vital importance would suffer. The mere fact that the State does not obtain as much financial profit from the concession as it expected, or as it considers it should obtain, is not such a vital interest. The action of the Iranian Government under the Oil Nationalization Act of 1st May 1951 is exclusively directed against a single foreign company, the Anglo-Iranian Oil Company, Limited, and is not justifiable on the ground that it is required for the protection of any vital public interest. Consequently, it is unlawful for this further reason.]

Unlawfulness of the Iranian Oil Nationalization Act of 1st May 1951 as directed exclusively against a foreign national and as not shown to be required to protect any vital public interest

The Iranian Oil Nationalization Act of 1st May 1951 is directed exclusively against the Anglo-Iranian Oil Company

19. The Government of the United Kingdom has contended so far that the Government of Iran has incurred international responsibility on the ground that the Iranian Oil Nationalization Act of 1st May 1951 is in violation of an express undertaking not to terminate the Concession Convention of 1933 unilaterally by legislative action. The Government of the United Kingdom now submits, secondly, that expropriation of the Anglo-Iranian Oil Company is unlawful for the reason that (a) it is a measure which, although purporting to be of a general character, is in fact directed exclusively against a particular foreign company, and (b) neither in intention nor in effect is it a measure for the protection of any vital Iranian interest. On the contrary, it was enacted in reckless disregard of Iranian economic interests. In fact, the Oil Nationalization Act of 1st May 1951 is directed exclusively against the Anglo-Iranian Oil Company. This fact appears directly from the text of the Act and requires no further elaboration. It may be added that, apart from the concession of the Anglo-Iranian Oil Company, there is only one other oil concession in Iran, namely, a concession operated by the Kavir-i-Khuriar Company and owned jointly by the U.S.S.R. and an Iranian group. This concession

is of negligible size and it is understood that it has not been working for some time.

The expropriation of the property of foreigners is unlawful unless public interests of vital importance necessitate such expropriation

20. The principle that it is unlawful to expropriate the property of foreigners by an act which is either openly or by implication directed exclusively against them is generally recognized (see paragraph 20B below). It is also clear that the nationalization or expropriation of a concessionary right granted to a foreigner is not justified under international law unless it can be shown that public interests of vital importance necessitate the measure, and the mere fact that the concession has not proved financially as lucrative to the grantor Government as was expected is *not* regarded as such a vital public interest as to justify the measure. In this connection the Government of the United Kingdom invites the attention of the Court to the case of *Administrator of Posts and Telegraphs of the Republic of Czechoslovakia v. Radio Corporation of America* (*American Journal of International Law*, Volume 30 (1936), p. 523). In this case an agreement had been concluded between the Administration and R.C.A. for a radio telegraphic circuit for commercial communication services between Czechoslovakia and the United States. The agreement provided that each party should transmit exclusively over the said circuit every available message. The Administration then planned to establish a second direct radio circuit to the United States in conjunction with Mackay Radio. R.C.A. contended that this would be contrary to their agreement with the Czechoslovak Government. The Arbitrators held that the Administration had not the right to establish the second radio circuit.

The award is interesting in many respects. It was disputed whether the agreement was governed by civil law or by public law. The Arbitrators inclined to the view that it was governed by civil law, but said: "At the same time, it may be added that also in public law there is room for the principle of liberty in concluding contracts, both as regards whether the agreement should be entered upon at all and what contents it should contain, and in public law the sentence *pacta sunt servanda* will also apply, just as public interest requires stability as regards any arrangement legally agreed upon.... How far an essential alteration in the interests of the public which may, in certain cases, lie behind an administration contract, may influence the continued validity of the contract will be dealt with later on, but it may be emphasized already here that any alteration or cancellation of an agreement on this basis as a rule should only be possible subject to compensation to the other party.... But even if this agreement should really be considered a public law agreement, *it must, at any rate, be a condition for allowing the State to repudiate the responsibilities which such agreement might contain,*

and which the private party would be forced to respect, that the State would be able to show that public interests of vital importance would suffer if the agreement should be upheld under the rules of ordinary civil law.... When a public institution enters into an agreement with a private person or a private company, it must be assumed that the institution has intended by this agreement to benefit its citizens. But that this expectation sometimes proves to fail in not giving the country as large a profit as was expected, cannot be considered sufficient reason for releasing that public institution from its obligations as signatory of said agreement" (pp. 531-534).

The Administration had given as a reason for wishing to establish the second circuit "the number of telegrams transmitted to us by your Company being insufficient and not corresponding at all to the number of messages transmitted in the direction Czechoslovakia-America". "But", said the Arbitrators, "this fact cannot possibly entitle the Administration to cancel or alter an agreement as this, concluded with a private company, appealing to the character of the agreement as a public law contract" (p. 532).

20A. Professor Scelle in his *Précis de Droit des Gens*, Vol. ii (1934), at page 113, also makes the point that the expropriation must be "pour cause d'utilité publique régulièrement constatée", and Professor Gidel, quoting Anzilotti, writes (*Revue de Droit international*, Vol. i (1927) p. 117): "l'expropriation n'est compatible avec le droit de propriété que si elle est justifiée par l'utilité générale qui prime l'utilité individuelle et accompagnée d'une équitable indemnité qui couvre le dommage subi".

Views of writers that expropriation is unlawful if directed exclusively against foreigners

20B. There is general support among writers for the view that expropriation is unlawful if it is directed exclusively against foreigners, whether such intention is plain or disguised. Professor Briery writes:

"Les biens des étrangers ne peuvent être confisqués pour la raison que leurs propriétaires sont étrangers; nous avons là un cas où la discrimination entre nationaux et étrangers, que celle-ci soit ouverte ou dissimulée, constituerait avec certitude un facteur décisif de la responsabilité de l'État." (*Recueil des Cours de l'Académie de Droit international*, 58 (1936) (iv), at p. 171.)

Professor Gidel says in *Revue de Droit international*, I (1927), at page 117:

"Si l'expropriation pour cause d'utilité publique qui permet, sous certaines conditions, la dépossession d'un individu, en dehors de son consentement, est admise par le droit international commun, cela implique précisément que la mesure est indépendante de la nationalité de l'individu."

Herz (in *American Journal of International Law*, 35 (1941), at p. 249) expresses a similar view :

“An important distinction is that between measures directed against foreigners only and those which concern aliens and nationals alike. It will be shown in more detail later that there is much doubt as to the legal consequences of measures of expropriation which refer indiscriminately to citizens and foreigners, especially in case of measures of general reform enacted in general legislation. No such doubt exists, however, when the act is one of discrimination against foreigners. Here the usual legal consequences (in particular the obligation to pay compensation) arise even should the expropriation, directed only against foreigners, be effected as part of a general legislative program.”

Professor A. de La Pradelle, in the *Projet provisoire de Résolutions* submitted to the Institute of International Law at Bath in 1950, says :

“Elle [*scil.* la nationalisation] peut porter sur les nationaux sans porter sur les étrangers ; elle ne peut atteindre les étrangers sans atteindre les nationaux.” (*Annuaire de l'Institut de Droit international*, 1 (1950), p. 68.)

A measure, ostensibly general in character, will be illegal as directed against foreigners if in fact it operates in a discriminatory manner

21. The Iranian Oil Nationalization Act of 1st May 1951 is concerned with and is avowedly directed exclusively against the Anglo-Iranian Oil Company. Its exclusive character is, therefore, clearly established both in fact and in law. However, in so far as the former Nationalization Act to which it refers—that of 20th March—speaks of “the nationalization of the oil industry throughout Persia” and appears, therefore, to be general in character, it is relevant to point out that the generality of the language used in an enactment is not decisive for the question whether it is in fact discriminatory against foreigners. The Permanent Court of International Justice on several occasions made it clear that discriminatory legislation which is couched in general terms is nevertheless unlawful¹.

¹ In the case of the *German Settlers in Poland* (Series B, No. 6), where the Court was concerned with legislation passed by Poland and expropriating all lands, title to which was derived from the German State, the Court found that the legislation, although general in its terms, was directed at persons of German origin, and was thus contrary to the Minorities Treaty, which, in this case, protected a certain category of Polish nationals against discrimination. The Court said, on this point :

“Article 8 of the Treaty guarantees to racial minorities the same treatment and security ‘in law and in fact’ as to other Polish nationals. The facts that no racial discrimination appears in the text of the law of July 14th, 1920, and that in a few instances the law applies to non-German Polish nationals who took as purchaser from original holders of German race, make no substantial difference. Article 8 is designed to meet precisely such complaints as are made

Evidence that the Iranian Oil Nationalization Act of 1st May 1951 is directed exclusively against the Anglo-Iranian Oil Company and is not justified on the ground of the necessity of protecting a vital public interest

22. The Government of the United Kingdom does not deny (and indeed the arbitral decision quoted in paragraph 20 above shows) that cases may arise in which a measure of expropriation solely affecting foreign nationals¹ is dictated by such overwhelming considerations of public utility and general welfare that the measure cannot be said to be directed against or discriminatory against foreigners. In such cases the fact that the expropriation affects foreigners only is, in a sense, accidental. The State cannot be expected to refrain from a measure which is of vital importance for the sole reason that the persons affected are foreigners. However, as the arbitral decision referred to in paragraph 20 above shows, the burden of proof is on the expropriating State to show that these overwhelming considerations exist and the situation is altogether different when the circumstances of the case point cogently to the conclusion that the action taken was embarked upon not in pursuance of a general purpose but with the object of nullifying a transaction which is deemed to be inconvenient or, although more lucrative than was expected at the time when it was entered into, still not as lucrative as the expropriating State would like. Indeed, the arbitral award in the case of *Administrator of Posts and Telegraphs of the Republic of Czechoslovakia v. Radio Corporation of America* (paragraph 20 above) shows that an expropriation cannot be justified on such a ground. Similarly the situation is altogether different when there is clear evidence that the measure taken was dictated by sentiments of resentment, animosity and vindictiveness against the foreign national in question. The conspicuous feature of the statements of the Government of Iran preceding, accompanying and following the passing of the Oil Nationalization Act of 1st May 1951 has been a succession of accusations and vituperation against the Anglo-Iranian Oil Company. The malevolence of the charges levelled against the Company as justifying a breach of the Concession Convention of 1933 in itself points to the true object of the Oil Nationalization Act. The Company has been accused of malpractice, dishonesty and corruption². The treatment to which the officials of the Com-

in the present case. There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law." (Pp. 23-24.)

This principle was applied in favour of Polish nationals in the case of the *Treatment of Polish Nationals in Danzig* (Series A/B, No. 44, p. 28) and was reaffirmed in the case of the *Minority Schools in Albania* (Series A/B, No. 64, at p. 19).

¹ I.e. solely affecting foreign nationals because there is only one enterprise of the kind in question and that is owned by foreigners.

² None of these charges were submitted to the Arbitration Court provided for in the Convention of 1933.

pany have been exposed since the passing of the Oil Nationalization Act throws light on the true motives which underlay the passing of that enactment. It substantiates the contention of the Government of the United Kingdom that this is not a case of genuine nationalization which happens to affect a foreign national, but that it is a case of deliberate attempt at confiscation actuated by anti-foreign prejudice. The vehemence of the political propaganda unleashed against the Company is clearly shown in the written Request for the Indication of Interim Measures of Protection (and the accompanying annexes), filed by the Government of the United Kingdom with the Court on 22nd June 1951. The interim measures requested included an indication that the Iranian Government should abstain from all propaganda calculated to inflame public opinion against the Anglo-Iranian Oil Company. In the course of that propaganda campaign pronouncements were made by members of the Iranian Government and by other persons associated with carrying out the Oil Nationalization Act to the effect that they would rather see the oil-wells dry out than permit the restoration of the rights of the Anglo-Iranian Oil Company. These statements, and the corresponding actions of the Iranian Government and its officials on various occasions, render it clear that one of the main motives of the Oil Nationalization Act is anti-foreign prejudice—a desire, in fact, not so much to confer constructive benefits upon the economy of Iran, as to destroy the Company's undertaking in that country. Inspired by such motives the Act constitutes an unlawful abuse of the power of nationalization.

Nationalization as a disguise for confiscation

23. No attempt has been made on the part of the Iranian Government to show that, on any long-range view, the Oil Nationalization Act was dictated by imperative requirements of the Iranian economy. In the submission of the Government of the United Kingdom, the contrary is the case. Economic conditions in Iran; the financial stability of that country; the industrial efficiency and commercial prosperity of the oil industry in Iran; and considerations of the peace of the world and of respect for law upon which the economic well-being of Iran, like that of other countries, ultimately depends—all these considerations demanded that, if measures of nationalization were considered to be desirable, the nationalization should have been accomplished by negotiation and agreement, as repeatedly urged by the Government of the United Kingdom and the Company, in accordance with the solemn pledges enshrined in the explicit articles of the Concession Convention of 1933 (e.g. Articles 21 and 26). Indeed, as shown in paragraph 2 above and in Annex 1B to this Memorial, the Government of the United Kingdom and the Company accepted, for the purposes of negotiation and without prejudice to their respective

legal rights, the principle of nationalization. Both the United Kingdom Government and the Company made, albeit without success, far-reaching proposals for a settlement on the basis of this principle. Instead the Government of Iran has resorted to action, closely approximating to confiscation, against a foreign company purely for political reasons.

Absence of good faith on the part of the Iranian Government

24. The Government of the United Kingdom desires to place on record certain actions and omissions of the Imperial Government of Iran which throw a glaring light on the motives inspiring the laws of March and May 1951. (For points (a), (b) and (c) below see Annex 3 to this Memorial. Evidence in support of points (d) and (e) below will be found in the United Kingdom's Request for the Indication of Interim Measures of Protection and also in the speech of the Rt. Hon. Sir Frank Soskice before the Court on 30th June 1951.)

(a) At no time since the adoption by Iran of the Convention of 1933 did the Imperial Government of Iran demand an arbitration under Article 22 of the Convention to test the validity of its grievances against the Anglo-Iranian Oil Company.

(b) Having signed on the 17th July 1949 a Supplemental Agreement—after prolonged negotiations—with the Anglo-Iranian Company, the Imperial Government of Iran failed to explain to the people of Iran that that Agreement would give considerable new advantages to Iran, *inter alia*, by nearly doubling the financial benefits provided for in the Convention of 1933.

(c) Early in 1951 the Imperial Government of Iran did not even give consideration to an offer by the Anglo-Iranian Oil Company of even greater benefits to Iran than those provided for in the Supplemental Agreement of 17th July 1949.

(d) The Imperial Government of Iran made no effort to stop and indeed stimulated an unparalleled stream of anti-British propaganda, accompanied by continuous intimidation of employees of the Anglo-Iranian Oil Company, which led to a strike and disorders in April 1951, resulting in the death of three British personnel.

(e) The Imperial Government of Iran attempted to induce the employees of the Anglo-Iranian Oil Company in Iran to break their respective contracts with the Company and to become servants of the Iranian Government.

(f) The Imperial Government of Iran refused to appear before this Court to justify its actions as being consistent with international law.

(g) The Imperial Government of Iran failed to respect the interim measures of protection indicated by the Court in its Order of 5th July 1951.

Conclusions of Section III

25. On the basis of the arguments and legal authority set forth in the preceding paragraphs of this section, the Government of the United Kingdom submits that it has shown that,

(a) *As a matter of law*, it is contrary to international law for a State to subject a concession, granted to a foreign company, to a measure of nationalization or expropriation, if such measure operates exclusively, or in a discriminatory manner, against the foreign company, and it is not shown by the expropriating Government that the measure was justified in order to protect the vital interests of the State—the desire of the State to realize greater profits from the concession not being, as a matter of international law, a sufficient ground to justify the expropriation.

(b) *As a matter of fact*,

(i) The Iranian measures of March and May 1951 operate exclusively against the undertaking of the Anglo-Iranian Oil Company, and

(ii) These measures were not justified as measures necessary to protect the vital interest of Iran; but, on the contrary, the motives for these measures were two-fold, being firstly and predominantly, anti-foreign prejudice on the part of that Government and, secondly, the desire of that Government not merely to obtain for itself a greater proportion of the profits accruing from the operation of the oil industry in Iran, but also to deprive the Company of any legitimate return for the financial risks which it alone had run and for the enterprise and skill which it had shown in developing the oil industry in Iran.

(c) So far from the Iranian measures of March and May 1951 being shown to be necessitated by, or even conducive to, the economic prosperity of Iran, the Iranian Government both by its words and by its conduct has shown that for it the economic interests of Iran are a matter of secondary concern as compared with its anti-foreign prejudice.

(d) For the reasons given by the United Kingdom Government in the written Request for the Indication of Interim Measures of Protection and in the speech of the Rt. Hon. Sir Frank Soskice before the Court on 30th June 1951, there is every reason to suppose that the carrying out of the Iranian legislation, far from promoting the economic prosperity of Iran, will actually be most deleterious to it.

SECTION IV

[Even in cases where the nationalization of the property of foreigners, including concessions granted to them, is not unlawful on any other ground, the taking of the property becomes an unlawful confiscation unless provision is made for compensation

which is adequate, prompt and effective. The provisions of the Oil Nationalization Act of 1st May 1951 with regard to compensation do not satisfy the requirements of international law with regard to compensation. The compensation provided for in that Act is neither adequate nor prompt nor effective.]

Confiscatory nature of the Iranian Oil Nationalization Act of 1st May 1951

Having regard to the terms of compensation which it provides, the Iranian Oil Nationalization Act of 1st May 1951 is essentially confiscatory

26. The Government of the United Kingdom has contended in the preceding two sections of this Memorial that the Oil Nationalization Act is unlawful for two reasons : (a) that it is in violation of an express undertaking not to terminate the Concession Convention of 1933 unilaterally, and (b) that the Act is in effect a measure directed exclusively against a foreign national and not justified as necessary for the protection of the vital interests of Iran. The Government of the United Kingdom now contends, thirdly, that even if the Oil Nationalization Act of 1st May 1951 were otherwise in accordance with international law, it would still be unlawful for the reason that it is essentially confiscatory in nature, having regard to the terms of compensation which it provides.

International rules regarding compensation in case of nationalization. The practice of States

27. Before examining the provisions of the Iranian Oil Nationalization Act of 1st May 1951, it is desirable to recall the rules of international law governing compensation in case of expropriation. That rule was stated repeatedly and emphatically in 1940 by the Government of the United States—as well as by other governments—in connection with the expropriation of American-owned and other oil companies in Mexico. In the first instance, the Government of the United States, while readily recognizing “the right of a sovereign State to expropriate property for public purposes”, stated with equal emphasis that “*the right to expropriate property is coupled with and conditioned on the obligation to make adequate, effective and prompt compensation. The legality of an expropriation is in fact dependent upon the observance of this requirement*”¹. (Note of Secretary Hull of 3rd April 1940 to the Mexican

¹ In a letter to Dr. Musaddiq, the Prime Minister of Iran (the text of which was released in Tehran on 21st August 1951), Mr. Harriman, Special Representative of the President of the United States, said, “In the view of my Government, the seizure by any government of foreign-owned property without paying prompt, adequate, effective compensation or working out arrangements mutually satisfactory to the foreign owner and the government is confiscation rather than nationalization.” (See the London *Times* of 22nd August 1951.)

Ambassador in Washington, reproduced in Hackworth, *Digest of International Law*, Vol. 3 (1942), p. 662, and commented upon, with approval, by Hyde, *International Law*, Vol. I (2nd ed., 1945), section 217 C.) The attitude of the Government of the Netherlands was the same. In a note to the Mexican Government of 27th October 1938, the Government of the Netherlands declared :

"... The Government of the Netherlands maintains that even in cases where circumstances oblige a government to expropriate private property, it is a condition *sine qua non* that the properties expropriated must be exactly defined, and that if the authority takes immediate possession of such goods a just and prompt indemnity shall be immediately and effectively guaranteed.... In the attitude of the Mexican Government after the decree of expropriation, the Netherlands Government regrets that it can only see a refusal to acknowledge these fundamental rules. Six months have passed since the day of expropriation, and the properties expropriated have not yet even been defined. Therefore, the Netherlands Government feels obliged to express new hope for a satisfactory arrangement of this controversy, an arrangement that cannot consist in less than adequate, prompt and effective compensation or in return of the properties expropriated to the companies affected." (*Documents on International Affairs* (published by the Royal Institute of International Affairs), 1938, Vol. I, p. 472.)

The Mexican Government itself, in a note to the British Government of 12th April 1938, stated that it wished "to place on record that there is a universally accepted principle of international law which attributes to all sovereign and independent countries the right to expropriate in the public interest with the payment of adequate compensation" (*ibid.*, p. 462). In a note to the United States Government of 1st May 1940, the Government of Mexico affirmed that it had declared its support to the principle of the "right to an equitable and prompt compensation for the expropriated properties" (Hackworth, *Digest of International Law*, Vol. 3, 1942, p. 664) ¹.

International rules regarding compensation in case of nationalization.
The practice of international tribunals

28. The practice of international tribunals is uniform on the subject, and it is not considered necessary here to substantiate, by an exhaustive examination of such practice, the proposition that the lawfulness of expropriation depends upon the payment of proper compensation.

¹ More recently, at the International Conference of American States at Bogota, the proposal of the Mexican Delegation that there ought to be prompt, adequate and effective compensation for expropriation "except when the constitution of any country provided otherwise" was rejected. (*Report of Ninth International Conference of American States*, United States Department of State Publication 3263, pp. 66-67.)

However, it is desirable to refer to the case of the *Chorzów Factory (Claim for Indemnity) (Merits)*, Series A, No. 17. In this case the Permanent Court of International Justice was dealing with an expropriation, which it had found to be unlawful as contrary to the Geneva Convention, and it defined the principles according to which redress for such an unlawful expropriation should be governed. (Reference will be made to these principles in Section V below.) The Court distinguished these principles from the different principles applicable to compensation for an expropriation which is in principle lawful and only becomes unlawful if the amount of compensation does not comply with the principles applicable to compensation for lawful expropriation. Its brief definition of these latter principles is given in the words "the value of the undertaking at the moment of dispossession, plus interest to the day of judgment". These words of the Permanent Court of International Justice define what is meant by *adequate* compensation. In the decision of an arbitral tribunal to be cited immediately below, it will be found that the requirement that the compensation should be *prompt* is also introduced. This decision, which is that of the tribunal in the case of *David Goldenberg v. German State (Revue de Droit international, vol. 3 (1929), p. 552)*, also confirms the other contentions made in this Section of the Memorial. The Arbitrator said :

"Le respect de la propriété privée et des droits acquis des étrangers fait sans conteste partie des principes généraux admis par le droit des gens....

La réquisition militaire est une forme *sui generis* de l'expropriation pour cause d'utilité publique. Cette dernière est une dérogation admise au principe du respect de la propriété privée des étrangers. Il en est de même de la réquisition....

Toutefois, si le droit des gens autorise un État, pour des motifs d'utilité publique, à déroger au principe du respect de la propriété privée des étrangers, c'est à la condition *sine qua non* que les biens expropriés ou réquisitionnés seront équitablement payés *le plus rapidement possible*.

L'application de ces règles aboutit au résultat suivant : la réquisition opérée par l'autorité militaire allemande ne constituait pas initialement un « acte contraire au droit des gens ». Pour qu'il continuât à en être ainsi, il fallait, cependant, que dans un délai raisonnable les demandeurs obtinssent une indemnité équitable. Or, tel n'a pas été le cas, l'indemnité atteignant à peine le sixième de la valeur des expropriés.

Il est dès lors constant que M. Goldenberg et fils ont été privés des 5/6 de leurs biens, sans compensation. Il y a là « acte contraire au droit des gens », que l'on applique le principe général qui s'oppose à l'expropriation de la propriété privée des étrangers sans juste indemnité."

There are very many other arbitral decisions which can be cited in a similar sense¹.

*International rules regarding compensation in case of nationalization.
The views of writers*

29. Writers have recorded, with impressive uniformity, the existing practice on the subject. Miss Whiteman, in the most comprehensive and authoritative work on the subject—*Damages in International Law* (1937)—states, at p. 1386 :

“If land belonging to an alien (other than an alien enemy) is expropriated, requisitioned or confiscated by a government, ‘just compensation’ must be paid for it. The international duty to make compensation exists apart from the provisions of municipal law.”

The same conclusion is reached by Professor Hyde (*International Law*, Vol. I (2nd rev. ed., 1945), at pp. 710-717). Freeman, in *The International Responsibility of States for Denial of Justice* (1938), states, at p. 518, that “the preponderance of legal authority accepts the view that no foreigner may be deprived of his property without adequate compensation” and that “it would seem difficult to maintain that the right to compensation does not exist just as fully in the case of general legislation under which an alien is expropriated as it does in individual cases of confiscation”.

Professor Erich Kaufmann (*Recueil des Cours de l'Académie de Droit international*, vol. 54 (1935), at p. 429) expresses the view that : “La propriété des étrangers ne peut être expropriée que pour cause d'utilité publique dans une procédure qui remplit

¹ It may be sufficient to mention the following decisions selected almost at random :

- (a) In the Award rendered by the Permanent Court of Arbitration on 13th October 1922, in the dispute between the United States and Norway relating to the requisitioning of contracts for the building of ships, the Tribunal held :

“Whether the action of the United States was lawful or not, just compensation is due to the claimants under the municipal law of the United States, as well as under the international law, based upon the respect for private property.” (*American Journal of International Law*, 17 (1923), p. 388.)

It further held that “no State can exercise towards the citizens of another civilized State the ‘power of eminent domain’ without respecting the property of such foreign citizens” or without paying just compensation as determined by an impartial tribunal if necessary. (*Ibid*, p. 392.)

- (b) In the *Spanish Zone of Morocco Claims*, brought by Great Britain against Spain in 1924, where expropriation was not actually in question, Dr. Huber, the Rapporteur, held, in general terms, that under international law a foreigner cannot be deprived of his property without just compensation. (*Annual Digest of Public International Law Cases*, 1923-1924, Case No. 85.)
- (c) In the *De Sabla Claim*, which came before the United States-Panama General Claims Commission in 1933, the Commission considered it “axiomatic that acts of a government in depriving an alien of his property without compensation impose international responsibility”. (*Annual Digest of Public International Law Cases*, 1933-1934, Case No. 92.)

toutes exigences de la justice procédurale et contre une juste compensation.”

Professor Gidel, citing with approval Anzilotti, writes as follows:

“Le vice de cette comparaison [between expropriation and liquidation] est qu’il néglige le trait capital qui distingue l’expropriation pour cause d’utilité publique de toutes les dépossessiones de propriété exorbitantes du droit commun. Dans sa célèbre consultation, M. Anzilotti l’a rappelé en ces termes: « Sans doute l’expropriation pour utilité publique s’impose aux étrangers autant qu’aux nationaux, mais à la condition qu’elle soit accompagnée des garanties dont toutes les législations modernes l’entourent dans le but de la rendre compatible avec le droit de propriété. L’expropriation n’est compatible avec le droit de propriété que si elle est justifiée par l’utilité générale qui prime l’utilité, individuelle et accompagnée d’une équitable indemnité qui couvre le dommage subi. »” (*Revue de Droit international*, vol. I (1927), p. 117.)

Fauchille and Silbert say, in *Revue générale de Droit international public*, 1925, p. 22:

“L’indemnité devra présenter les traits suivants:

1. Il va de soi qu’elle doit être *générale*, c’est-à-dire exister dans tous les cas et s’appliquer sans distinction à tous les biens frappés d’expropriation;
2. l’indemnité doit être *intégrale*, c’est-à-dire tenir compte au propriétaire de la valeur de ce qu’il transmet et de la dépréciation subie par ce qui lui est laissé;
3. elle doit être *préalable*, ou tout au moins coïncider avec la prise de la propriété....”

In the above quotation once again the requirements of *adequacy* (No. 2 above) and of *promptness* (No. 3 above) are brought out.

The meaning of “prompt” compensation

30. From the authorities cited in paragraphs 27-29 above, it is clear that the nationalization of the property of foreigners, even if not unlawful on any other ground, becomes an unlawful confiscation unless provision is made for compensation which is adequate, prompt and effective. By “adequate” compensation is meant “the value of the undertaking at the moment of dispossession, plus interest to the day of judgment”—per the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits)* case, Series A, No. 17 (paragraph 28 above). The second requirement, “promptness”, has already been referred to in the authorities quoted in the above paragraphs and has to some extent been defined by these authorities. It is, however, desirable to specify in greater detail what the Government of the United Kingdom understands by “promptness”. There have, in fact, been pronouncements that prompt compensation means immediate payment in cash. Thus, in the arbitration between the United States and Norway relating to the requisition-

ing of contracts for the building of ships in the United States, it was held: "The Tribunal is of opinion that full compensation should have been paid at the latest on the day of the effective taking" (Scott, *Hague Court Reports*, Second Series (1932), at p. 77). The Government of the United Kingdom is, however, prepared to admit that deferred payment may be interpreted as satisfying the requirement of payment in accordance with the rules of international law if

- (a) the total amount to be paid is fixed promptly ;
- (b) allowance for interest for late payment is made ;
- (c) the guarantees that the future payments will in fact be made are satisfactory, so that the person to be compensated may, if he so desires, raise the full sum at once on the security of the future payments.

As Professor Hyde puts it :

"The matter of time of payment is among the factors that must always be considered because, if payment is to be deferred, the total amount will fail to be fully compensatory if it does not make provision, among other things, for interest on the investment or for loss of benefits to the owner after the property was taken and prior to payment. Thus the adequacy of compensation is to be tested in cases where deferred payments are contemplated, by the respect which the arrangement pays for the consequences of postponement. It should be clear that a deferred payment, or series of deferred payments, is not truly compensatory if the loss sustained by the owner in consequence of postponement be unrequited. In his correspondence with the Mexican Government, Secretary Hull did not intimate that arrangements for deferred payments which would make requisite provision for the period of delay would be inadequate. There is hardly room to impute to him the thought that the fiscal equivalent of prompt payment, if duly arranged for at the outset, would violate any requirement of international law." (*International Law*, Vol. I (2nd rev. ed., 1945), pp. 718-719.)

The meaning of "effective" compensation.

30A. In the immediately preceding paragraphs consideration has been given to the meaning of two of the three requirements of international law with regard to compensation for expropriations or nationalizations, which are in principle lawful—namely, that the compensation must be adequate in amount and promptly paid. The third requirement is summed up in the word "effective" and means that the recipient of the compensation must be able to make use of it. He must, for instance, be able, if he wishes, to use it to set up a new enterprise to replace the one that has been expropriated or to use it for such other purposes as he wishes. Monetary compensation which is in blocked currency is not effective because, where the person to be compensated is a foreigner, he is not in a position to use it or to obtain the benefit of it. The compensation therefore must be freely transferable from the

country paying it and, so far as that country's restrictions are concerned, convertible into other currencies.

The provisions for compensation in the Oil Nationalization Act of 1st May 1951 do not satisfy the requirements of international law

31. The Government of the United Kingdom submits that the provisions for compensation in the Iranian Oil Nationalization Act of 1st May 1951 do not satisfy the requirements of international law because the compensation for which they provide is neither adequate nor prompt nor effective, and that, accordingly, even if the expropriation of the property and rights of the Anglo-Iranian Oil Company were not otherwise contrary to international law, it is so contrary for the reason that the compensation provided for falls short of the requirements of international law.

The provisions of the Oil Nationalization Act of 1st May 1951 relative to compensation

32. The principal provision of the Iranian Oil Nationalization Act of 1st May 1951, relative to compensation, is Article 3, which reads as follows :

"The Government is bound to examine the rightful claims of the Government as well as the rightful claims of the Company under the supervision of the Mixed Board and to submit its suggestions to the two Houses of Parliament in order that the same may be implemented after approval by the two Houses."

Reasons why Article 3 of the Oil Nationalization Act of 1st May 1951 does not satisfy the requirements of international law

33. The principal respect in which these provisions fall short of the requirements of international law is that there is no certainty that under Article 3 any compensation will be paid at all, far less that it will be adequate or prompt or effective. In order that the provisions for monetary compensation should be adequate, it is necessary that these provisions should either provide in terms for a fixed sum which satisfies the requirement of adequacy or provide for a procedure, the fairness of which cannot be challenged, by which the amount of compensation will be promptly determined. It will be seen that Article 3 does not fix the amount of compensation, but it provides that it will be determined by the two Houses of the Iranian Parliament upon the proposals of the Mixed Board (itself composed of ten parliamentarians with the Minister of Finance as Chairman), which is the executive organ appointed by the law for carrying out the act of expropriation or nationalization. It is submitted that this is an extreme example of a party making itself the judge of its own cause and failing to provide a fair and judicial method of assessing compensation. It is clear that the Iranian Government, if it were not going to fix the compensation in the Act of 1st May

1951, should have provided for an impartial judicial procedure by which the amount of compensation should be assessed, and in a case where purely the interest of a foreign company is involved and national feeling about that foreign company has been worked up to a high pitch, a fair and judicial body would have to be one which gave the position of umpire to some impartial person who was neither Iranian nor British. In fact, the same Arbitration Court provided for by Article 22 of the Concession Convention of 1933, which contains this vital feature concerning an impartial or neutral umpire, was the body obviously indicated to assess the compensation, and indeed in Section VI below the United Kingdom Government submits as a legal proposition that this Arbitration Court should assess the compensation, if it is to be assessed on the basis that the expropriation is lawful subject to the payment of adequate compensation. Under the Oil Nationalization Act of 1st May 1951, the Anglo-Iranian Oil Company is expropriated and the compensation is to be decided in the future by the same Parliament which has displayed the highest animosity against the Company, and, so far from there being any guarantees that the procedure will be fair and judicial, there is every reason to fear that purely political considerations will govern the decision. Article 3, therefore, gives every reason to suppose that the procedure for compensation offers no guarantees either for its adequacy in amount, its promptness of payment or its effectiveness. It should further be noticed that the Iranian Parliament, on the proposals of the same Mixed Board, is also to pronounce upon the claims of the Iranian Government against the Company and to set these off against the claims of the Company for compensation. In the recent past the Iranian Government has made a certain number of claims against the Company. These claims, if the Iranian Government believed in them, were claims which should have been pronounced upon by the Arbitration Court provided for under Article 22 of the Concession Convention of 1933. The Iranian Government, however, has not at any time thought fit to bring these claims before that Court, but now, under Article 3 of the Oil Nationalization Act of 1st May 1951, the Iranian Government and Parliament is to be judge in its own cause in the matter of deciding claims which it may think fit to put forward against the Company.

Article 2 of the Oil Nationalization Act of 1st May 1951 as an indication of the maximum compensation which the Iranian legislators would be prepared to allow

34. In this connection it is relevant to consider the provisions of Article 2 of the Oil Nationalization Act of 1st May, 1951¹,

¹ Article 2 reads: "The Government is bound to dispossess at once the former Anglo-Iranian Oil Company under the supervision of the Mixed Board. If the Company refused to hand over at once on the grounds of existing claims on the

because the provisions of this Article at any rate indicate what was in the mind of the Iranian legislators as to the maximum compensation and the manner in which it should be paid. Article 2, having provided that the Mixed Board is to dispossess the Company, then goes on to provide that, if the Company is unwilling to part with its property without some security for compensation, 25 per cent of the current revenue from the oil, after deduction of exploitation expenses, may be set aside and placed in some bank to provide a fund out of which the compensation should be paid. It would seem, therefore, that the Iranian legislators thought that, as a maximum, 25 per cent of current revenue less expenses would provide a fund adequate to provide for the compensation of the Company. In no event could a fund constituted in this way produce adequate compensation. The Government of the United Kingdom is in a position to demonstrate this by financial arguments; but, as these arguments would necessarily be somewhat long and would involve a number of calculations, the Government of the United Kingdom will reserve them for submission, if need be, on a later occasion.

Conclusions of Section IV

34A. The Government of the United Kingdom submits that it has shown in this section that the nationalization or expropriation of the property of foreigners, including the cancellation of concessions granted to them, is an international wrong unless there is provision for compensation which is adequate, prompt and effective; that the provisions for compensation contained in the Iranian Oil Nationalization Act of 1st May 1951, do not satisfy the requirements of international law in this respect; and that the cancellation of the concession of the Anglo-Iranian Oil Company (even if it were not otherwise an international wrong) is an international wrong for this reason.

SECTION V

[Where the nationalization is unlawful, the relief to be granted is governed by the principles formulated by the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits)* case (Series A, No. 17). According to these principles, the primary remedy is restitution in kind (or, where such restitution is impracticable, the payment of pecuniary compensation, instead of restitution, consisting of a sum "corresponding to the value which a restitution in kind would bear") together with pecuniary damages for loss sustained which would not be

Government, the Government can, by mutual agreement, deposit in the Bank Milli-Iran or in any other bank, up to 25 per cent of current revenue from the oil after deduction of exploitation expenses in order to meet the probable claims of the Company."

covered by restitution in kind (or by payment in place of it). Since, for the reasons given in (2) to (4) above, the action taken by the Iranian Government against the Anglo-Iranian Oil Company is unlawful, there should be full restitution of its concessionary rights to the Company (or, in the alternative, if restitution is not granted, pecuniary compensation should be paid of an amount corresponding to the value which the restored concession would bear) together with pecuniary damages for all loss occasioned by the acts of the Iranian Government between 1st May 1951 and the date of the restitution or of the payment of pecuniary compensation in lieu thereof.]

The legal remedies for unlawful expropriation

The relief for unlawful expropriation distinguished from compensation in cases of lawful expropriation. Decision of the Permanent Court of International Justice in the Chorzów Factory (Claim for Indemnity) (Merits) case, Series A, No. 17

35. It has been submitted in the preceding section of the present Memorial that the Oil Nationalization Act of 1st May 1951 is unlawful for the reason—in addition to those adduced in Sections II and III of the Memorial—that it is confiscatory, inasmuch as it does not provide for compensation according to the rules which international law prescribes in cases of expropriation. It will now be submitted that, even if the compensation offered were such as is otherwise in conformity with international law in cases of *lawful* expropriation, it would not be a sufficient remedy in the present case, seeing that for the reasons stated in Sections II and III of the Memorial, the expropriation under the Oil Nationalization Act of 1st May 1951 is *unlawful*. The Government of the United Kingdom contends that, should the Court find that the action of the Government of Iran is unlawful for all or any of the reasons adduced in the preceding sections of this Memorial, then any such finding of the Court will be directly relevant to the question of the remedy to which the Government of the United Kingdom is entitled. That relevance lies in the distinction, well recognized in international law, between the consequences of an expropriation which is lawful and the consequences of an expropriation which is in violation of the international obligations of the State. That distinction was formulated by the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits) case* (Series A, No. 17). In view of the importance of the ruling of the Court in that case, it is considered necessary to quote the relevant passage in full. The Court said :

“The action of Poland which the Court has judged to be contrary to the Geneva Convention is not an expropriation—to

render which lawful only the payment of fair compensation would have been wanting ; it is a seizure of property, rights and interests which could not be expropriated even against compensation, save under the exceptional conditions fixed by Article 7 of the said Convention. As the Court has expressly declared in Judgment No. 8, reparation is in this case the consequence not of the application of Articles 6 to 22 of the Geneva Convention, but of acts contrary to those articles.

It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the day of payment. This limitation would only be admissible if the Polish Government had had the right to expropriate, and if its wrongful act consisted merely in not having paid to the two Companies the just price of what was expropriated ; in the present case, such a limitation might result in placing Germany and the interests protected by the Geneva Convention, on behalf of which interests the German Government is acting, in a situation more unfavourable than that in which Germany and these interests would have been if Poland had respected the said Convention. Such a consequence would not only be unjust, but also and above all incompatible with the aim of Article 6 and following articles of the Convention—that is to say, the prohibition, in principle, of the liquidation of the property, rights and interests of German nationals and of companies controlled by German nationals in Upper Silesia—since it would be tantamount to rendering lawful liquidation and unlawful dispossession indistinguishable in so far as their financial results are concerned.

The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear ; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.

This conclusion particularly applies as regards the Geneva Convention, the object of which is to provide for the maintenance of economic life in Upper Silesia on the basis of respect for the *status quo*. The dispossession of an industrial undertaking—the expropriation of which is prohibited by the Geneva Convention—then involves the obligations to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible. To this obligation, in virtue of the general principles of international law, must be added that of compensating loss sustained as the result of the seizure. The impossibility, on which the Parties are agreed, of restoring the Chorzów factory

could therefore have no other effect but that of substituting payment of the value of the undertaking for restitution ; it would not be in conformity either with the principles of law or with the wish of the Parties to infer from that agreement that the question of compensation must henceforth be dealt with as though an expropriation properly so-called was involved." (Series A, No. 17, pp. 46-48.)

In the opinion of the Government of the United Kingdom the above judgment of the Court expresses a rule of international law which is not only well established but also just and practicable. Accordingly, the Government of the United Kingdom submits that, even if the compensation offered by the Government of Iran in the Oil Nationalization Act of 1st May 1951 were such as international law provides for cases of lawful expropriation, it would still not provide the remedy to which the Government of the United Kingdom is entitled in the circumstances of this case. For the expropriation, in this case, is unlawful. Accordingly, the remedy to which the Government of the United Kingdom is entitled is that laid down by the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits)* case and is based on the distinction between lawful and unlawful expropriation. As has been shown, the compensation which is envisaged in—or which may be deduced from—the Oil Nationalization Act of 1st May 1951 is not even such as international law requires in the case of an otherwise lawful expropriation. *A fortiori* it is not compensation such as international law requires in the case of an unlawful expropriation.

International rules regarding relief for unlawful expropriation. The practice of international arbitral tribunals

36. The above-quoted pronouncement of the Permanent Court of International Justice is so explicit and it covers so fully all the aspects of the case which forms the subject-matter of the present Memorial that any further citation of judicial or arbitral authority in the matter would appear to be redundant. However, the Government of the United Kingdom attaches importance to stating that that pronouncement, far from constituting a new departure in international law, was fully in conformity with established practice and was regarded as such in arbitral awards which followed the judgment of the Court.

Thus, in the *Martini* case, decided in 1930, although there was no occasion to apply the principles enunciated in the *Chorzów Factory* case with regard either to compensation or to restitution in kind, the Tribunal cited with approval the judgment of the Permanent Court of International Justice in that case as an authority for its decision to annul expressly an unjustified imposition of damages by a municipal tribunal. The Tribunal said :

“Le Tribunal arbitral souligne qu’un acte illicite a été commis et applique le principe que les conséquences de l’acte illicite doivent

être effacées." (*Reports of International Arbitral Awards*, II (1949), p. 975 at p. 1002; *American Journal of International Law*, 25 (1931), p. 554 at p. 585.)

In the *Shufeldt* case, a dispute between the United States and Guatemala, the Arbitrator emphasized that *restitutio in integrum* must be given to a person injured by an unlawful act. In that case a concession held by a United States citizen was abrogated by the legislature of Guatemala. In an Award given on 24th July 1930, the Arbitrator assessed damages on the principle that "whoever concludes a contract is bound not only to fulfil it but also to recoup or compensate (the other party) for damages and prejudice which result directly or indirectly from the nonfulfilment or infringement by default or fraud of the party concerned, and that such compensation includes both damage suffered and profits lost: *damnum emergens et lucrum cessans*". (*Reports of International Arbitral Awards*, II (1949), p. 1083 at p. 1099¹.)

A conspicuous number of earlier arbitral decisions, which it is not considered necessary to recount in detail, acted on the same principle of fullest compensation in cases of unlawful interference with concessionary or other proprietary rights².

In the *Antioquia Railway* case, a case of breach of a contract made with British nationals by the Colombian Government, the Arbitral Tribunal laid down as the guiding principle for cases of that nature that the damage caused to one party by the wrongful breaking of the contract includes, on the one hand, all the expenses and losses which it has incurred in fulfilling its contractual obligations (*damnum emergens*) and, on the other hand, the profits which were likely to arise from its regular execution (*lucrum cessans*). (*La Fontaine, Pasicrisie internationale*, p. 552.)

¹ See also the case of *Walter Fletcher Smith* which was submitted to arbitration by the United States and Cuba. In this case the property of the claimant was expropriated, ostensibly in pursuance of a general law for the urbanization of the district but in fact, as the Arbitrator found, by a measure specifically directed against him. In an Award given in 1929 the Arbitrator, after holding that, according to law, the property should be restored to the claimant, assessed compensation to cover both the value of the land, buildings and personal effects, and the deprivation of the use of the property. (*Reports of International Arbitral Awards*, II (1949), at pp. 917-918; *American Journal of International Law*, 24 (1930), p. 384.)

² In the *Delagoa Bay Railway* case, the award in which was given in 1900, the Portuguese Government had rescinded the concession of the Lourenço Marques Railroad, which was financed by English and American capital. The Arbitration Tribunal found that the decree of rescission had been carried out in disregard of contract of concession. It then held that there was but one principle of law applicable to the fixing of the compensation—that of *dommages et intérêts*, comprising, in accordance with the rules of law universally admitted, *damnum emergens* and *lucrum cessans* (*Archives diplomatiques*, vol. lxxiv, p. 214).

International rules regarding relief for unlawful expropriation. The views of writers

37. Writers on the question of State responsibility have given full support to the view that in case of unlawful action the measure of damages is determined by the principle of *restitutio in integrum* whether in the form of restitution in kind or full compensation. Thus Freeman (*The International Responsibility of States for Denial of Justice* (1938), p. 573) writes :

“Speaking generally, the reparation of an international wrong may take two possible forms : that of *restitutio in integrum* or of compensation by way of damages (*dommages-intérêts*) for the injuries suffered. The first is simply the re-establishment of the state of facts which would exist if the unlawful act had not been committed, the second an economic satisfaction given either in lieu of restitution where that, for some reason, has become impossible, or as a complement thereof when it itself is inadequate to repair the wrong.”

This is also the view of other writers¹.

Restitution in kind. The practice of international tribunals

38. It will have been noted from the survey of authorities referred to above that the principle of *restitutio in integrum* may assume two forms. In the first instance, it may take the form of

¹ Thus Salvioli (*Recueil des Cours de l'Académie de Droit international*, 28 (1929) (iii), p. 239) expresses a similar view :

“Dans ce cas (où la restitution en nature n'est pas possible) l'arbitre doit déterminer la valeur de remplacement en tenant compte de deux éléments :

1. Quelle serait la valeur de la chose, exprimée en monnaie — actuelle — d'indemnité, à la date de la décision ;
2. Quel serait le développement normal que la chose aurait raisonnablement pris, si elle était restée entre les mains de son propriétaire.”

This is also the view of Sibert (in *Revue générale de Droit international public*, 44 (1937), pp. 539-542) and Spiropoulos (in *Zeitschrift für internationale Recht*, 35 (1925-1926), p. 116). The latter says :

“In principle, according to recognized international law, the damage arising from an international wrong where liability is established is to be indemnified in full on the basis of the universal conception of compensation (*damnum emergens* and *lucrum cessans*).”

More recently, Professor A. de La Pradelle says, in the “*Projet provisoire de Résolutions*” attached to his Report on International Effects of Nationalizations presented to the Institute of International Law at Bath in 1950 :

“La nationalisation, acte unilatéral de souveraineté, doit respecter les engagements valablement conclus, soit par traité, soit par contrat.

Faute de ce respect, il y aurait déni de justice donnant naissance, non pas à une simple indemnité, valeur pour valeur, mais à des dommages-intérêts, à caractère pénalisateur.” (*Annuaire de l'Institut de Droit international*, I (1950), p. 68.)

complete restitution, *in specie*, of the *status quo ante*¹. International law clearly prescribes complete restitution in all possible cases. As the Permanent Court of International Justice said in the above-quoted judgment in the *Chorzów Factory (Claim for Indemnity) (Merits)* case, Series A, No. 17, "restitution in kind" is in the first instance the natural expression of the duty of *restitutio in integrum*. It is only "if this is not possible" that consideration must be given to the "payment of a sum corresponding to the value which a restitution in kind would bear". There is, so far as the Government of the United Kingdom are aware, no case on record in which an international arbitral tribunal has held that, for reasons connected with the sovereignty of the State, no restitution in kind is admissible in international law. In many cases, while admitting it in principle, international tribunals give detailed reasons why in the case before them such restitution was not practicable. The following passage from the Award of Undén, Arbitrator, given in 1933 in the arbitration between Greece and Belgium, illustrates that aspect of the matter :

"The Arbitrator is of the opinion that the obligation of restoring the forests to the claimants cannot be imposed upon the defendant. There are several reasons which may be given in favour of this opinion. The claimants in whose behalf a claim put forward by the Greek Government has been held admissible, are partners in a commercial organization composed of other partners as well. It would therefore be inadmissible to compel Bulgaria to restore integrally the disputed forests. Moreover, it is hardly likely that the forests are in the same condition that they were in 1918. Assuming that most of the rights in the forests are rights of cutting a fixed quantity of wood, to be removed during a certain period, a decision holding for restitution would be dependent upon an examination of the question whether the quantity contracted for could be actually obtained. Such a decision would also require examining and determining the rights which may have arisen meanwhile in favour of other persons, and which may or may not be consistent with the rights of the claimants.

The only practicable solution of the dispute, therefore, is to impose upon the defendant the obligation to pay an indemnity." (*Annual Digest and Reports of Public International Law Cases, 1933-1934, Case No. 39, at pp. 99-100.*)

A writer who has devoted a monograph to the study of the question of reparation for illicit acts in international law summarizes the position as follows :

¹ It should be noted that, even where restitution in kind is awarded, there may (indeed almost certainly will) be an award of damages as well for the loss suffered as a result of the dispossession while it continued. The Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits)* case (Series A, No. 17) used the words: "the award if need be of damages for loss sustained which would not be covered by restitution in kind or payment in place of it" (p. 47).

“Depuis plus d’un siècle, les commissions et tribunaux internationaux appliquent la règle qui prescrit une *restitution en nature* au profit du lésé et seulement en cas d’impossibilité une indemnité pécuniaire.” (Reitzer, *La réparation comme conséquence de l’acte illicite en droit international* (1938), p. 171.)

Restitution in kind. The views of writers

39. The opinions of writers are uniformly and emphatically in favour of the admissibility, in principle, of restitution in kind¹. Decencière-Ferrandière, *La responsabilité internationale des États* (1927), says at p. 246 :

“Il n’existe aucun principe de droit qui oblige l’État demandeur à se contenter d’une indemnité, s’il préfère voir les choses remises dans leur situation primitive, s’il préfère, par exemple, recouvrir en nature un bien confisqué à l’un de ses nationaux.”

Lais, *Rechtsfolgen völkerrechtlicher Delikte* (1932), says at p. 29 :

“Restitution in kind is the most complete means of reparation of damage ; the person who has suffered damage is restored to the same position as if nothing had happened. As the *status quo ante* is being restored, it is not necessary that he should be given a substitute. As in any other system of law, so also in international law restitution in kind must apply. For this is the only way of repairing damage to the full extent. There is no reason why in international law a State should be satisfied with any other form of reparation—which is only in the nature of a substitute—so long as the restoration of the *status quo ante* is possible.”

Anzilotti, *Cours de droit international* (1929 edition, translated by Gidel), says at p. 526 :

“On enseigne communément que l’on doit procéder à la restitution en nature toutes les fois qu’elle est possible (comp. *Cour permanente de Justice internationale*, arrêt n° 13, 13 sept. 1928 ; *Publications*, Série A, n° 17, p. 47). En effet, il n’y a aucune raison pour que l’État lésé doive se contenter d’une compensation d’un autre genre, par exemple d’une somme d’argent.”

Restitution in kind and the solvency of the defendant State

40. The authorities adduced above show that there is nothing in the principles of international law and in international practice which prevents the Court from decreeing restitution in kind and that, on the contrary, international law prescribes such restitution as the remedy if restitution is possible. There is, in this connection, a further material factor to which the Government of the United Kingdom attaches importance. While it may be admitted that in certain circumstances restitution in kind may not be either possible or necessary for safeguarding the true interests of the parties, there may be other cases in which such restitution provides

¹ The views of Freeman have been given in paragraph 37 above.

the only practicable and just solution. Such cases include those in which the offending State is unlikely to be in a position to grant adequate pecuniary compensation and in which the situation, wrongfully created by it, is calculated, if allowed to subsist, to affect adversely its solvency. Reference is made here to the considerations adduced in paragraph 8 of the Request for the Indication of Interim Measures of Protection filed with the Court on 22nd June 1951.

Conclusions of this portion of Section V

40A. The relief to be granted in the present case in respect of the action of the Imperial Government of Iran should be full restitution of its concessionary rights to the Anglo-Iranian Oil Company, since there is no reason to render such restitution impracticable. In addition, there should be paid pecuniary damages for all loss incurred by the acts of the Iranian Government between 1st May 1951 and the date of restitution.

Compensation to be awarded if a restitution in kind is not awarded; such compensation to consist of "payment of a sum corresponding to the value which a restitution in kind would bear"

41. Should the Court decide that in the circumstances of the present case compensation, as distinguished from the restitution of the *status quo ante*, is the proper remedy, then it is contended by the Government of the United Kingdom that the second alternative envisaged in the Judgment in the *Chorzów Factory* case must apply, namely, "payment of a sum corresponding to the value which a restitution in kind would bear"¹. That sum, according to well-established international arbitral practice², includes both the value of the actual investment and loss of profits.

42. According to these principles, the compensation would have to cover the value of all the property of the Company in Iran of which the Company has been deprived as a result of the confiscation of this property by the Iranian Government (this constituting the value of the investment which the Company had made in Iran—*damnum emergens*), and in addition compensation for all the loss of prospective profits which the Company had suffered (*lucrum cessans*). Under this heading of loss of profits would be included not merely an estimate of the profits which the Company had lost by the cessation of the Iranian portion of its enterprise, but the loss which it had suffered (including, if necessary, the extra expense in which it would be involved)

¹ In either case there will be in addition "the award, if need be, of damages for loss sustained, which would not be covered by restitution in kind or payment in place of it".

² See the *Shufeldt* case (paragraph 36 above) and the remarks of Salvioi (foot-note on page 114).

by reason of the fact that the non-Iranian portion of its enterprise with which the Company is left would be an ill-balanced truncated portion of what was designed to be a part of one balanced whole and would, therefore, be far less valuable as a truncated portion as compared with its value as part of a whole.

These observations on the subject of compensation have at present only a general character

42A. The above observations on the subject of compensation must, at the present stage of the proceedings, of necessity be of a general character. Any more specific legal submissions of the Government of the United Kingdom on the question of compensation will be presented if and when the Court has found that this is the proper legal remedy to which the Government of the United Kingdom is entitled.

SECTION VI

[If it is otherwise lawful to nationalize the enterprise, which is covered by a contract of concession with a foreigner, and if that contract contains a provision for arbitration, the amount of compensation due must be decided by the Arbitration Court, provided for in the concession. The Iranian Oil Nationalization Act of 1st May 1951 provided for the determination of the compensation by the Iranian Parliament and wrongfully excluded the Arbitration Court provided for in the concession.]

The arbitration clause and the question of restitution and compensation

Even if the Imperial Government of Iran is entitled to terminate the Convention of 1933 unilaterally, such right of unilateral termination does not extend to Article 22 of the Convention

43. The Government of the United Kingdom has submitted in previous sections of this Memorial that the Government of Iran is not entitled to terminate by legislative action a Convention which it expressly undertook not to terminate by legislative action; that, in particular, it is not entitled so to terminate a Convention which, having regard to the circumstances of its conclusion and to its provisions, constitutes an international contractual obligation on the part of Iran towards the United Kingdom; and that the unilateral termination of the Convention constitutes, therefore, a violation of the rights, protected by international law, of the Anglo-Iranian Oil Company and of the Government of the United Kingdom. However, assuming—though the Government of the United Kingdom denies the validity of any such assumption—that the Government of Iran was entitled, notwithstanding the circumstances in which the Convention was

concluded and its express provision to the contrary, to terminate it unilaterally, it is submitted that such right of unilateral termination did not—or did not necessarily—extend to Article 22 of the Convention. That Article provides for the arbitration of all disputes relating to the interpretation of the Convention.

Reasons why the right of unilateral termination of the Convention of 1933, even if such right existed, would not extend to Article 22 of the Convention

44. It is arguable—and the argument is not devoid of apparent logic—that, if the Convention is denounced, such denunciation must include the whole of it and cannot stop short of any particular article. The Government of the United Kingdom submits that this is not necessarily so, in particular, in relation to the present case, for the following reason: Even if it were possible for the Government of Iran to assert that the unilateral denunciation of the Convention for the purpose of nationalization was dictated by the vital interests of the State, it does not follow that these vital interests of the State demanded that the termination of the Convention be combined with the cancellation of the clause which is the proper instrument for providing a remedy—in the form of adequate compensation determined in accordance with law as applied by the arbitrators—for what is undeniably a breach of the contract. Even assuming that unilateral termination was admissible, it would still have been possible—and proper—for the Iranian Government to approach the Anglo-Iranian Oil Company and say: “We find ourselves under a necessity, for inescapable reasons of State, to put an end to the Convention. We cannot, therefore, admit that under Article 22 of the Convention the arbitrators or the sole arbitrator have the right to pass upon the legality of the measure taken and, in particular, to decree the restitution of the concession. However, as a matter of law, and, in the words of Article 21 of the Convention, ‘on principles of mutual goodwill and good faith’ as well as on a ‘reasonable interpretation of this Agreement’, we are prepared to abide by an award of arbitrators as to the compensation due to the Company for the breach of the Convention.” Instead the Iranian Government has refused to submit the dispute, even within the limited compass as suggested, to arbitration and has provided that compensation is to be determined by the Iranian Parliament¹.

¹ Reference may be made to the *Lena Goldfields* arbitration (*Annual Digest of Public International Law Cases*, 1929-1930, Case No. 1 and Case No. 258; see also the *London Times* of 3rd September 1930, and Schwarzenberger, *International Law*, 1945 edition, p. 215). The concession agreement between Lena and the Soviet Government was signed on 14th November 1925. Article 86 authorized dissolution of the concession agreement by the Arbitration Court in cases of default by Lena and Article 90 provided for the reference of all disputes to the Arbitration Court.

The dispute arose because Lena complained that the Soviet Government had “created for Lena undue difficulties and interference, and, in fact, the impossibility

The refusal of the Imperial Government of Iran to have recourse to arbitration constitutes a denial of justice

45. This refusal of the Iranian Government to allow the clause of the Concession Convention providing for arbitration any effect whatever enhances the unlawfulness of the unilateral termination of the Convention and adds to it the element of another international delinquency, namely, denial of justice. For some such procedure of arbitration on compensation is essential if the principle of the nationalization of the oil industry in Iran is conceded. The Oil Nationalization Act of 1st May 1951 itself provides for the determination of compensation, but, as shown in paragraph 33

as regards performing its part of the concession agreement, and had prevented Lena from carrying out the concession agreement or enjoying the rights, privileges and benefits thereby created". Lena requested arbitration and appointed its arbitrator. The Soviet Government appointed an arbitrator and agreed to the appointment of the super-arbitrator; later it withdrew its arbitrator. However, Lena's arbitrator, Sir Leslie Scott, and the super-arbitrator, Dr. O. Stutzer, sitting in Berlin on 9th May 1930, decided "that the concession agreement was still operative and that the jurisdiction of the Court remained unaffected".

The tribunal next met in London and, the report continues, "it was proved to the satisfaction of the Court in the course of the trial that Lena would not have entered into the Concession Agreement at all but for the presence in the contract of this arbitration clause and of the preceding clause (Article 89) whereby it was mutually agreed that 'the parties base their relations with regard to this Agreement on the principle of good-will and good faith as well as on reasonable interpretation of the terms of the Agreement'" (words similar to those in Article 21 of the 1933 Concession Convention between the Persian Government and the Anglo-Persian Oil Company). The Court then said: "*Although the Government has thus refused its assistance to the Court, it still remains bound by its obligations under the Concession Agreement and in particular by the terms of Article 90, the arbitration clause of the contract.*"

Further, although the Lena concession did not expressly provide that it should be governed by international law, the Court accepted the argument of Lena's counsel that, although on all domestic matters in the U.S.S.R., Soviet law should apply except in so far as it was excluded by the contract, for other purposes the general principles of law, such as those recognized by Article 38 of the Statute of the Permanent Court of International Justice, should be regarded as "the proper law of the contract"—the reason being that the agreement was signed "not only on behalf of the Executive Government of Russia generally but by the Acting Commissary for Foreign Affairs, and that many of the terms of the contract contemplated the application of international rather than merely national principles of law".

Lena's main claim, said the Court, was "put in two alternative ways, preferably the second. The first was for damages for breach of contract—viz. the present value of the future profits lost by reason of the Government's acts and defaults. The second was for restitution to the Company of the full present value of the Company's properties, by which in the result the Government had become 'unjustly enriched'. This second formulation of the case rested upon the principle of continental law, including that of Soviet Russia, which gives a right of action for what in French law is called 'enrichissement sans cause'; it arises where the defendant has in his possession money or money's worth of the plaintiff's to which he has no just right."

In the event, the Arbitration Court, basing its award on the principle of "unjust enrichment", ordered the Government to pay to Lena £12,965,000 in British Sterling, with interest at 12 per cent from the date of the Award and, having made this order, declared the concession agreement dissolved.

above, this provision is illusory and nominal since the Iranian Parliament is itself to adjudicate upon the claims of the Company. There is no principle of law more fundamental than that a party cannot be judge in its own cause. The Permanent Court of International Justice applied that principle in a radical manner in the Twelfth Advisory Opinion relating to the interpretation of the Treaty of Lausanne when it held it to be superior to the apparently paramount principle of unanimity of the Council of the League of Nations. It would have been possible for the Government of Iran, while insisting on its right to terminate the Convention of 1933 on account of the law nationalizing the oil industry in Iran, to leave the arbitration clause of Article 22 intact.

With regard to the practice of national courts and municipal legislation in granting specific performance in relation to arbitration clauses in private agreements, the following extract from the oral statement of the representative of the United States before the International Court of Justice in connection with the Advisory Opinion relating to the *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania* may be quoted :

“Although some countries, including the United States, have found difficulty in the absence of legislation to give full effect to, or adequate redress for, the breach of an agreement to arbitrate, judicial decisions of national courts as well as national legislation reveal a definite trend not only towards more complete legal recognition of an agreement to arbitrate but towards more effective legal redress for the breach of such agreement. In *Red Cross Line v. Atlantic Fruit Co.* ((1923) 264 U.S. 109, at p. 123), Justice Brandeis, speaking for the United States Supreme Court, declared that ‘the substantive right created by an agreement to submit disputes to arbitration is recognized as a perfect obligation’.” (See *Berkovitz v. Arbib and Houlberg* (1921), 230 N.Y. 261, 130 N.E. 288, opinion by Cardozo recognizing that a Statute which provided for specific enforcement of arbitration may be applied to an arbitration agreement concluded prior to the Statute ; (International Court of Justice, *Pleadings, Oral Arguments, Documents*, 1950, p. 294).)

Conclusions of Section VI

46. For the reasons set out in the two preceding paragraphs, the Government of the United Kingdom contends that, even if the Iranian Government was entitled to cancel unilaterally the Convention of 1933, such cancellation need not, necessarily or automatically, extend to the arbitration clause of the Convention so as to exclude the Arbitration Court (provided for in that clause) as the body to assess compensation. Reasons of legal principle, supported by precedent, and considerations of good faith require that that clause should be given effect in every possible case. The refusal of the Government of Iran to give any effect at all to the arbitration clause of the Convention and its determination to remain

the sole judge in matters arising out of the unilateral cancellation of the Convention—in particular with regard to the compensation due to the Anglo-Iranian Oil Company—constitute tortious actions which engage the international responsibility of Iran.

SECTION VII

[A measure of confiscation or nationalization of a concession which is contrary to international law, engages directly the international responsibility of the State, if it is the result of legislation or other action admitting of no recourse against the measure to local courts or the tribunals provided for in the concession agreement. In addition, the international responsibility of the State is directly engaged on the further ground of denial of justice if such a measure is put into force on the pretext of alleged defaults on the part of the concessionaire and if the correctness of such allegations is not proved, and the right to cancel the concession by reason thereof is not established, to the satisfaction of the appropriate judicial tribunal (in particular to the satisfaction of the judicial tribunal provided for in the concession, if one is so specified). In the present case the international responsibility of Iran is directly engaged because :

- (a) the nationalization was unlawful for the reasons given in (2), (3) and (4) above ;
- (b) the Iranian laws of 20th March and 1st May 1951 admitted of no recourse, against the operation of these laws, either to the local courts or to the Arbitration Court provided for in the concession ; and
- (c) allegations of default or misconduct by the Company were advanced as some of the reasons for its expropriation and the truth of these allegations was not proved, and the right to cancel the concession by reason thereof was not established, to the satisfaction of the Arbitration Court provided for in the concession or indeed even submitted to that or any other court.]

The direct international responsibility of the Imperial Government of Iran arising out of the fact that in this case there were no local remedies to exhaust

47. There cannot in this case be any question of the responsibility of the Imperial Government of Iran being dependent upon any previous exhaustion of available local remedies, since it is an established principle of international judicial and arbitral practice that the requirement of exhaustion of local remedies does not

apply in cases where there are no local remedies to exhaust¹. There are no local remedies under the law of Iran against a law passed by the Iranian legislature. Moreover, the legal remedies for a breach of the Convention of 1933 are the remedies provided for in Article 22 of, the Convention, namely, recourse to the Arbitration Court provided for in that Article. That legal remedy the Government of Iran has repudiated expressly and repeatedly—a repudiation which in itself constitutes the international delinquency of denial of justice. Further, Iran has not only excluded arbitration as a remedy for the Company to use if the Company disputes, as it does, the legality of the expropriation. The expropriation has itself been justified in part by allegations of default or misconduct on the part of the Company, yet Iran has not called upon the Arbitration Court provided for in the Convention to examine these allegations, although this Arbitration Court certainly had exclusive jurisdiction to pronounce upon allegations of default. Instead Iran has made herself the judge in her own cause on this issue also².

¹ See the case of the *Panevezys-Saldutiskis Railway (Judgment)* (Series A/B, No. 76, pp. 18-19).

² The *Martini* case, decided in 1930 between Italy and Venezuela, provides an instructive example of judicial examination of the question of existence of reasons adduced as a justification for the cancellation of a concession (see *Annual Digest of Public International Law Cases, 1929-1930, Case No. 93*).

Also in the *Turnbull* case, the Umpire said :

“the non-fulfilment of the pledged obligations by one party does not annul the contract *ipso facto*, but forms a reason for annulment, which annulment must be asked of the tribunals, and the proper tribunal alone has the power to annul such a contract—this rule of the law of almost all civilized nations being in absolute concordance with the law of equity—that nobody can be judge in his own case”. (Ralston, *the Law and Procedure of International Tribunals* (1926), p. 83.)

In the *El Triunfo* case (United States *v.* Salvador), it was said :

“In any case, by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just grounds for complaint that under its organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought.” (*Ibid.*)

In the *Milligan* case before the Mixed Commission of Lima, it was contended by the American Commissioner that the Government of Peru, in declaring the contract null and void, deprived itself automatically of the right to insist that the Company should submit the dispute to the local courts. The observation, on that argument, of the learned commentator in La Pradelle & Politis (*Recueil des Arbitrages internationaux*, vol. II (1923), p. 595) is relevant :

“L'argumentation du commissaire américain ne semble pas admissible, car la question de savoir si le Pérou avait eu le droit de révoquer son contrat était précisément une question d'interprétation de ce contrat, qui devait, d'après ses propres termes, être soumise aux tribunaux du Pérou.

La clause, en droit international, était nulle, comme fermant tout recours à l'arbitrage.”

It will be noted, in so far as the unilateral termination of the Convention is based on allegations that the Company has been guilty of a breach of the Convention, that Article 26 of the Convention provides that the following cases only shall be regarded as a default of the Company in the performance of the Convention, justifying a declaration by the Arbitration Court that the concession is annulled, namely :

“(a) If any sum awarded to Persia by the Arbitration Court has not been paid within one month of the date of the award.

(b) If the voluntary or compulsory liquidation of the Company be decided upon.”

“In any other cases”, the Article continues, “of breach of the present Agreement by one party or the other, the Arbitration Court shall establish the responsibilities and determine their consequences.”

FINAL CONCLUSIONS OF THE GOVERNMENT OF THE UNITED KINGDOM

48. The Government of the United Kingdom accordingly submits :

A. That it is entitled to a declaration and judgment that

(1) The putting into effect of the Iranian Oil Nationalization Act of 1st May 1951, inasmuch as it purports to affect a unilateral annulment, or alteration of the terms, of the Convention concluded on 29th April 1933 between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, is an act contrary to international law; and that the aforesaid Convention cannot lawfully be annulled, or its terms altered, by the Imperial Government of Iran, otherwise than as the result of agreement with the Anglo-Iranian Oil Company, Limited, or under the conditions provided in Article 26 of the Convention ; *and*

(2)—(a) The Imperial Government of Iran is bound, within a period to be fixed by the Court, to restore the Anglo-Iranian Oil Company, Limited, to the position as it existed prior to the said Oil Nationalization Act and to abide by the provisions of the aforesaid Convention, including the obligations of Article 22 thereof, providing for the arbitration of any differences of any nature whatever between the Imperial Government of Iran and the Anglo-Iranian Oil Company, Limited, and that the Company is entitled to compensation for all loss and damage suffered by it as the result of all acts by the authorities of the Imperial Government of Iran which are contrary to the provisions of the Convention of 29th April 1933, and which occurred between 1st May 1951 and the date of the restoration of the Company to its former position and that the amount of such damage shall be assessed either

- (i) by the Arbitration Court provided for in Article 22 of the aforesaid Convention, or
- (ii) in such other manner as the International Court of Justice shall decide; or

(b) *In the alternative, if the International Court of Justice, contrary to the contentions of the Government of the United Kingdom, decides that it should not give judgment in the sense of sub-paragraph (a) of this paragraph, the Imperial Government of Iran should pay compensation to the Government of the United Kingdom, on behalf of the Anglo-Iranian Oil Company, Limited, in accordance with the principles, with relation to expropriations which violate international law, accepted in international jurisprudence and formulated by the Permanent Court of International Justice in the *Chorzów Factory (Claim for Indemnity) (Merits)* case, Series A, No. 17, such compensation including*

- (i) A sum corresponding to the value which a restitution in kind would bear (or in other words the value of the undertaking expropriated and of the loss of future profits);
- (ii) Damages for loss sustained which would not be covered by a restitution in kind (or by payment in place of it):

the amount of compensation to be assessed in such manner as the Court should decide.

B. *Alternatively, if, contrary to the contentions of the Government of the United Kingdom, the International Court of Justice should hold that the Government of the United Kingdom is not entitled to a declaration and judgment in accordance with the submissions of "A" above, and that the Iranian Oil Nationalization Act of 1st May 1951 only infringes international law in so far as its provisions with regard to compensation are inadequate: then the Court should declare that the provisions contained in the said Act with regard to compensation do not satisfy the requirements of international law with regard to compensation and that the amount of compensation should be decided by the procedure of arbitration provided for in Article 22 of the Convention concluded on 29th April 1933 between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, and that, in the case of the failure of the Imperial Government of Iran to agree to arbitration as therein provided, the amount of such compensation shall be determined by the International Court of Justice.*

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

10th October 1951.

ANNEXES

LIST OF ANNEXES

<i>Annex</i>	<i>Title</i>	<i>Page</i>
1 A.	Diplomatic Notes relating to the Court's Order of 5th July 1951 indicating Interim Measures of Protection in the case	129
	<i>Appendix No. 1.</i> —Note presented by His Britannic Majesty's Ambassador in Tehran to the Imperial Government of Iran on 7th July 1951	129
	<i>Appendix No. 2.</i> —Note presented by the Imperial Government of Iran to His Britannic Majesty's Ambassador in Tehran on 12th July 1951	129
	<i>Appendix No. 3.</i> —Telegram from the Iranian Minister for Foreign Affairs to the Secretary-General of the United Nations, dated 9th July 1951	130
1 B.	The Stokes Mission	134
	<i>Appendix No. 1.</i> —Outline of suggestions submitted to the Iranian Delegation on 13th August 1951 by the Stokes Mission without prejudice to any party concerned	134
	<i>Appendix No. 2.</i> —Statement issued by the Foreign Office on 23rd August 1951	136
1 C.	Events subsequent to the withdrawal of the Stokes Mission	138
	<i>Appendix No. 1.</i> —Statement by Foreign Office spokesman on 6th September 1951	138
	<i>Appendix No. 2.</i> —Note presented by His Britannic Majesty's Ambassador in Tehran to the Imperial Government of Iran on 11th September 1951	138
	<i>Appendix No. 3.</i> —Letter, dated 12th September 1951, from the Iranian Prime Minister to Mr. Harriman, Special Representative of the President of the United States	140
	<i>Appendix No. 4.</i> —Letter, dated 15th September 1951, from Mr. Harriman, Special Representative of the President of the United States, to the Iranian Prime Minister	142
2.	Observations of the Government of the United Kingdom with regard to the jurisdiction of the Court to deal with the merits of the case	145
	<i>Appendix No. 1.</i> —Text of the Establishment Convention concluded at Tehran between Iran and Turkey on 14th March 1937	172

LIST OF ANNEXES

127

<i>Annex</i>	<i>Title</i>	<i>Page</i>
	<i>Appendix No. 2.</i> —Exchange of Notes, dated 10th May 1928, between the United Kingdom Government and the Imperial Persian Government regarding the position of British nationals in Persia after the Abolition of the Capitulations	176
3.	Statement of relevant facts up to 1st May 1951	184
	<i>Appendix No. 1.</i> —Map of Iran showing the more important places mentioned in this Memorial (and in particular in this Annex).	219
	<i>Appendix No. 2.</i> —The D'Arcy Concession dated 28th May 1901	219
	<i>Appendix No. 3.</i> —Letter, dated 29th August 1920, from the Under-Secretary of the Persian Ministry of Finance appointing Sydney Armitage Armitage-Smith Esq., C.B., as "representative of the Imperial Government to finally adjust all questions in dispute between the Anglo-Persian Oil Company and the Imperial Government of Persia".	228
	<i>Appendix No. 4.</i> —Agreement concluded on 22nd December 1920 between the Anglo-Persian Oil Company, Limited, and Sydney Armitage Armitage-Smith Esq., C.B., as representative of the Imperial Persian Government.	229
	<i>Appendix No. 5.</i> —Letter, dated 27th November 1932, from the Persian Minister of Finance to the Resident Director in Tehran of the Anglo-Persian Oil Company	235
	<i>Appendix No. 6.</i> —Letter, dated 29th November 1932, from the Resident Director in Tehran of the Anglo-Persian Oil Company to the Persian Minister of Finance	236
	<i>Appendix No. 7.</i> —Letter, dated 1st December 1932, from the Persian Minister of Finance to the Resident Director in Tehran of the Anglo-Persian Oil Company	237
	<i>Appendix No. 8.</i> —Note, dated 2nd December 1932, presented by His Britannic Majesty's Minister in Tehran to the Imperial Persian Government	237
	<i>Appendix No. 9.</i> —Note, dated 3rd December 1932, presented by the Persian Minister for Foreign Affairs to His Britannic Majesty's Minister in Tehran	238
	<i>Appendix No. 10.</i> —Note, dated 8th December 1932, presented by His Britannic Majesty's Minister in Tehran to the Imperial Persian Government	238
	<i>Appendix No. 11.</i> —Note, dated 12th December 1932, presented by the Persian Minister for Foreign Affairs to His Britannic Majesty's Minister in Tehran	239
	<i>Appendix No. 12.</i> —Letter, dated 14th December 1932, from the United Kingdom Government to the Secretary-General of the League of Nations	244
	<i>Appendix No. 13.</i> —Telegram, dated 14th December 1932, from the United Kingdom Government to the Secretary-General of the League of Nations	244

<i>Annex</i>	<i>Title</i>	<i>Page</i>
	<i>Appendix No. 14.</i> —Letter, dated 17th February 1933, from Dr. Edvard Beneš, rapporteur of the Council of the League of Nations, to M. Davar, representative of the Imperial Government of Persia before the Council	245
	<i>Appendix No. 15.</i> —Letter, dated 24th February 1933, from Dr. Edvard Beneš, rapporteur of the Council of the League of Nations, to M. Davar, representative of the Imperial Government of Persia before the Council	246
	<i>Appendix No. 16.</i> —Convention concluded between the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, at Tehran, on 29th April 1933	247
	<i>Appendix No. 17.</i> —Letter, dated 17th August 1933, from the Persian Chargé d'Affaires in London to the Registrar of the Permanent Court of International Justice	270
	<i>Appendix No. 18.</i> —Letter, dated 17th August 1933, from the United Kingdom Government to the Registrar of the Permanent Court of International Justice	271
	<i>Appendix No. 19.</i> —Letter, dated 21st October 1933, from the Registrar of the Permanent Court of International Justice to the Under-Secretary of State at the Foreign Office	272
	<i>Appendix No. 20.</i> —Map showing the concessional area in Iran of the Anglo-Iranian Oil Company, Limited	272
	<i>Appendix No. 21.</i> —"Labour Conditions in the Oil Industry in Iran." Report of a Mission of the International Labour Office (January-February 1950)	273
	<i>Appendix No. 22.</i> —Text of Single Article Law passed by the Iranian Majlis on 22nd October 1947	273
	<i>Appendix No. 23.</i> —Supplemental Agreement between the Imperial Iranian Government and the Anglo-Iranian Oil Company, Limited, made at Tehran on 17th July 1949	274
	<i>Appendix No. 24.</i> —Note presented by His Britannic Majesty's Ambassador in Tehran to the Imperial Government of Iran on 14th March 1951	277
	<i>Appendix No. 25.</i> —Text of the Iranian Oil Nationalization Act of 1st May 1951	275

*Annex I a*DIPLOMATIC NOTES RELATING TO THE COURT'S ORDER
OF 5th JULY 1951 INDICATING INTERIM MEASURES OF
PROTECTION IN THE CASE

This Annex contains the following separate Appendices :

Appendix No. 1.—Note presented by His Britannic Majesty's Ambassador in Tehran to the Imperial Government of Iran on 7th July 1951.

Appendix No. 2.—Note presented by the Imperial Government of Iran to His Britannic Majesty's Ambassador in Tehran on 12th July 1951.

Appendix No. 3.—Telegram, dated 9th July 1951, from the Iranian Minister for Foreign Affairs to the Secretary-General of the United Nations.

Appendix No. 1 to Annex I a

NOTE PRESENTED BY HIS BRITANNIC MAJESTY'S AMBASSADOR IN TEHRAN
TO THE IMPERIAL GOVERNMENT OF IRAN ON 7th JULY 1951

As already publicly announced, His Majesty's Government accept in full the recommendations of the International Court on the United Kingdom request for the indication of interim measures of protection relative to the present oil dispute. On the assumption that the Imperial Government similarly accept these recommendations in full, His Majesty's Government are considering their nominations to the Board of Supervision recommended by the Court and hope to let the Imperial Government know very shortly the names of their representatives. They will be glad to learn in due course the names of the two representatives to be nominated by the Imperial Government. His Majesty's Government also hope shortly to be in a position to make suggestions regarding the fifth member of the Board, whose name is to be agreed between the two Governments, and will in the meantime be glad to learn of any suggestion which the Imperial Government may wish to make.

His Majesty's Government will be making a further communication to the Imperial Government about the detailed implementation of the Court's recommendations, particularly about measures to be taken to make possible the resumption of the Company's operations on the basis proposed by the Court.

Appendix No. 2 to Annex I a

NOTE PRESENTED BY THE IMPERIAL GOVERNMENT OF IRAN TO HIS
BRITANNIC MAJESTY'S AMBASSADOR IN TEHRAN ON 12th JULY 1951

In reply to Your Excellency's Note of 7th July, you are informed that

- (1) Imperial Government in its declaration of 2nd October 1930 did not accept competence of International Court of Justice in matters relating to Persia's national sovereignty.
- (2) Imperial Government had notified International Court of this view and Court should therefore, instead of taking any decision, have issued declaration of its own non-competence.
- (3) Court's decision of 5th July has no legal foundation whatever and is contrary to justice and equity, and Imperial Government does not consider it valid.
- (4) In telegram addressed to Secretary-General of United Nations 9th July and repeated for information to International Court, I stated clearly that the Imperial Government did not consider Court competent to investigate this matter, and in addition, withdrew acceptance of Court's compulsory jurisdiction as laid down in part 2 of Article 36 of Court's constitution. Imperial Government has thus decided that decision of International Court is unjust and contrary to Persia's independence and national sovereignty and as I informed Your Excellency orally at our interview on Saturday 7th July continues to regard decision mentioned as invalid.

Appendix No. 3 to Annex I a

[Translation]

TELEGRAM, DATED 9th JULY 1951, FROM THE IRANIAN MINISTER FOR FOREIGN AFFAIRS TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

At the request of the Government of His Britannic Majesty the International Court of Justice made an Order dated 5 July 1951, concerning measures of protection in the petroleum case. I am instructed by my Government to bring the following to your attention: (1) According to Article 36 of the Statute of the International Court of Justice, 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 or in treaties and conventions in force. Article 36, paragraph 2, of the said Statute provides that the States parties to it 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 specified cases. No declaration has so far been made by the Imperial Government of Iran to the effect of recognizing the jurisdiction of the International Court of Justice as compulsory. Accordingly, the competence of the Court so far as compulsory jurisdiction in questions and disputes affecting Iran is concerned is based on Article 36, paragraph 5, which reads as follows: 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 acceptance 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. The accession of the Imperial Government of Iran to the provisions of Article 36 of the Statute of the Permanent Court of International Justice, according to the Declara-

tion of 10 Mehr 1309 (2 October 1930) and the Act of 23 Khordad 1310 took place on 13 September 1932, the compulsory jurisdiction of the Court being extended only to disputes arising out of situations and events directly or indirectly connected with the application of treaties and conventions concluded by the Government of Iran after the ratification of the said Declaration. Moreover, any questions which would, according to international law, be exclusively within the competence of Iran were excluded by the said Declaration from the compulsory jurisdiction of the Court. Hence it is obvious that agreements made under private and domestic law such as the concessions which States grant to their nationals or to aliens for the purpose of working certain sources of wealth, commercial matters and questions relating to the sovereign rights of Iran and exclusively within its domestic jurisdiction, were and still are excluded from the compulsory jurisdiction of the former Permanent Court of International Justice and of the present Court. (2) In 1933, by means of machinations and by the creation of special circumstances due to British policy, the particulars of which need not be enumerated here, a new concession was obtained from the Iranian Government by the former Anglo-Iranian Oil Company for the prospecting, extraction and utilization of petroleum in a specified region of Iran. We do not wish to enter into a discussion of the nature of this imposed concession and of its invalidity in law ; but even on the assumption that it is valid and well-founded, it relates to the internal law of Iran and merely represents a concession granted by the Iranian Government to a company, that is a private legal person, and the granting of any concession, even to nationals, has to be effected by legislation with the approval of Parliament, as prescribed in Article 24 of the Iranian Constitutional Act. The United Kingdom was not mentioned in any capacity in this concession and no rights or powers were reserved to it therein. Therefore, the concession has nothing in common with the international treaties and conventions referred to in the Statute of the former Permanent Court of International Justice and in the Statute of the present Court. (3) Relying on paramount national considerations and in conformity with Article 1, paragraph 2, of the Charter of the United Nations, which proclaims the right of peoples to self-determination, and with a view to liberating themselves from the clutches of a usurping company which for many years has served as an instrument of interference in the economic, social and political affairs of Iran, the people and Government of Iran have, without any distinction as between nationals and aliens, proclaimed the nationalization of the petroleum industries throughout Iranian territory by two acts unanimously approved by the Legislative Chambers and dated 29 Esfand 1329 (20 March 1951) and 9 Ordibeheshteh 1330 (30 April 1951), and have at the same time devised means of providing fair compensation for any damage which the holders of the concession may suffer and of organizing the exploitation of petroleum and its sale to the countries which have hitherto been purchasers of it. It is the incontestable right of each nation to nationalize any of its industries, a right which has been used and is being used by some nations in various forms and for various reasons. Thus the present British Government has nationalized certain branches of Britain's industries, including the coal and steel industries, no protest being raised by any other government or international authority, nor is nationalization being obstructed by any concession

granted or contract concluded under domestic law, even though aliens may be the beneficiaries under the concession or contract. (4) The former Anglo-Iranian Company on the one hand and the British Government which encouraged that Company on the other hand have interfered in the domestic affairs of Iran in disregard of legislation and international law by resisting the application of the Iranian petroleum industry Nationalization Act. By internal intrigues, by the organization of strikes and by the despatch of warships and the reinforcement of its land and air forces in areas near Iran—a circumstance which might conceivably cause my Government to lodge a complaint with the United Nations—England is on the one hand threatening the Government and people of Iran, and on the other hand appealing to the International Court of Justice and, on the basis of the invalid Contract of Concession of 1933, requesting that the application of the petroleum industry Nationalization Act should be suspended and that the former Company should have freedom of action as in the past. England is also applying to the Court for measures of protection. It must be taken into consideration that England had no right to make such a complaint, for in the first place Iran has concluded no treaty with her on that subject. Furthermore, as mentioned in the first and second parts of this statement, the International Court of Justice is not competent to give a ruling in this alleged dispute, for Iran did not consent to the submission of this matter to the Court, the Charter of the United Nations did not authorize the Court to assume jurisdiction in this particular case, and there are no international conventions or treaties on this subject which confer such jurisdiction on the Court. Moreover, the Imperial Government's Declaration of 2 October 1930 regarding the recognition of the compulsory jurisdiction of the former Permanent Court related solely to disputes arising out of the performance of international conventions and treaties. As the petroleum concession was not the subject of any convention between the Government of Iran and England and since, as stated above, Iran by its Declaration has excluded from the competence of the Court any disputes regarding matters solely within its domestic jurisdiction, therefore, in view of these facts, the Iranian Government, in reply to Registrar of the Court's telegraphic notice explicitly drew his attention to the lack of jurisdiction in the Court and subsequently in its reply to the notice of 22 June 1951 regarding the British Government's request for measures of protection (a copy of which will be forwarded to you later), set forth this point in detail with incontrovertible arguments. Nevertheless, the Court by its action to date and in particular by its Order of 5 July 1951, has unfortunately impaired the confidence which the Government of Iran and the Iranian nation had always had in international justice, namely (a) since the fact that England was not legally competent to institute proceedings and that the Court had no jurisdiction in the case was clear and evident the Court, before taking any action or making any decision, should have declared its lack of jurisdiction; (b) the notice from the Registrar of the Court communicating the British request for measures of protection was received by the Iranian Government at Tehran on Monday, 25 June at 7 p.m., while the date appointed for the sitting of the Court was Saturday, 30 June. The short time allowed which was barely sufficient for the preparation of a reply and its despatch was contrary to Article 61, paragraph 8, of the Rules of the Court, which provide that in the case

of a request for measures of protection the parties must be allowed sufficient time. The Iranian Government and nation are deeply shocked by such undue haste ; (c) the Court by its Order of 5 July 1951 decided that the Iranian Government should take no measures of any kind designed to hinder the carrying on of the commercial and industrial operations of the former Anglo-Iranian Oil Company as they were carried on prior to 1 May 1951, and that these operations should be continued under the direction of its former management. The consequence of this order (assuming that it is enforceable) will be that Iran's right of sovereignty in a solely domestic matter is abolished as the result of a complaint by England, which England was not legally competent to make and which was not within the jurisdiction of the International Court. Clearly the members of the United Nations and free peoples and free men of the world will realize the disastrous and dangerous results such a situation will imply for law and international justice. The direct significance of such a decision is the establishment of a new system of capitulations for the benefit of the nationals of the great powers to the detriment of the nationals of the weak and small countries, for if governments could exercise their right of sovereignty solely with respect to their own nationals and not *vis-à-vis* foreign nationals of the great powers, this could only mean the creation of an unlawful and unjust privilege for foreigners, in other words, the restoration of capitulations in a new form. Moreover, it must be clearly stated once again that such a situation is incompatible with the letter and spirit of the Charter of the United Nations and with the provisions of Article 2, paragraph 1, which reads the Organization is based on the principle of the sovereign equality of all its members ; (d) the Court of International Justice, by its Order of 5 July 1951, not only acted contrary to its own competence, law and justice and the love of freedom of the peoples of the world, but it also violated the principles of Article 2, paragraph 7, of the Charter, which states nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. (3) As a crowning injustice, the Court, exceeding the United Kingdom's demands and unasked by the complainant, ordered the establishment of a board of supervision composed of two members appointed by Iran and two other members appointed by the United Kingdom, together with a fifth member who should be a national of a third State, to ensure the carrying on of the operations of the former Anglo-Iranian Oil Company in conformity with the terms of the concession. Hitherto, the Iranian Government has only had dealings with a private company, but under this order (were it enforceable) the United Kingdom, which was not exercising any right and was not even making any claims in this connection, would be entitled through its direct representatives to interfere in Iran's domestic affairs, thereby infringing the sovereign rights and independence of Iran.

(F) In addition, in the final passages of its order, the Court decided that the said board should be instructed to ensure that the Company's excess of revenue over expenses should be paid into banks selected subject to the approval of the board of the parties. The point to be very specially noted here is that even if the former concession contract were still temporarily valid, certain sums (never disputed by the Company or solicited by the claimant) would have to be regularly paid to the Iranian Government. The judges, possibly having been informed that

the Iranian Government and people are at present in a difficult financial situation, may be under the impression that the stoppage and sequestration of petroleum profits payable to Iran and the designation of a distant time-limit for the decision on the substance of the case (the time-limit for consideration of the interim measures was five days, but the time-limit for consideration of the substance of the case laid down in the interim measures order is six months) will suffice to persuade the Government and people of Iran to give way and abandon their national aims. In view of the foregoing, and of the fact that the Court has departed from the ways of justice and shaken the confidence placed in it by the world, I have the honour to inform Your Excellency with great regret that the Imperial Government of Iran withdraws its Declaration of 2 October 1930 concerning acceptance of the compulsory jurisdiction of the International Court of Justice. A copy of this Declaration is being transmitted to the International Court of Justice at The Hague. I have the honour, etc.

(Signed) B. KAZEMI,
Minister for Foreign Affairs.

Annex 1 b

THE STOKES MISSION

This Annex contains the following separate Appendices :

Appendix No. 1.—Outline of suggestions submitted to the Iranian Delegation on 13th August 1951 by the Stokes Mission, without prejudice to any party concerned.

Appendix No. 2.—Statement issued by the Foreign Office on 23rd August 1951.

Appendix No. 1 to Annex 1 b

OUTLINE OF SUGGESTIONS SUBMITTED TO THE IRANIAN DELEGATION ON
13th AUGUST 1951 BY THE STOKES MISSION,
WITHOUT PREJUDICE TO ANY PARTY CONCERNED

[The following abbreviations are used throughout: A.I.O.C. for Anglo-Iranian Oil Company; N.I.O.C. for National Iranian Oil Company.]

1. A.I.O.C. will transfer to N.I.O.C. the whole of its installations, machinery, plant and stores in Iran. As regards the assets in southern Iran compensation by N.I.O.C. to A.I.O.C. would be included in the operating costs of the oil industry in the area. Compensation for the assets used in the past for distribution and marketing in Iran will be dealt with under the separate arrangements suggested in paragraph 7 below.

2. A Purchasing Organization will be formed in order to provide the assured outlet for Iranian oil which is the only basis upon which an oil industry of the magnitude of that of Iran could hope to maintain itself.

This will be done by means of a long-term contract, say twenty-five years, with N.I.O.C. for the purchase f.o.b. of very large quantities of crude oil and products from southern Iran.

3. Apart from this arrangement N.I.O.C. would be able to make additional sales of oil subject to the normal commercial provision that such sales should be effected in such a way as not to prejudice the interests of the Purchasing Organization.

4. The Purchasing Organization under the agreement will be placing at the disposal of the N.I.O.C. a world-wide transportation and marketing service, including one of the largest tanker fleets in the world, and will be entering into firm commitments with its customers for the fulfilment of which it will be relying on Iranian oil. It will, therefore, as a matter of normal commercial practice, have to assure itself that oil in the necessary quantities and qualities will come forward at the times required. In order to secure this objective, the Purchasing Organization will agree with N.I.O.C. an Organization which, under the authority of N.I.O.C., will manage on behalf of N.I.O.C. the operations of searching for, producing, transporting, refining and loading oil within the area. The Purchasing Organization will arrange from current proceeds the finance necessary to cover operating expenses.

5. In order that the proposed Purchasing Organization can be induced to commit itself to the purchase of large quantities of Iranian oil over a long period of years, the commercial terms must be not less advantageous than the Purchasing Organization would secure elsewhere either by purchase or development. In effect, this means that the Purchasing Organization would buy the oil from N.I.O.C. at commercial prices f.o.b. Iran less a price discount equal in the aggregate to the profit remaining to N.I.O.C. after allowing for the discount and for the costs of making the oil available to the Purchasing Organization.

6. In the event of the foregoing suggestions being accepted by the Iranian Government as a basis for the future operation of the oil industry in southern Iran, it is suggested that they should be expanded into the Heads of an Agreement which could later be developed into a detailed purchasing arrangement between the Iranian Government and the proposed Purchasing Organization. The Heads of Agreement would also provide for the immediate resumption of operations in southern Iran on an interim basis.

7. It is suggested that all the assets owned by the Kermanshah Petroleum Company Limited which produces and refines oil for consumption in Iran, together with the installations, machinery, plant and movable assets of A.I.O.C. which have been used in the past for distribution and marketing of refined products within Iran, should be transferred to the Iranian Government on favourable terms.

8. There will be Iranian representation on the board of directors (or its equivalent) of the Operating Organization, which will, of course, only employ non-Iranian staff to the extent that it finds it necessary to do so for the efficiency of its operations. It will also offer its full co-operation to N.I.O.C. in any programme of training on which the latter may wish to embark.

Appendix No. 2 to Annex 1b

STATEMENT ISSUED BY THE FOREIGN OFFICE ON 23rd AUGUST 1951

It will be recalled that on 3rd August the Foreign Office published the texts of the messages exchanged between the Persian Government and His Majesty's Government, which formed the basis on which the Lord Privy Seal's mission was dispatched to Tehran. At the same time it was announced that the Persian Government had agreed that the basis for His Majesty's Government's acceptance of the "principle of nationalization" was the Persian law of 20th March 1951 (which merely stated this principle); that they had recognized that they would have to negotiate with His Majesty's Government the manner in which this law would be carried out in so far as it affected British interests; and had confirmed to Mr. Harriman that they recognized the necessity of relieving the atmosphere which then obtained, particularly in the oil areas.

The text of the Persian Cabinet minute which formed the agreed basis for negotiation is attached. At that time, in the light of Mr. Harriman's conversations with the Persian Government, His Majesty's Government had every reason to suppose that the Persian Government would not insist on negotiating on the basis of the nine-point law of 1st May 1951.

This law, which attempted to provide for the practical implementation of the principle of nationalization, had been hastily drafted without the necessary reflection or consultation with qualified technicians, and was in the view of His Majesty's Government not only entirely unworkable in practice, but represented a clear breach of the Persian Government's contractual obligations.

During the Lord Privy Seal's negotiations, he put forward an eight-point proposal which has been widely recognized as providing a fair and indeed generous solution to the oil dispute. Under it the Persian people would have realized nationalization and control of their principal industry, and would have had at their disposal the technical knowledge and experience of British personnel and the Company's fleet of tankers and world-wide marketing organization.

The Persian Government could, moreover, have expected to receive an annual revenue of some £50 million under the equal sharing of profits proposed. They could thus have pursued the urgently needed economic development of their country and improved the lot of their people.

In the course of negotiations, however, it became increasingly clear that the Persian Government had no intention of negotiating on the basis agreed by Mr. Harriman with both Governments. Instead, the Persian Government were in effect insisting on the full implementation of the nine-point law of 1st May 1951.

Furthermore, they took no steps to mitigate the campaign of interference with the Company's personnel in southern Persia in their work and the harrasing of them in their daily lives. Finally, the Persian Government refused to agree to any arrangement which would have allowed the British staff to work under proper management and in acceptable working conditions. To-day the great industry remains at a standstill, to the advantage of no one and at heavy cost to Persia.

His Majesty's Government must now take their stand on the interim decision given by the International Court of Justice at The Hague on

5th July. This decision, as it will be recalled, indicates *inter alia* that both the Persian and the United Kingdom Governments should ensure that no measure of any kind is taken designed to hinder the operations from being carried on as they were carried on before 1st May 1951, and that the Company's operations in Persia should continue under the direction of its management as it was constituted before 1st May 1951.

As a result of the stoppage of its operations in the oilfields consequent on the action of the Persian Government, the A.I.O.C. has been compelled to withdraw its personnel from these fields; it has, however, instructed a nucleus of its personnel to remain in Abadan, in order to be ready to carry on the Company's operations, in accordance with the Hague Court's decision, whenever the Persian Government make it possible for them to do so.

The Persian Government are, of course, under an obligation in international law to ensure the safety and protection of these personnel, as of all foreigners. As has been stated before, His Majesty's Government would be obliged to take the necessary measures to protect them should the Persian Government fail in their obligations in this respect.

His Majesty's Government are deeply grateful to Mr. Harriman for the untiring efforts which he has made to create and maintain a basis for negotiation. They cannot but express their extreme regret that the departure of the Persian Government from this basis and their failure to appreciate the conditions essential for the carrying on of the industry should have resulted in a suspension of the negotiations and in the continued stoppage of the Company's operations.

They remain prepared at any time to reopen negotiations on the basis of Mr. Harriman's formula whenever any disposition is shown on the Persian side to discuss the questions in dispute in a spirit of good will and reason, and in the light of the inescapable facts which confront Persia in this matter. They will continue to pursue their application to the Hague Court for a definitive judgment in this dispute.

*

The text of the Persian Cabinet minute handed to Mr. Harriman on 24th July, which formed the agreed basis for negotiations between the British and Persian Governments, was as follows :

The Council of Ministers and the Mixed Oil Commission in their meeting of 31st Tirmah (23rd July 1951) held at the residence of His Excellency Dr. Moussadek, the Prime Minister, approved the following formula :

1. In case the British Government, on behalf of the former Anglo-Iranian Oil Company, recognizes the principle of nationalization of the oil industry in Persia, the Persian Government would be prepared to enter into negotiation with representatives of the British Government on behalf of the former Company.

2. Before sending representatives to Tehran, the British Government should make a formal statement of its consent to the principle of nationalization of the oil industry on behalf of the former Company.

3. 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 was confirmed by the law of Isfand 29, 1329 (20th March 1951), the text of which proposal is quoted hereunder : "In the name of the prosperity of the Persian nation, and with a view to helping secure world

peace, we the undersigned propose that the oil industry of Persia be declared as nationalized throughout all regions of the country without exception, that is to say, all operations for exploration, extraction, and exploitation shall be in the hands of the Government."

In this connection, for Mr. Harriman's further information, a copy of the Note which the representatives of the former oil Company submitted to the Persian Government on their method of accepting the principle of the nationalization of the oil industry, which Note was not accepted, is being herewith enclosed.

4. The Persian Government is prepared to negotiate the manner in which the law will be carried out in so far as it affects British interests.

Annex 1c

EVENTS SUBSEQUENT TO THE WITHDRAWAL OF THE
STOKES MISSION

This Annex contains the following separate Appendices :

Appendix No. 1.—Statement by Foreign Office spokesman on 6th September 1951.

Appendix No. 2.—Note presented by His Britannic Majesty's Ambassador in Tehran to the Imperial Government of Iran on 11th September 1951.

Appendix No. 3.—Letter, dated 12th September 1951, from the Iranian Prime Minister to Mr. Harriman, Special Representative of the President of the United States.

Appendix No. 4.—Letter, dated 15th September 1951, from Mr. Harriman, Special Representative of the President of the United States, to the Iranian Prime Minister.

Appendix No. 1 to Annex 1c

STATEMENT BY FOREIGN OFFICE SPOKESMAN ON 6th SEPTEMBER 1951

The recent speech by the Persian Prime Minister in the Senate shows conclusively that no further negotiations with the present Persian Government can produce any result. His Majesty's Government therefore now consider that the negotiations begun by the Lord Privy Seal are no longer in suspense but broken off. As regards the threat to withdraw the residence permits of the British Company employees, it is evident that any attempt made by the Persian Government to evict them would be a further breach of the interim decision of the Hague International Court.

Appendix No. 2 to Annex 1c

NOTE PRESENTED BY HIS BRITANNIC MAJESTY'S AMBASSADOR IN TEHRAN
TO THE IMPERIAL GOVERNMENT OF IRAN ON 11th SEPTEMBER 1951

I have the honour, under instructions from His Majesty's Government in the United Kingdom, to inform Your Excellency that in view of the

breakdown of the negotiations in Tehran His Majesty's Government have been compelled to review the effect on the economy of the United Kingdom of the cessation of the export of Iranian oil. They have decided that they have no alternative but to withdraw certain exceptional facilities which have hitherto been granted to Iran by virtue of the importance of that oil to the economy of the United Kingdom.

At present Iran enjoys special facilities—not normally open to non-members of the sterling areas—for conversion of sterling into dollars. She also enjoys automatically the right to make use of sterling for payment to and from countries in the sterling area and to certain other countries.

The cessation of the export of oil from Iran not only removes the justification for these exceptional facilities but also makes it necessary for the United Kingdom to spend large sums of dollars on the replacement of oil. In these circumstances, His Majesty's Government can no longer afford to supply Iran with dollars. For this reason it has been necessary for His Majesty's Treasury to make an order under which all sterling payments to and from Iran will be subjected to the permission of His Majesty's Treasury. Since, however, the intention is to withdraw only the exceptional facilities which can no longer be justified, the power conferred by the order will normally be exercised in such a way as to allow all transactions except conversions into United States' dollars and payments and receipts of sterling by Iran in respect of oil transactions.

In addition to these facilities in financial spheres, Iran has hitherto been given the right, in view of the contribution which her oil has made to the economy of the United Kingdom, to purchase certain scarce goods which are urgently required in the United Kingdom or could have been sold either for dollars or to other markets. As a corollary to the action described above, His Majesty's Government have, therefore, in addition, taken the necessary steps by action under export licensing arrangements for the immediate discontinuance of supplies from the United Kingdom of these scarce goods.

It is His Majesty's Government's sincere hope that the need for these measures will not be of long duration. They are intended solely as measures of defence of the United Kingdom economy and have been forced on His Majesty's Government in circumstances not of their making. The intention of His Majesty's Government is to limit the harm which has been caused to the economy of the United Kingdom by the action of the Iranian Government and the measures in question can be revoked whenever the Iranian Government makes possible a solution to the oil question.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) F. M. SHEPHERD.

Appendix No. 3 to Annex 1 c

LETTER, DATED 12th SEPTEMBER 1951, FROM THE IRANIAN PRIME MINISTER TO MR. HARRIMAN, SPECIAL REPRESENTATIVE OF THE PRESIDENT OF THE UNITED STATES

[The text given below is as received from the Government of the United States. As the letter was telegraphed the words shown in brackets were omitted.]

Dear Mr. Harriman :

Saheb Gharanieh Conference which came into existence as result (of) Your Excellency's endeavours and good will and in which Iran Government and people had lodged their complete faith unfortunately did not produce desirable results. Subsequent (to) this, Mr. Stokes and Your Excellency left Iran (on) 22nd and 24th August, respectively, and (the) negotiations were declared suspended in spite (of the) fact that in my last meeting with (Mr.) Stokes I gave him in writing viewpoints of (the) Imperial Iranian Government and he promised (to) give due consideration to (the) same and inform me about his views from London. While (the) Iranian Government expected (that) negotiations would be started on (the) basis of (the) viewpoints submitted to him, unfortunately, we have been kept in suspense up to (the) present. It is even said they are expecting new proposals from us in London. This state of suspense which has lasted has become intolerable.

Since Your Excellency, representing the President (of the) United States, has arranged negotiations between Iran on (the) one hand and (the) British Government representing (the) former A.I.O.C. on (the) other and on your departure from Tehran and later in London and Washington had kindly proposed your voluntary co-operation, hence the Iranian Government ventures (to) offer present proposals through Your Excellency with (a) request (to) their immediate transmission to (the) British Government as representative of (the) former A.I.O.C. First, as Your Excellency is well aware, (the) main point of difference which had appeared during (the) last days of negotiations concerned itself with (the) management of (the) N.I.O.C. (Mr.) Stokes suggested that either (an) operating agency or (a) British general director should have charge of (the) management of (the) oil industry in (the) south of Iran. While (the) Iranian Government could not give its accord to such a proposal because, according to (the) formula which had been submitted by Your Excellency to (the) British Government and both (the) Iranian and British Governments had agreed with (the) same, it was obvious that all exploration, extraction and exploitation activities should be in (the) hands of (the) Iranian Government and to accept any proposal contrary to said formula would be looked upon as submission to revival of (the) former A.I.O.C. under new guise.

(The) Iranian Government does not deny (the) fact of its need (of a) foreign technical staff and also (the) fact that such technical men need (to) have sufficient autonomy and liberty of action which would be conducive (to the) best management of (the) industry. (The) former A.I.O.C. was divided (into) various departments having at (the) head (of) each department foreign experts with necessary and proper liberty of action. (The) Iranian Government has in mind (to) keep (the) same

original (staff) in so far as it does not contradict (the) terms (of the) Nationalization Law and employ managers and (?) (responsibilities) of technical sections in the National Iranian Oil Company with (the) same amount (of) authority which they have enjoyed previously. Furthermore, in order (to) keep pace with (the) technical (advancements) of (the) modern world in line (with) oil technology, (the) Imperial Iranian Government is prepared (to) take advantage (of) expert knowledge (of) foreign technicians from neutral countries and provide in (the) original law of (the) National Iranian Oil Company (the) existence of (a) mixed executive board composed (of) such experts and Iranian specialists who would jointly manage administrative and technical affairs of (the) National Iranian Oil Company.

Secondly, while it has been repeatedly stated that (the) Iranian Government had never intended and is not intending (to) confiscate properties of (the) former Company, yet, it proposes (the) following three methods for equitable settlement (of) just claims of (the) former A.I.O.C. with due regard (to) claims of (the) Imperial Iranian Government :

- (a) Determination and amount (of) compensation to be based on quoted value (of) shares of (the) former Company at prevailing quotations prior (to the) passage of (the) Oil Nationalization Law.
- (b) Rules and regulations relative to (the) Nationalization in general which have been followed in democratic countries to be regarded as basis for (the) determination and amount (of) compensation.
- (c) Or any other method which may be adopted by mutual consent (of the) two parties.

Thirdly, with reference to (the) sale of oil, as we have been informed, Britain has been using about ten millions tons (of) Iranian oil per year for its internal consumption, (the) Iranian Government declares its readiness (to) sell this amount (of) oil for (a) period agreed upon by mutual consent of both parties every year at prevailing international prices on basis of f.o.b. value in Iranian port.

Fourthly, one of (the) proposals of Mr. Stokes was (to) transport Iranian oil by (the) company which he proposed. It must be said that we can agree (to) deliver (a) fixed amount (of) oil which is sold to Great Britain to any company or transport agency of their designation. Aforesaid points are to be regarded as basis for starting new negotiations and (the) Iranian Government hopes eventually (that an) agreement may be reached.

(The) Iranian Government and (the) people can no longer tolerate this state of suspension because on one hand there are great numbers of British experts in Abadan who are presented by (the) former A.I.O.C. to be employed by (the) National Iranian Oil Company and (the) Iranian Government ; therefore, with all its good intentions and expectations to arrive at (a) mutually satisfactory conclusion has so far abstained from employing experts from other countries. On (the) other hand, so long as existing differences have not been removed and certain employees of (the) former A.I.O.C. cause new agitation every day and create misunderstandings in relations between the two Governments of Great Britain and Iran, it is quite obvious that other countries will not be ready (to) send their experts to Iran and enter into transactions

for purchase of oil with us. It must be pointed out that as (a) result, this confused state of affairs and derangements in economic and financial affairs of (the) country in addition (to) enormous maintenance costs (of the) oil industry imposed on our budget, we cannot endure such a situation for (a) long time and (the) Iranian Government, because of its great responsibility, deems it necessary (to) bring to a close this period of uncertainty. Hence, if in (the) lapse of 15 days from (the) date at which this present proposal is submitted to (the) British Government no satisfactory conclusion is achieved, (the) Imperial Iranian Government regrets (to) state its compulsion (to) cancel (the) residence permits held by (the) British staff and experts now residing in southern oil fields.

(Signed) Dr. MOHAMMAD MUSADDIQ.

Appendix No. 4 to Annex 1 c

LETTER, DATED 15th SEPTEMBER 1951, FROM MR. HARRIMAN, SPECIAL REPRESENTATIVE OF THE PRESIDENT OF THE UNITED STATES, TO THE IRANIAN PRIME MINISTER

Dear Mr. Prime Minister :

Your Excellency's message of 12th September 1951 has been communicated to me by the Iranian Ambassador. I share your regret that the discussions between the Iranian Government and the British delegation under Lord Privy Seal Stokes did not culminate in an agreement upon a settlement of the oil controversy. I know that the continued interruption of the production and shipment of Iranian oil imposes a very considerable hardship upon the economy of Iran as it does upon the economy of Great Britain. The United States and the entire free world looked anxiously upon these discussions in the hope that some solution could be found which would satisfy the legitimate interests of both parties.

I assure Your Excellency that I continue to stand ready to assist in any way that I can in finding a just solution. In my efforts thus far I have endeavoured to be frank and objective in the advice that I have given to the Iranian Government, as well as to the British Government. It is in this objective and friendly spirit, and in an effort to be helpful to you in arriving at a settlement, that I should like to comment upon the substance of your communication.

With reference to the proposals in general, I should say at the outset that they appear to be the same as the proposals made by the Iranian Government during the course of the negotiations in Tehran, which the British Mission did not accept since they did not conform to practical and commercial aspects of the international oil industry. In some respects the proposals in fact represent a retrogression from the position taken during the discussions.

Your Excellency has suggested that the various departments of the Anglo-Iranian Oil Company be retained, in so far as this does not conflict with the terms of the Nationalization Law, and that the managers and other responsible personnel of the technical sections be employed in the National Iranian Oil Company with the same authority which they

enjoyed previously. You have also stated that the Iranian Government is prepared to create a mixed executive board composed of Iranian and neutral foreign technicians who would jointly manage the administrative and technical affairs of the National Iranian Oil Company.

In discussing this possibility during the negotiations in Tehran, I endeavoured to point out to the Iranian representatives the impracticability of attempting to operate a large and complex industry on the basis of a number of section heads reporting to a board of directors, with no single individual being given executive authority. I believe that no organization can operate effectively in this manner, and I understood Mr. Stokes's position in Tehran to be that the British would not consider it workable. Moreover, I have pointed out that effective operations, particularly of a refinery of the size and complexity of that in Abadan, require the employment of an integrated organization rather than the employment of individual foreign specialists. Competent technicians would not themselves consent to employment except under conditions satisfactory to them. Such conditions would include assurance that the industry was under capable management and operated in a manner which would assure safety and efficiency.

Your Excellency has expressed concern that the arrangement for the operation of the oil industry must take into account the requirements of the Nationalization Law. I am convinced that arrangements are possible which would meet this objective and at the same time would assure that the oil industry is conducted on an efficient basis. During our visit in Tehran, Mr. Levy and I discussed with Iranian officials arrangements under which a competent organization could be employed to operate under the control of the National Iranian Oil Company. Such arrangements are a common business practice throughout the world.

Your Excellency has reiterated that the Iranian Government has not intended and does not intend to confiscate the property of the Anglo-Iranian Oil Company and has suggested methods for the determination of the amount of compensation.

While I have no comments upon your suggestions for determining the value of the assets, it is obvious that payment of compensation must depend upon and will be affected by arrangements for the efficient operation of the oil industry to assure that the products continue to be made available for sale to world markets. As I have pointed out to Your Excellency, in the view of the United States Government, the seizure by any government of foreign-owned assets without either prompt, adequate and effective compensation or alternative arrangements satisfactory to the former owner is, regardless of the intent, confiscation rather than nationalization. There must be more than a willingness to pay; there must be the ability to do so in an effective form. I believe, however, that if arrangements for the sale of oil are made with the British interests, the compensation problem could be worked out satisfactorily and that the net oil income accruing to Iran could be as large as that of any other oil-producing country under comparable circumstances.

Your Excellency has stated that the Iranian Government is prepared to sell to the British ten million tons of oil per year, this quantity representing an estimate of Iranian oil previously used in Great Britain. It is specified that sales would be at prevailing international prices on the basis of the f.o.b. value at Iranian ports. It is also stated that this oil

would be delivered to any company or transport agency designated by the British.

As I pointed out to Your Excellency in Tehran, in order to be assured of continuous sales of substantial quantities of its oil in world markets, Iran must make arrangements with customers that can make available large transportation and distribution facilities for marketing it on a world-wide basis. Potential customers would not make such arrangements unless they could obtain Iranian oil on a basis as favourable as that on which they could buy or develop oil in other producing countries. This, of course, is a practical business consideration. It is also true that only those who have developed markets for Iranian oil are in a position to commit themselves for its purchase in the large quantities produced.

The production of Iranian oil before the present controversy arose amounted to some 30 million tons per year. The major portion of this production was handled by British concerns and affiliates which have developed markets for it throughout the world. Only they have the great transportation facilities needed to carry the oil from Iran to its markets, where only they have the necessary distribution facilities for it. Arrangements, including financial terms, for the sale of only that portion of the oil which previously went to Great Britain would leave the problem of shipping to and distribution in other parts of the world unsolved, and would force the British interests to develop other sources of supply.

During the negotiations in Tehran the Iranian Government indicated its willingness to consider a long-term contract for the sale of Iranian oil to an organization acting on behalf of former purchasers of the products. Under this suggestion, that portion of the industry's output which was not covered by this contract could be sold directly by the National Iranian Oil Company to its own customers. Your Excellency's present suggestion would indicate that there has been a change in this position.

Your Excellency, in pointing out that the suspension of negotiations with the British and the shut-down of the Iranian oil industry have created a serious situation in Iran, has stated that if a satisfactory conclusion is not achieved within 15 days from the date on which your proposal is submitted to the British Government, the Iranian Government intends to cancel the residence permits held by the British staff and experts now residing in the southern oil-fields.

As I pointed out to Your Excellency, the proposal which you have set forth in your communication do not represent an advance from the positions taken in the discussions in Tehran and in some respects appear to be opposite. I believe that the problem with which Iran and Great Britain are confronted can be settled only by negotiations based upon recognition of the practical business and technical aspects of the oil industry and based upon mutual goodwill between the parties. Such a settlement which would attain Iranian aspirations for control of the oil industry within Iran is, I am convinced, possible and feasible in accordance with the discussions we have had in Tehran and the comments I have made. However, I consider that my passing your communication to the British Government would militate against a settlement, particularly in view of the position taken regarding the expulsion of the British employees in southern Iran, a position which I believe will only further aggravate an already serious situation.

As a sincere friend of Iran, I earnestly hope that Your Excellency will reconsider the points set forth in your communication and that a basis can be developed under which negotiations can soon be resumed. I want to tell Your Excellency how much I appreciate your communicating with me on this matter. As stated earlier, I am anxious to be as helpful as circumstances permit, but for the reasons I have set forth I regret that it is not possible for me to meet your request in this particular instance.

(Signed) W. AVERELL HARRIMAN.

Annex 2

OBSERVATIONS OF THE GOVERNMENT OF THE UNITED KINGDOM WITH REGARD TO JURISDICTION OF THE COURT TO DEAL WITH THE MERITS OF THE CASE

1. The Application, filed by the Government of the United Kingdom on 26th May 1951 and instituting proceedings against the Imperial Government of Iran in the *Anglo-Iranian Oil Company* case, is based, so far as the provisions on which the jurisdiction of the Court is founded are concerned, on

- (a) Article 36 (2)¹ and Article 36 (5)² of the Statute of the Court, and
- (b) The declarations made by the Governments of Persia and of the United Kingdom under Article 36 (2) of the Statute of the Permanent Court of International Justice, which are given respectively in paragraphs 2 and 4 below.

1A. The Government of the United Kingdom accepts the position that, since the jurisdiction of the Court is contested by the Imperial Government of Iran, that Government must be taken to have declined to confer jurisdiction on the Court on the basis of *forum prorogatum* (see paragraph 20 of the Application). The Court must therefore satisfy itself that it has jurisdiction and it is for the Government of the United Kingdom to satisfy the Court on this question. Thus, in the case of the *Mavrommatis Palestine Concessions*, Series A, No. 2 (at p. 10), the Court said: "the preliminary question to be decided is not merely whether the

¹ Article 36 (2) reads: "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."

² Article 36 (5) reads: "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."

nature and subject of the dispute laid before the Court are such that the Court derives from them jurisdiction to entertain it, but also whether the conditions upon which the exercise of this jurisdiction is dependent are all fulfilled....". At pp. 16-17 the Court distinguished the dictum in the *Tunis and Morocco Decrees case*, Series B, No. 4 (dealt with later in paragraphs 19-22 below), that the Court need only decide *provisionally* that the legal grounds (*titres*) relied on are of juridical importance for the dispute, on the ground that the objection in the *Mavrommatis* case related not to a general jurisdiction, such as that under Article 15 (8) of the Covenant, but to "a jurisdiction limited to certain categories of disputes which are determined according to a legal criterion", and held that "it cannot content itself with the provisional conclusion that the dispute falls or not within the terms of the Mandate. The Court, before giving judgment on the merits of the case, will satisfy itself that the suit before it, in the form in which it has been submitted and on the basis of the facts hitherto established, falls to be decided by application of the clauses of the Mandate."

No doubt, the words of the Court in the above-quoted extract are relevant to the present case, if one substitutes for "Mandate" the Persian declaration under Article 36 (2) of the Statute of the Permanent Court of International Justice. The Government of the United Kingdom accepts the position that it is for it to show that the case comes within the terms of the Persian declaration and relates to the application of treaties and conventions invoked by the United Kingdom as bringing the case within the Persian declaration. On the other hand, there are cases—of which this may be one—where, in the words of the Permanent Court of International Justice in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77), the objection to the jurisdiction "is closely linked to the merits of the case" (p. 83), and where that is so, then, as indicated by the Court in that case, the Court cannot regard the objection as preliminary in character and must examine it together with the merits of the case (see also paragraph 25 below).

2. On 2nd October 1930, M. Hussein Ala on behalf of the Imperial Persian Government signed a declaration under Article 36 of the Statute of the Permanent Court of International Justice accepting the compulsory jurisdiction of that Court in the following terms :

"Le Gouvernement impérial de Perse déclare reconnaître comme obligatoire, 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, la juridiction de la Cour permanente de Justice internationale, conformément à l'article 36, paragraphe 2, du Statut de la Cour, sur tous les différends qui s'élèveraient après la ratification de la présente déclaration, au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse et postérieurs à la ratification de cette déclaration, exception faite pour :

- a) les différends ayant trait au statut territorial de la Perse, y compris ceux relatifs à ses droits de souveraineté sur ses îles et ports ;
- b) les différends au sujet desquels les parties auraient convenu ou conviendraient d'avoir recours à un autre mode de règlement pacifique ;

- c) les différends relatifs à des questions qui, d'après le droit international, relèveraient exclusivement de la juridiction de la Perse.

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.

La présente déclaration est faite pour une durée de six ans ; à l'expiration de ce délai, elle continuera à avoir ses pleins effets jusqu'à ce que notification soit donnée de son abrogation."

3. An instrument of ratification of this declaration was deposited with the Secretariat of the League of Nations on 19th September 1932. The instrument states, *inter alia*, that the declaration (which was appended thereto) had been approved by the Persian Parliament.

4. The Government of the United Kingdom accepted the compulsory jurisdiction of the Permanent Court of International Justice on 19th September 1929 in the following terms :

"On behalf of His Majesty's Government in the United Kingdom and subject to ratification, I accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years and thereafter until such time as notice may be given to terminate the acceptance, over all disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to the said ratification, other than

disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ; and

disputes with the government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree ; and disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom ;

And subject to the condition that His Majesty's Government reserve the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to or is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the proceedings in the Court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the Members of the Council other than the parties to the dispute.

(Signed) ARTHUR HENDERSON."

5. An instrument of ratification of this declaration was deposited with the Secretariat of the League of Nations on 5th February 1930.

6. At the date of the institution of the present proceedings, neither Iran nor the United Kingdom had terminated its acceptance of compulsory jurisdiction or abrogated its declaration. In the telegram addressed by the Iranian Minister for Foreign Affairs to the Secretary-General of the United Nations on 9th July 1951 (Appendix No. 3 to Annex 1A to this Memorial), to which reference is made later in this Annex (paragraph 28 below), the Foreign Minister purported to abrogate the Persian declaration and to terminate the acceptance by Iran of the compulsory jurisdiction of the Court. It does not appear whether or not the Iranian Government proposes to contend that this purported abrogation (if it is effective) applies to the present case, in which proceedings before the International Court had already been instituted. If any such contention is made, the Government of the United Kingdom reserves the right to reply fully to it and will content itself at this stage with this observation only, namely, that, if a State can retrospectively terminate its acceptance of compulsory jurisdiction in relation to a case which has already been instituted before the Court, the provisions of Article 36 (2) of the Statute would become completely worthless¹.

7. The Government of the United Kingdom submits that the present dispute between the Government of the United Kingdom and the Imperial Government of Iran is a dispute covered by the terms of the declaration of the Imperial Government of Persia set out above, and also by the terms of the declaration of the Government of the United Kingdom similarly set out above, because :

- (a) the dispute is a legal dispute concerning one or more of the matters set out in Article 36 (2) of the Statute ;
- (b) the dispute has arisen "après la ratification de la présente déclaration" (i.e. the Persian declaration), and *a fortiori* after the ratification of the United Kingdom declaration (paragraph 8 below) ;
- (c) the dispute is "au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse" (paragraph 9 below) ;
- (d) the dispute is "au sujet de situations ou de faits" which are "postérieurs à la ratification de cette déclaration" (i.e. the Persian declaration), and *a fortiori* is with regard to situations or facts subsequent to the ratification of the United Kingdom declaration (paragraph 8 below) ;
- (e) the dispute does not fall within any of the exceptions set forth in either the Persian or the United Kingdom declaration.

8. The dispute between the Government of the United Kingdom and the Imperial Iranian Government arose in May 1951 (see paragraphs 4-7 of the Application instituting Proceedings). The facts and situations which are the subject-matter of the dispute are the Iranian Oil Nationalization Act of 1st May 1951 and its consequences.

¹ The observations of Judge Hudson in the case of the *Electricity Company of Sofia and Bulgaria*, Series A, No. 77, at p. 123, are noteworthy. He said : "The fact that the Treaty of 1931 (viz. a treaty which gave the Court jurisdiction) ceased to be in force some nine days later (i.e. after the Application was filed) can have no bearing on the Court's jurisdiction with respect to this case. If the jurisdiction existed on 26th January 1938, it will continue until the case is disposed of in due course."

9. The "traités ou conventions acceptés par la Perse", to the application of which the situations and facts out of which the dispute arises have relation (*ont trait*), fall into three classes :

- (a) Treaties and conventions between Iran and the United Kingdom by which Iran is obliged to accord to British nationals the same treatment as that accorded to nationals of the most favoured nation, taken in conjunction with treaties and conventions between Iran and other States by which Iran is obliged to treat the nationals of these States in accordance with the principles of international law (paragraphs 10 and 11 below) ;
- (b) A treaty or convention between Iran and the United Kingdom by which Iran is obliged to treat British nationals in accordance with the rules and practice of international law (paragraph 13 below) ;
- (c) (i) The Agreement between the Governments of the United Kingdom and of Persia to observe the provisions of the 1933 Concession Convention between the Persian Government and the Anglo-Persian Oil Company, the conclusion of which was accepted by the two Governments as the settlement of the dispute then existing between them before the Council of the League of Nations (the date of this Agreement must be regarded as 12th October 1933, the date of the last meeting of the Council of the League of Nations which dealt with this dispute) and (ii) the Concession Convention itself which came into force on 29th May 1933.

(For the contention of the Government of the United Kingdom, with regard to (c) (i) and (c) (ii) above, attention is invited to paragraphs 6-6B of the Memorial and paragraph 40 below.)

10. The treaties and conventions obliging Iran to accord to British nationals the same treatment as that accorded to nationals of the most favoured nation (referred to in paragraph 9 (a) above) are :

- (a) The Treaty concluded at Paris between the United Kingdom and Persia on 4th March 1857 (ratifications exchanged 2nd May 1857), Article IX of which reads : "The High Contracting Parties engage that, in the establishment and recognition of Consuls-General, Consuls, Vice-Consuls, and Consular Agents, each shall be placed in the dominions of the other on the footing of the most favoured nation ; and that *the treatment of their respective subjects, and their trade, shall also, in every respect, be placed on the footing of the treatment of the subjects and commerce of the most favoured nation.*" (*British and Foreign State Papers*, Vol. 47, p. 43.)
- (b) The Commercial Convention concluded at Tehran between the United Kingdom and Persia on 9th February 1903 (ratifications exchanged 27th May 1903), Article II of which reads :

".... Il est formellement stipulé que les *sujets* et les importations *britanniques en Perse*, ainsi que les *sujets persans* et les importations *persanes* dans l'Empire britannique, *continueront à jouir sous tous les rapports du régime de la nation la plus favorisée....*" (*British and Foreign State Papers*, Vol. 96, p. 51.)

II. The treaties obliging Iran to treat the nationals of certain other States in accordance with the principles of international law (also referred to in paragraph 9 (a) above) include the following :

- (a) The Treaty of Friendship and Establishment concluded at Tehran between Persia and Egypt on 28th November 1928 (ratifications exchanged 21st July 1929), Article IV of which provides that the subjects of each of the High Contracting Parties shall enjoy "la plus constante protection et sécurité quant à leurs personnes, biens, droits et intérêts, conformément au droit commun international". (*League of Nations Treaty Series*, Reg. No. 2127.)
- (b) The Establishment Convention concluded at Tehran between Persia and Belgium on 9th May 1929 (ratifications exchanged 24th November 1930), Article I of which provides that : "Les ressortissants de chacune des Hautes Parties contractantes seront, sur le territoire de l'autre, reçus et traités, relativement à leur personne et à leurs biens, conformément au droit commun international. Ils y jouiront de la plus constante protection des lois et des autorités territoriales pour leur personne, leurs biens, droits et intérêts." (*League of Nations Treaty Series*, Reg. No. 2570.)
- (c) The Establishment Convention concluded at Tehran between Persia and Czechoslovakia on 29th October 1930 (ratifications exchanged 25th June 1931), Article I of which provides that : "Les ressortissants de chacun des États contractants seront accueillis et traités sur le territoire de l'autre État, en ce qui concerne leurs personnes et leurs biens, d'après les principes et la pratique du droit commun international. Ils y jouiront de la plus constante protection des lois et autorités territoriales pour leurs personnes et pour leurs biens, droits et intérêts." (*League of Nations Treaty Series*, Reg. No. 2784.)
- (d) The Treaty of Friendship, Establishment and Commerce concluded at Tehran between Persia and Denmark on 20th February 1934 (ratifications exchanged 6th March 1935), Article IV of which provides that : "Les ressortissants de chacune des Hautes Parties contractantes seront, sur le territoire de l'autre, reçus et traités, relativement à leurs personnes et à leurs biens, conformément aux principes et à la pratique du droit commun international. Ils y jouiront de la plus constante protection des lois et des autorités territoriales pour leurs personnes, et pour leurs biens, droits et intérêts." (*League of Nations Treaty Series*, Reg. No. 3640.)
- (e) The Establishment Convention concluded between Persia and Switzerland at Berne on 25th April 1934 (ratifications exchanged 1st June 1935), Article I of which provides that : "Les ressortissants de chacune des Hautes Parties contractantes seront accueillis et traités sur le territoire de l'autre partie, en ce qui concerne leurs personnes et leurs biens, d'après les principes et la pratique du droit commun international. Ils y jouiront de la plus constante protection des lois et autorités territoriales pour leurs personnes et pour leurs biens, droits et intérêts." (*League of Nations Treaty Series*, Reg. No. 3691.)
- (f) The Establishment Convention concluded at Tehran between Persia and Germany on 17th February 1929 (ratifications exchanged 11th December 1930), Article I of which provides that : "Les ressortissants de chacun des États contractants seront

accueillis et traités sur le territoire de l'autre État, en ce qui concerne leurs personnes et leurs biens, d'après les principes et la pratique du droit commun international. Ils y jouiront de la plus constante protection des lois et autorités territoriales pour leurs personnes, et pour leurs biens, droits et intérêts." (*League of Nations Treaty Series*, Reg. No. 2590.)

- (g) The Establishment Convention concluded at Tehran between Iran and Turkey on 14th March 1937¹, Article I of which provides that : "Les ressortissants de chacune des Hautes Parties contractantes seront, sur le territoire de l'autre, reçus et traités, relativement à leurs personnes et à leurs biens, conformément au droit commun international. Ils y jouiront de la plus constante protection des lois et des autorités territoriales pour leurs personnes et leurs biens, droits et intérêts." (A copy of the text of this Convention is given in Appendix No. 1 to this Annex.)
- (h) The Exchange of Notes between Persia and the United States constituting a *modus vivendi* regarding friendly and commercial relations, dated 14th May 1928, in which the Acting Persian Minister for Foreign Affairs stated that : "A dater du 10 mai 1928, les ressortissants des États-Unis d'Amérique en Perse seront admis et traités conformément aux règles et pratiques du droit commun international et sur la base d'une parfaite réciprocité." (*League of Nations Treaty Series*, Reg. No. 2494.)
- (i) The Exchange of Notes between Persia and the Netherlands constituting a *modus vivendi* regarding friendship and commerce dated 20th June 1928, in which the Acting Persian Minister for Foreign Affairs stated : "Les ressortissants des Pays-Bas sur le territoire de la Perse y seront admis et traités conformément aux règles et pratiques du droit commun international." (*League of Nations Treaty Series*, Reg. No. 1852.)
- (j) The Exchange of Notes between Persia and Italy, constituting a *modus vivendi* in matters of commerce and jurisdiction dated 25th June 1928, in which the Acting Persian Minister for Foreign Affairs stated : "Les ressortissants italiens seront admis et traités sur le territoire persan conformément aux règles et pratiques du droit commun international sur la base d'une parfaite réciprocité." (*League of Nations Treaty Series*, Reg. No. 2179.)

12. By virtue of the treaty and the convention referred to in paragraph 10 above, the Iranian Government became obliged, upon the conclusion of each of the treaties and conventions referred to in paragraph 11 above, to accord to British nationals the treatment assured thereby to the nationals of the States which were parties to them, i.e. (*inter alia*) to treat British nationals in accordance with the principles of international law.

13. The treaty or convention between Iran and the United Kingdom by which Iran is obliged to treat British nationals in accordance with

¹ The exact date of the exchange of ratifications in respect of this Convention is not known to the Government of the United Kingdom. The Convention was approved by the Iranian Majlis on 5th June 1937, and by the Turkish Parliament on 7th June 1937. It came into force, as law No. 3209 of the Turkish Parliament, on 15th June 1937, being published in *Resini Gazeta (Journal officiel)*, No. 3636 of 21st June 1937.

the rules and practice of international law is the Exchange of Notes between the Imperial Government of Persia and the Government of the United Kingdom on 10th May 1928, relating to the abolition of capitulations in Persia, by which the Imperial Persian Government undertook that thenceforth British nationals in Persia "seront admis et traités sur le territoire persan conformément aux règles et pratiques du droit international". (A copy of this Exchange of Notes is appended to this Annex as Appendix No. 2¹.)

14. The Government of the United Kingdom is complaining of conduct by the Iranian Government towards the Anglo-Iranian Oil Company which, in the submission of the Government of the United Kingdom, constitutes a contravention of the principles, and of the rules and practice, of international law, in the respects summarized in paragraph 9 of the Application instituting Proceedings and in paragraph 7 of this Memorial. A contravention of the principles, and of the rules and practice, of international law, by the Government of Iran in its treatment of the Anglo-Iranian Oil Company, a British national, is a contravention of the treaties and conventions accepted by Iran, and referred to in paragraphs 10-13 above. The dispute between the Iranian and United Kingdom Governments is a dispute as to whether the Iranian Government has been guilty of such contravention of these treaties and conventions. This is therefore a dispute "au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse", the situations or facts being the conduct of the Iranian Government in attempting to put into force the Oil Nationalization Act of 1st May 1951, which conduct is alleged by the United Kingdom Government to constitute a contravention of these treaties and conventions.

14A. The Agreement and the Concession Convention referred to in paragraph 9 (c) above make it a breach of an international contractual obligation between Iran and the United Kingdom for Iran to fail to observe the provisions of the Concession Convention ; and the United Kingdom Government complains that Iran has infringed the provisions of the Concession Convention.

15. In the telegram sent to the President of the Court on 29th June 1951 by the Imperial Government of Iran, that Government, in addition to addressing to the Court arguments directed to the merits of the case, challenged the jurisdiction of the Court. Although the message purported to be an answer to the United Kingdom Government's Request for the Indication of Interim Measures of Protection, these challenges were to the jurisdiction of the Court to deal with the dispute on the merits. The material passages of the telegram are the following :

"(a) We wish to bring to the notice of the Honourable Judges of the International Court of Justice a case which is purely based on the greed and selfishness of an English Company against a peace-loving and weak oriental nation, which has been submitted to an incorrect appeal by the British Government beyond the jurisdiction of the Court....

¹ This Exchange of Notes was not registered with the League of Nations under Article 18 of the Covenant.

- (b) Having brought to the attention of the Honourable Judges of the International Court of Justice the record and the evidences [*sic*] of our case, we beg permission to advance our arguments on the subject of the incompetency of the British Government in submitting the plea in question which is beyond the jurisdiction of the Honourable Court to give consideration to such a plea.
- (i) Even if we grant the validity of the 1933 agreement, the second contracting party is a private company (the former Anglo-Iranian Oil Company) and not the British Government. Hence the British Government, not being one of the two contracting parties, cannot have any claim on the Iranian Government which could be referred to the International Court of Justice. These companies, as in the case of all other private companies whether foreign or local, are subject to the international [*sic*] laws of the country where they operate, and in case of having any claims against the Iranian Government they must refer to the local courts of justice for gaining their rights. The mere fact that the British Government is a large shareholder in the former Anglo-Iranian Oil Company cannot change the status of the said company as the signatory of the original contract.
- (ii) The declaration made by the Iranian Government in the year 1932 with reference to the acceptance of the jurisdiction of the International Court of Justice excludes all the questions that might have any bearing on its national sovereignty.
- (iii) Paragraph 7 of the second Article of the United Nations Charter explicitly specifies that none of the provisions of the said Charter authorize the United Nations intervention in matters pertaining to the sovereign rights of any nation; member countries are not bound to settle differences of this nature through methods stipulated in the Charter.
- (iv) In accordance with Article 36 of the Statute of the International Court of Justice, the jurisdiction of the Court extends to all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

From what has been said above, it is not clear to us how the British Government, not being one of the two contracting parties and lacking in competence to intervene in such a case, should have considered it appropriate to file a plea with the Court regarding the oil dispute....

- (c) With the explanations furnished as to the fundamental aspects of the question with special reference to the British Government's lack of legal competence to institute a lawsuit and to the fact that it would be beyond the jurisdiction of the International Court of Justice to examine the case, the Iranian Government finds it unnecessary to make any statement in rejection of the request made by the British Government to take interim measures of protection. Nevertheless, I venture to invite the kind attention of the Honourable Judges of the Court to the following points:
- (i) As it has been noted, there is no controversy between the Government of Iran and Great Britain, the British Government is unjustly trying to inject itself into a matter which, according to the most elementary and axiomatic principles of international law, results from the Iranian right to sover-

- eignty and which is exclusively within the jurisdiction of the Iranian Government.
- (ii) Granted that a controversy exists on the nationalization of Iranian oil, such controversy could only be between the Iranian Government and the former Anglo-Iranian Oil Company, which is a juristic personality no different from a single British national, and by virtue of paragraph 1 of Article 34 of the Statute of the Court which stipulates that only States may be parties in cases before the Court, it could not be brought up before the International Court....
- (d) In view of the foregoing considerations, the Iranian Government hopes that the Court will declare that the case is not within its jurisdiction because of the legal incompetence of the complainant and because of the fact that exercise of the right to sovereignty is not subject to complaint."

16. The first objection raised by the Imperial Government of Iran to the jurisdiction of the Court is that the Government of the United Kingdom has no *locus standi*. This objection does not in fact relate to the jurisdiction of the Court. It would, if it were well founded, be a ground for dismissal of the case for the reason that the Government of the United Kingdom had shown no cause of action at all rather than for the reason that the Court had no jurisdiction. However, without prejudice to this point, it may be more convenient to deal with this objection here rather than in that part of the Memorial which deals with the merits of the case. Moreover, were it not that the Government of the United Kingdom does not wish to appear to show any disrespect towards the arguments of the Imperial Government of Iran, the Government of the United Kingdom would scarcely have thought it necessary to address any argument or cite any authority to the Court to show that this objection is ill-founded. It is not, of course, as a shareholder of the Anglo-Iranian Oil Company that the Government of the United Kingdom has made the present Application to the Court, but in the exercise of the well-recognized right of a State to take up the case of one of its nationals in cases where it considers that its national has been treated in a manner contrary to international law and to ensure, in the person of its nationals, respect for the rules of international law¹. It will be sufficient to cite the well-known passage in the decision of the Permanent Court of International Justice in the case of the *Mavrommatis Palestine Concessions*, Series A, No. 2, at pages 11-12 :

"A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The present suit between Great Britain and Greece certainly possesses these characteristics. The latter Power is asserting its own rights by claiming from His Britannic Majesty's Government an indemnity on the ground that M. Mavrommatis, one of its subjects, has been treated

¹ In its Order indicating Interim Measures of Protection, the Court has in fact indicated that the objection is misconceived by saying : "Whereas it appears from the Application by which the Government of the United Kingdom instituted proceedings, that that Government has adopted the cause of a British company and is proceeding in virtue of the right of diplomatic protection" (I.C.J. Reports 1951, p. 92).

by the Palestine or British authorities in a manner incompatible with certain international obligations which they were bound to observe.

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. Henceforward therefore it is a dispute which may or may not fall under the jurisdiction of the Permanent Court of International Justice....

It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on its behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law.

The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant."

17. It is in general a condition of the right of a State to intervene on behalf of its national that the national should have exhausted the local remedies available to it under municipal law, if there are any. The telegram sent by the Imperial Iranian Government to the President of the Court on 29th June 1951 appears to touch on this point when it says: "these companies [*scilicet*, private companies] as in the case of all other private companies whether foreign or local are subject to the international [*sic*] laws of the country where they operate, and in case of having any claims against the Iranian Government they must refer to the local courts of justice for gaining their rights". This objection is, however, also clearly an objection which does not relate to the jurisdiction of the Court¹, but is an objection which, if it were well founded, would lead to a rejection of the United Kingdom's claim on its merits. It is a point which might be decided as a preliminary point before the rest of the merits of the case are investigated, but it is not a point which is relevant to the jurisdiction of the Court under the instruments on which the United Kingdom Government submits that the Court has jurisdiction in this case. In fact, the United Kingdom Government has shown in paragraphs 7 (7) and 47 of the Memorial that in this case there were no municipal remedies to exhaust.

¹ This objection could only be one which related to the jurisdiction of the Court if the instrument, on the basis of which it was claimed that the Court had jurisdiction, confined it to cases where municipal remedies had been exhausted. The point came up in this form in the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77) because one of the instruments relied on in that case made this a condition limiting the Court's jurisdiction.

18. The second objection raised by the Imperial Government of Iran is that the present dispute falls within the third exception contained in the Persian declaration of 2nd October 1930, i.e. "les différends relatifs à des questions qui, d'après le droit international, relèveraient exclusivement de la juridiction de la Perse". A similar exception, on which by virtue of the condition of reciprocity Iran is entitled to rely if it is applicable, occurs in the United Kingdom declaration of 19th September 1929, namely, "disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom". The present dispute, in the submission of the Government of the United Kingdom, cannot be regarded as one concerning a question which by international law falls exclusively within the jurisdiction of Iran, since the dispute between the United Kingdom and Iran concerns the question whether Iran has committed a breach of international law. The question whether or not Iran has committed a breach of international law cannot be a question which by international law is exclusively within the jurisdiction of Iran, since the powers, the exercise of which international law leaves within the domestic jurisdiction of a State, cannot extend to the commission of an international wrong. The contention of the Government of the United Kingdom in this respect is supported by the *Tunis and Morocco Nationality Decrees* case (Series B, No. 4), which is discussed in the succeeding paragraph. The words in Article 15, paragraph 8, of the Covenant of the League and in the Resolution of the Council of the League¹ which were considered in that case have, it is submitted, the same meaning as those in the Persian and United Kingdom declarations under the Optional Clause². The parties to these declarations meant to make the same exception as is made in Article 15 of the Covenant of the League³. The Court should, in the submission of the Government

¹ The words so used were *compétence exclusive* (solely within the domestic jurisdiction) and *exclusivement une affaire d'ordre intérieur* (solely a matter of domestic jurisdiction).

² Moreover, the Iranian telegram refers to Article 2 (7) of the Charter of the United Nations, which uses the words "domestic jurisdiction" (in English) and "*compétence nationale*" (in French), as if Article 2 (7) of the Charter had the same effect as Iran's reservations to the Optional Clause. Indeed, apart from the difference, if any, which arises from the qualifying adverb "exclusively" in the declarations and in Article 15 of the Covenant, as compared with the qualifying adverb "essentially" which is used in the Charter (a point which does not arise here), it is plain that the Charter exception and the Covenant exception have the same meaning. The words most generally used are "domestic jurisdiction" (in English) and "*compétence nationale*" (in French); but, when the other slight variants are used, the same meaning is intended.

³ (a) The words in the Iranian declaration are: "D'après le droit international relèveraient exclusivement de la juridiction de [la Perse]."
 (b) The words in the United Kingdom declaration are: "by international law fall exclusively within the jurisdiction of [the United Kingdom]."
 (c) The words of Article 15 of the Covenant of the League of Nations, in French, are: "que le droit international laisse à la compétence exclusive de [cette partie]."
 (d) The words of Article 15 of the Covenant of the League of Nations, in English, are: "by international law is solely within the domestic jurisdiction of [that party]."
 (e) The words of Article 2 (7) of the Charter of the United Nations, in French, are: "qui relèvent essentiellement de la compétence nationale d'un État".

of the United Kingdom, interpret the reservations in these declarations in accordance with the same principles as were laid down by the Permanent Court of International Justice with regard to the exception in Article 15 of the Covenant in the *Tunis* case, for the reason that States which, in declarations made subsequently to the judgment of the Court, used words substantially identical with those which had been interpreted by the Court in that case, must be deemed to have intended to give to those words the meaning which the Court had held them to have.

19. In the case of the *Tunis and Morocco Nationality Decrees*, Series B, No. 4, the Permanent Court of Justice had to consider the words in paragraph 8 of Article 15 of the Covenant of the League of Nations, namely :

“If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party (*que le droit international laisse à la compétence exclusive de cette partie*), the Council shall so report, and shall make no recommendation as to its settlement”,

and also the words in the Resolution asking for the Advisory Opinion of the Court, namely,

“whether the dispute is or is not by international law solely a matter of domestic jurisdiction (*une affaire exclusivement d'ordre intérieur*)”.

The Court said at pages 23-24 :

“From one point of view, it might well be said that the jurisdiction of a State is *exclusive* within the limits fixed by international law—using this expression in its wider sense, that is to say, embracing both customary and general as well as a particular treaty law. But a careful scrutiny of paragraph 8 of Article 15 shows that it is not in this sense that exclusive jurisdiction is referred to in that paragraph.

The words ‘solely within the domestic jurisdiction’ seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

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.

(f) The words of Article 2 (7) of the Charter of the United Nations in English are “which are essentially within the domestic jurisdiction of any State”.

It follows, comparing (c) and (d), that “domestic jurisdiction” in English has the same meaning as “compétence” in French. It also follows, comparing (e) and (f), that “compétence nationale” in French and “domestic jurisdiction” in English have the same meaning. Therefore, it is submitted, there is no doubt that “jurisdiction” in (b) has the same meaning as “domestic jurisdiction” in (d) and (f), and that “jurisdiction” in (a) has the same meaning as “compétence” in (c) and therefore as “domestic jurisdiction” in (d) or “jurisdiction” in (b).

For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law. Article 15, paragraph 8, then ceases to apply as regards those States which are entitled to invoke such rules, and the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character and falls outside the scope of the exception contained in this paragraph."

Again at pages 25-26 the Court said :

"It is certain 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.

It is equally true 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. 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 formation 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 the State, enters the domain governed by international law."

In considering the contentions of the parties on the various points, the Court said :

- (a) "The question whether the exclusive jurisdiction possessed by a protecting State in regard to nationality questions in its own territory extends to the territory of the protected State depends upon an examination of the whole situation as it appears from the standpoint of international law. The question is therefore no longer solely one of domestic jurisdiction as defined above" (at p. 28).
- (b) "The Court observes that, in any event, it will be necessary to have recourse to international law in order to decide what the value of an agreement of this kind may be as regards third States, and that the question consequently ceases to be one which, by international law, is solely within the jurisdiction of a State, as that jurisdiction is defined above" (*ibid.*).
- (c) Similarly (at pp. 29-32), the Court held that a point on which it is not possible to make any pronouncement "without recourse to the principles of international law concerning the duration of the validity of treaties", a point which involves "the interpretation of international engagements", and a point concerning the application of a treaty are not questions which, by inter-

national law, fall solely within the domestic jurisdiction of a State as defined above.

20. Applying the principles set forth in the passage in the Court's Opinion quoted in the preceding paragraph, it is plain that the first question to be asked is whether the *matter* brought before the Court is *in principle* regulated by international law. If the answer is "Yes", then it is not necessary to consider whether it is only regulated by international law because of treaty provisions.

The matter in this case is the cancellation of a concession granted to a foreign company and the taking of its property. It is submitted that this matter is clearly *in principle regulated by international law*. Paragraph 7 of the Memorial outlines the rules of international law which the United Kingdom contends are applicable, and paragraphs 8-47 contain the further exposition of these rules and the legal authority for them as well as the reasons why it is alleged that Iran has violated them. These rules show that in *this matter* the expropriating State is not left by international law as the *sole judge*. On the contrary, international law imposes many limitations and conditions upon the exercise of the right of expropriation.

21. In fact the United Kingdom also invokes treaty obligations as well, but as, with one exception, these treaties simply prescribe the obligation to act in accordance with international law, they do not carry the issue now under consideration further. However, the one exception does carry the issue further, namely the contractual obligation (referred to in paragraph 6 of the Memorial and in paragraph 9 (c) above) binding Iran towards the United Kingdom to observe the provisions of the Concession Convention of 1933 and therefore not to abrogate it in violation of its terms. As the later portion of the extract from the Court's Opinion shows, this contractual obligation would prevent the cancellation of this particular concession from falling into the sphere of domestic jurisdiction even if (contrary to the contention in paragraph 20 above) the abrogation of foreign concessions was not *in principle* regulated by international law.

22. It appears from the Opinion of the Court quoted in paragraph 19 above that, where a matter is *in principle* regulated by international law, then the domestic jurisdiction exception never excludes a question relating to that matter from the jurisdiction of the Court. Therefore the first question is whether the United Kingdom has shown that the abrogation of foreign concessions is *in principle* regulated by international law, or in other words whether the rules set forth in the Memorial have any existence or not. The Court cannot hold, on an objection to the jurisdiction, that these rules have no existence without going into the merits of the case, unless it is prepared on a summary consideration to hold that the United Kingdom has not even made a *prima facie* case for their existence. The Government of the United Kingdom is convinced that the authority cited for these rules in the Memorial is much more than sufficient to establish a *prima facie* case. The question of fact whether there has been an infringement of these rules is a question which can only be decided on the merits of the case. At most (and even this is far from clear) the Court could only, on an objection to the jurisdiction, dismiss the Application if it were prepared to hold, on a sum-

mary consideration, that it was clear that none of the facts alleged, even if true, constituted violations of the rules of international law. The Government of the United Kingdom is convinced that in this Memorial it has made much more than a *prima facie* case that the acts of which it complains infringe the rules of international law on which it relies. The argument in this paragraph is supported by the case referred to in paragraph 23 below. Indeed, if anything, this case shows that the argument in the present paragraph is understated.

23. In this connection, reference may be made to the case of the *Electricity Company of Sofia and Bulgaria* (Series A/B, No. 77). This case related to a concession held by a Belgian company for the distribution of light and electricity. Belgium contended that the municipality of Sofia was levying rates on the Company in a manner which conflicted with the concession as interpreted by a certain decision of a Mixed Arbitral Tribunal. Municipal remedies were exhausted and Belgium took up the case in diplomatic protection of its national, the Company, and instituted proceedings by unilateral Application before the Permanent Court of International Justice under the Optional Clause (Article 36 (2) of the Statute of the Court), and also under a Treaty of Conciliation and Arbitration. There was no domestic jurisdiction exception in the Belgian or Bulgarian declarations¹, but Bulgaria contended that the dispute did not fall within any of the categories of Article 36 of the Court's Statute. Belgium complained of "acts prejudicial to the Electricity Company of Sofia and Bulgaria, carried out by various organs of the Bulgarian State in violation of the latter's international obligations", and relied on "the right to obtain reparation for the damage resulting for the Belgian Company" (p. 77). The Court said the "Belgian Government had thus raised a point of an international character in this dispute" (p. 77), and further :

"Although this [Bulgarian] argument is designed to prove that the Court has no jurisdiction and to prevent proceedings being continued, the Court, after considering its scope, has arrived at the conclusion that this objection is closely linked to the merits of the case. The reasoning in fact aims at establishing that there is no international element in the legal relation created between the Belgian Company and the Bulgarian authorities by the awards of the Mixed Arbitral Tribunal. But that amounts not only to encroaching on the merits, but to coming to a decision in regard to one of the fundamental factors in the case. The Court cannot therefore regard this plea as possessing the character of a preliminary objection within the meaning of Article 62 of the Rules.

In these circumstances, the Court cannot accept the contention that it lacks jurisdiction under the declarations of adherence to the Optional Clause, in so far as this contention is founded on the argument *ratione temporis*; and in so far as this contention is founded on the argument *ratione materiae*, the Court does not regard it as preliminary in character and consequently rejects it, though the

¹ Indeed, as writers have often said, it is questionable whether these domestic jurisdiction exceptions in declarations under Article 36 (2) are not otiose, since any cases covered by them would be outside the terms of Article 36 (2) of the Statute anyway.

Parties remain free to take it up again in support of their case on the merits¹." (Pp. 82-83.)

24. There remains, however, the contractual obligation referred to in paragraph 21 above, and it is abundantly clear that, if the existence of this contractual obligation is established, Iran has infringed it. The question, therefore, is whether the United Kingdom in paragraphs 6-6B of this Memorial had made a case in favour of the existence of this obligation sufficient (using the words of the Court in the *Tunis and Morocco Nationality Decrees* case, Series B, No. 4) "to justify the provisional conclusion" that this contractual obligation (alleged by the United Kingdom) "is of juridical importance for the dispute", so that the Court has "to form an opinion with regard to the validity and construction" of this contractual obligation. If the United Kingdom contention (that this contractual obligation came into existence) is of juridical importance, then for this further reason the case cannot be dismissed on account of the domestic jurisdiction exception. The United Kingdom is confident that, in paragraphs 6-6B of this Memorial, it has made more than a sufficient case for this purpose.

25. It may happen that the question which arises on the issue of jurisdiction and the question which arises on the merits are in one sense the same, or, as it was said in the case of the *Electricity Company of Sofia and Bulgaria*, Series A/B, No. 77 (paragraph 23 above), the two questions are "closely linked", and that is why the Permanent Court of International Justice was led in many cases to join the objection to the jurisdiction to the merits of the case and decide both issues simultaneously. In this case, too, the two questions are in one sense the same or are "closely linked". On the issue of jurisdiction, the question is whether there is a question of a violation of international law. On the merits, the question is whether there has been a violation of international law. It is clear, on the principles followed in the case of the *Electricity Company of Sofia and Bulgaria*, that the Court cannot regard the "domestic jurisdiction" objection in this case as "preliminary in character" and must reject it.

26. For all these reasons, the United Kingdom Government submits that the present dispute is not within the exception of domestic jurisdiction in the Persian declaration. In fact, in its Order of 5th July 1951 (I.C.J. Reports 1951, p. 89), the Court has already indicated as much, because, after reciting the Iranian objection made "on the grounds principally of the want of competence on the part of the United Kingdom Government to refer to the Court a dispute which had arisen between the Iranian Government and the Anglo-Iranian Oil Company, Limited, and of the fact that this dispute pertaining to the exercise of the sovereign rights of Iran was exclusively within the national jurisdiction of that State and thus not subject to the methods of settlement specified in the Charter" (p. 92), the Court said: "Whereas the complaint made in the Application is one of an alleged violation of international law by the breach of the agreement for a concession of 29th April 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

¹ See separate opinion of Judge Anzilotti in the same sense at p. 95.

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" (pp. 92-93).

26A. The third objection raised by the Imperial Government of Iran to the jurisdiction of the Court is that that jurisdiction is excluded by paragraph 7 of Article 2 of the Charter of the United Nations, which reads as follows :

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State (*qui relèvent essentiellement de la compétence nationale d'un État*) or shall require the Members to submit such matters to settlement under the present Charter ; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

The United Kingdom Government would in any case contend that the present dispute is not a matter which is essentially within the domestic jurisdiction of Iran. A matter which is *in principle* regulated by international law or to which treaties and international contractual obligations are applicable is not "essentially" within the jurisdiction of a State any more than it is "exclusively" within it. As indicated in footnote 3 on page 156, the meaning of the words in the Charter is the same as the meaning of the words in Article 15 of the Covenant of the League of Nations and in the two relevant declarations under Article 36 (2) of the Statute of the Permanent Court of International Justice, apart from the effect of the difference (if any) in the qualifying adverbs "exclusively" and "essentially". However, the difference (if any) is irrelevant in the present case because Article 2 (7) of the Charter is irrelevant. The jurisdiction of the International Court of Justice is derived not from the Charter but from its own Statute, which is annexed to the Charter, and, as regards this particular case, by the declarations under Article 36 (2) of the Statute of the Permanent Court of International Justice made by the United Kingdom and by Iran. Article 2 (7) of the Charter is, therefore, completely irrelevant to the issue of jurisdiction now before the Court.

27. The Court, in its Order indicating Interim Measures of Protection in this case (I.C.J. Reports 1951, p. 89), after referring to, and indeed in a sense disposing of, the objections to the jurisdiction hitherto advanced by Iran, added the following :

"Whereas the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction" (at p. 93).

The Iranian Government has the right to file objections to the jurisdiction at any time up to 10th January 1952—the time for the delivery of its Counter-Memorial. It may or may not avail itself of this right. The Government of the United Kingdom is, however, under the duty, recognized in paragraph 1A above, of satisfying the Court that it has jurisdiction, and it is for this reason that it is now proposed, in the subsequent paragraphs of this Annex, to amplify the submissions contained in the Application instituting Proceedings so far as they relate

to jurisdiction, and to deal with other possible objections to the jurisdiction which might occur to the Court whether Iran raises them or not. In so doing, the Government of the United Kingdom desires to recall the attention of the Court to what has been said in paragraph 3 of the Memorial—namely, that the Observations in this Annex are submitted now, because it is believed that it will be convenient for the Court to have them now—since the United Kingdom Government desires to show at this stage that it entertains no doubt as to the jurisdiction of the Court and hopes to convince Judges Winiarski and Badawi Pasha that the doubts, which they expressed (in a purely provisional way on a purely summary view of the matter) as to the right of the Court to exercise jurisdiction in the case in their dissenting opinion to the Order indicating Interim Measures of Protection, will be found on further examination to be unfounded.

On the other hand, as stated in paragraph 3 of the Memorial, the United Kingdom Government submits these observations now, before the time when it is (as it believes) obliged to do so, on the faith that it will have another opportunity to address the Court on the subject of jurisdiction before the Court reaches its decision on jurisdiction, but it will be content if this opportunity is confined to making observations orally. The Iranian Government may yet submit further arguments to the Court on the subject of jurisdiction—raising objections which the United Kingdom Government has not been able to anticipate here or even making arguments relating to the objections already made or anticipated, to both of which the United Kingdom Government would desire to be able to reply. Moreover, even if the Iranian Government makes no further communication to the Court on this subject, the Government of the United Kingdom wishes to exercise the right, which it is believed the practice of the Court gives in every case, to make oral observations on the subject of jurisdiction as well as written observations.

28. One at least of these possible further objections is hinted at in the telegram addressed to the Secretary-General of the United Nations on 9th July 1951 by the Iranian Minister for Foreign Affairs, a copy of which is to be found in Annex 1A to the Memorial, as Appendix No. 3. This telegram contains the following passages :

“The accession of the Imperial Government of Iran to the provisions of Article 36 of the Statute of the Permanent Court of International Justice, according to the Declaration of 10 Mehr 1309 (2nd October 1930), and the Act of 23 Khordad 1310, took place on 13 September 1932 [*sic*], the compulsory jurisdiction of the Court being extended only to disputes arising out of situations and events directly or indirectly connected with the application of treaties and conventions concluded by the Government of Iran after the ratification of the said Declaration.”

In this passage an interpretation is put on the Persian declaration different from that relied upon by the Government of the United Kingdom. According to this interpretation, the Persian declaration relates only to conventions concluded after the date of Persia's ratification of that declaration ; whereas, according to the Government of the United Kingdom's interpretation of the Persian declaration, that declaration relates to conventions concluded at any time, the word “postérieurs”

(i.e. the word which comes just before the words "à la ratification de cette déclaration") being applicable not to the words "traités ou conventions acceptés par la Perse" but to the words "situations et faits" (which come two lines higher up)¹. If the interpretation given in the Iranian telegram to the United Nations were correct, the United Kingdom Government would not be able to rely (on the issue of jurisdiction) on treaties or conventions concluded by Iran prior to 19th September 1932. It may be pointed out at once that this objection does not apply to the Concession Convention itself, which was concluded in 1933, or to the contractual agreement between the two Governments which came into existence at the same date or at a later meeting of the Council of the League of Nations referred to in paragraph 9 (c) above, and which are relied upon by the Government of the United Kingdom as an alternative ground on which the Court has jurisdiction².

29. However, some, but not all, of the treaties referred to in paragraph 9 (a) above and set out in paragraphs 10 and 11 above, on which the United Kingdom Government also relies as alternatives, were concluded prior to 19th September 1932 (i.e. the date of the ratification of the Persian declaration). It is necessary, therefore, to deal with the objection, which appears to be raised in the Iranian telegram to the Secretary-General of the United Nations, that the Persian declaration extended the compulsory jurisdiction of the Court only to situations and facts directly or indirectly connected with the application of treaties and conventions concluded by the Government of Iran after the ratification of the said declaration.

30. The Government of the United Kingdom concedes that the declaration is grammatically capable of bearing the meaning implied in the Iranian telegram, although, if that is what was intended, it could have been much more simply and naturally expressed by saying "au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse après la ratification de cette déclaration". The Government of the United Kingdom submits that, for the reasons given in paragraphs 31-37 below, the Court should interpret the Persian declaration in the sense contended for by the United Kingdom Government, namely, that the words "postérieurs à la ratification de cette déclaration" should be construed as governing "situations ou faits" rather than "traités ou conventions acceptés par la Perse".

31. It is legitimate, in considering the meaning to be attributed to a text such as the Persian declaration, to consider the forms of words used in other documents of a similar nature prior to the date of the Persian declaration, and the historical development of the form of words used.

This course is especially indicated in the case of declarations under Article 36 (2) of the Statute of the Court, because the declarations made successively by governments are almost all variants of a common pattern (like a series of municipal enactments of which all, after the

¹ For the text of the Persian declaration, see paragraph 2 above.

² See also paragraph 40 below on this point; see also, in general, paragraphs 6-6B of the Memorial.

first, are amendments, by addition or subtraction, of the first one). Judge van Eysinga noted this in the *Phosphates in Morocco (Preliminary Objections)* case, Series A/B, No. 74 (at p. 34), when he said:

“Disregarding a minor difference in the French declaration which speaks of ‘des situations’ and ‘des faits’ in place of ‘de’—a detail apparently of no significance—we find the same words employed in a large number of similar declarations. They appeared for the first time in the Belgian declaration (25th September 1925).”

It is permissible to conclude that at any rate Judge van Eysinga would have considered the Court’s interpretation of the relevant words in the French declaration in the *Phosphates in Morocco* case as an authority for the interpretation of similar words in the declaration of other countries¹.

32. It was common in arbitration conventions from the first to make some exception *ratione temporis*, as stated in the *Mavrommatis Palestine Concessions* case¹. A popular formula was to exclude disputes having their origin “dans des faits antérieurs” to the conclusion of the convention, or words to that effect².

33. From 1920 onwards, when States began to accept the compulsory jurisdiction of the Permanent Court of International Justice by declarations under the Optional Clause of the Statute of the Court, it became the custom for States in so doing to make exceptions or reservations. As Professor Manley Hudson says at page 468 of his book on the

¹ Moreover (in regard to other documents of a similar nature but still relating to provisions conferring jurisdiction), we find that in the *Mavrommatis Palestine Concessions* case, Series A, No. 2 (at p. 35), the Court used the fact that certain language was commonly employed in arbitration treaties as an aid to the interpretation of the jurisdictional provision in Article 26 of the Mandate. The Court said: “the Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment. In the present case, this interpretation appears to be indicated by the terms of Article 26 itself, where it is laid down that ‘any dispute whatsoever ... which may arise’ shall be submitted to the Court. The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction, and, consequently, the correctness of the rule of interpretation enunciated above.” So in the *Chorzów Factory (Claim for Indemnity) (Jurisdiction)* case, Series A, No. 9, the Court, in interpreting Article 23 of the Geneva Convention, considered the development of general treaties of arbitration during the previous 50 years, with special reference to the “*clauses compromissaires*” of which Article 23 was an example. It rejected the Polish contention as being “contrary to the fundamental conceptions by which the movement in favour of general arbitration has been characterized” (p. 22), and included “the historical development of arbitration treaties”, as well as “the terminology of such treaties” among the factors of which account must be taken in interpreting Article 23 (p. 24).

² See for instance the conventions between Belgium and Greece, signed at Athens on 19th April/2nd May 1905, and ratified on 9th/22nd July 1905 (*British and Foreign State Papers*—subsequently referred to as *B.F.S.P.*—Vol. 98, p. 407); between Chile and Italy, signed at Santiago on 8th August 1913, and ratified on 27th March 1914 (*B.F.S.P.*, Vol. 107, p. 721); between France and Roumania, signed at Paris on 10th June 1926, and ratified on 8th November 1926 (*B.F.S.P.*, Vol. 125, p. 585); and between Austria and Poland, signed at Vienna on 16th April 1926, and ratified on 2nd April 1927 (*ibid.*, p. 169).

Permanent Court of International Justice (1943 edition), "certain types of exclusions were frequently employed and the forms of stating them became more or less standardized". One exception which in particular became standardized was the exception *ratione temporis*. On 6th August 1921, the Netherlands, and on 2nd May 1923, Estonia, accepted the jurisdiction simply "sur tout différend futur". On 25th September 1925, however, Belgium accepted the jurisdiction in a form which, so far as concerns the exception *ratione temporis*, is manifestly based on the formula in the arbitration conventions referred to in paragraph 32 above, to one of which Belgium was a party. The declaration (an instrument of ratification of which was deposited on 10th March 1926) was in the following terms :

"Au nom du Gouvernement belge, je déclare reconnaître comme obligatoire de plein droit et sans convention spéciale, vis-à-vis de tout autre Membre ou État acceptant la même obligation, la juridiction de la Cour, conformément à l'article 36, paragraphe 2, du Statut de la Cour, pour une durée de quinze années, sur tous les différends qui s'élèveraient après la ratification de la présente déclaration au sujet de situations ou de faits postérieurs à cette ratification, sauf les cas où les Parties auraient convenu ou conviendraient d'avoir recours à un autre mode de règlement pacifique."

The German declaration of 23rd September 1927 (instrument of ratification deposited 29th February 1928) used identically the same words. The Spanish declaration of 21st September 1928 was (so far as is material) identical, save that the relevant date was that of signature, not that of ratification. The Latvian declaration of 10th September 1929 (instrument of ratification deposited 26th February 1930), the French declaration of 19th September 1929 (instrument of ratification deposited 25th April 1931), the British Commonwealth declarations of 19th September 1929 (instruments of ratification deposited at various dates between 5th February 1930 and 18th August 1930), the Czechoslovak declaration of 19th September 1929, the Luxembourg declaration of 15th September 1930, and the Albanian declaration of 17th September 1930 (instrument of ratification deposited same day), are (so far as material) identical with the Belgian. The Peruvian declaration of 19th September 1929 (instrument of ratification deposited 29th March 1932) differs materially only by the omission of the words "après la ratification de la présente déclaration" after "s'élèveraient". Indeed, with the exception of Ethiopia and the Netherlands (renewing their earlier declaration), no State which accepted the jurisdiction subject to an exception *ratione temporis* between 1925 and October 1930 used any other form of words. The texts of all these declarations are to be found in the Permanent Court of International Justice, Series D, No. 6, *Collection of Texts governing the jurisdiction of the Court* (fourth edition, 1932) ; moreover, they had all (except the Luxembourg and Albanian) been published prior to October 1930 in the third edition, 1926 (Series D, No. 5), or in the 3rd, 4th, 5th or 6th Annual Reports of the Permanent Court of International Justice. In all these texts the words "postérieurs à cette ratification" or the equivalent words indubitably govern the words "situations ou faits". The reason for such an exception is described in the case of the *Phosphates in Morocco (Preliminary Objections)*, Series A/B, No. 74, in the following words

dealing with the French declaration : "Not only are the terms expressing the limitation *ratione temporis* clear, but the intention which inspired it seems equally clear ; it was inserted with the object of depriving the acceptance of the compulsory jurisdiction of any retroactive effects, in order both to avoid, in general, a revival of old disputes and to preclude the possibility of the submission to the Court by means of an application of situations or facts dating from a period when the State whose action was impugned was not in a position to foresee the legal proceedings to which these facts and situations might give rise" (at p. 24).

34. The Persian declaration of 2nd October 1930 differs from the Belgian and other similar declarations only by the addition of the words "ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse". In all other respects it is identical with the "more or less standardized" form of those declarations. The natural inference is that Persia intended to accept the compulsory jurisdiction subject to the same exceptions as those other countries, save for the additional reservation that the acceptance was limited to disputes "au sujet de situations ou de faits ayant directement ou indirectement trait à l'application des traités ou conventions acceptés par la Perse". The declaration is drafted in the common form, save for the addition of the words quoted ; and it would be an odd result, and one which the Court would strive to avoid, if the effect of the addition of these words was not only to add the further limitation imposed by the additional words themselves, but also to alter the meaning and effect of other words which form part of the common form declaration (namely "postérieurs à cette ratification" or "postérieurs à la ratification de cette déclaration"), by attaching them to "traités ou conventions" instead of to "situations ou faits".

35. Moreover, "it is a fundamental rule in interpreting legal texts that one should not lightly admit that they contain superfluous words : the right course, whenever possible, is to seek for an interpretation which allows a reason and a meaning to every word in the text" (*Light-houses case between France and Greece*, Series A/B, No. 62, p. 31, *per Judge Anzilotti* in a separate opinion).

If the construction now suggested by Iran, namely, taking "postérieurs" as governing "traités ou conventions", is correct, the words "*qui s'élèveraient après la ratification de la présente déclaration*" are completely otiose, and their omission would leave the effect of the sentence quite unchanged, for a dispute concerning a treaty or convention posterior to the ratification of a declaration could not possibly arise or have arisen before such ratification¹. On the other hand, it might reasonably have been thought (as it clearly was thought by the countries whose declaration followed the Belgian formula) that situations or facts, which existed prior to the date of ratification, might before that date *either* have given rise to no dispute at all, but could possibly be made the ground of a new dispute later, *or* have

¹ It is submitted that retention of these words shows almost conclusively that the Government of the United Kingdom's interpretation is the correct one. It is almost inconceivable that they would have been left in if the interpretation suggested in the Iranian telegram to the United Nations is correct.

given rise to a difference which might even have become dormant ; and in both cases it was not desired that the acceptance of the Optional Clause should apply so as to cover a new dispute about old facts or an old dispute about old facts, including an old dispute which might have become dormant. On the interpretation contended for by the United Kingdom Government, therefore, the words "*qui s'élèveraient après la ratification de la présente déclaration*" do serve some purpose.

35A. Further, the reason for the limitation *ratione temporis* is clearly given in the passage (quoted at the end of paragraph 33 above) from the decision of the Permanent Court of International Justice in the case of the *Phosphates in Morocco (Preliminary Objections)*, Series A/B, No. 74. That reason is fully satisfied by the interpretation given by the Government of the United Kingdom. It does not in any way require the interpretation suggested in the Iranian telegram.

36. In addition to the foregoing considerations, which lead towards the interpretation contended for by the Government of the United Kingdom, that Government submits that the Persian declaration accepting the jurisdiction of the Court should be interpreted as if it formed, together with the declaration of the United Kingdom Government, a treaty or international engagement. As Fachiri says, at page 99 of his book on the Permanent Court of International Justice (2nd edition, 1932): "The Optional Clause constitutes an international agreement each party to which contracts with every other to accept the compulsory jurisdiction of the Court as defined by Article 36, paragraph 2, of the Statute." Professor Manley O. Hudson, at page 473 of his book on the Permanent Court of International Justice (1943 edition), says: "The 42 effective declarations were equivalent to 861 bipartite agreements." It has been the practice of the Secretariats both of the League of Nations and of the United Nations to register such declarations and to notify them to other States which have accepted the compulsory jurisdiction. In this dissenting opinion in the case of the *Electricity Company of Sofia and Bulgaria*, Series A/B, No. 77, Judge Urrutia said: "The adherence of the two Parties to Article 36 of the Statute of the Court is equivalent in law to an international agreement between them within the limits fixed by the reservations in the Belgian declaration" (at p. 103). Moreover, in the case of the *Austro-German Customs Régime*, Series A/B, No. 41, the Court said that "from the standpoint of the obligatory character of international engagements, it is well known that such engagements may be taken in the form of treaties, conventions, *declarations*, agreements, protocols, or exchanges of notes" (at p. 47).

It is apparent that declarations accepting the compulsory jurisdiction of the Court are of a consensual nature ; since, therefore, other States which had made such declarations would naturally attribute to the Persian declaration, in view of its close approximation to the common form, the meaning for which the Government of the United Kingdom contends, Iran is precluded from alleging that her declaration has any other meaning.

37. If it is suggested that the declaration, being a document conferring jurisdiction on an international tribunal, must be construed restrictively, the conclusive answers to any such argument are :

(a) That the so-called rule of restrictive interpretation can be resorted to only if all other methods of interpretation have failed (see the case relating to the *Territorial Jurisdiction of the International Commission of the River Oder*, Series A, No. 23, p. 26). In the present case, as has been stated above, there are other methods of interpretation which point to the interpretation contended for by the United Kingdom.

(b) Despite certain dicta of the Permanent Court of International Justice in favour of the so-called principle of restrictive interpretation, the practice of the Permanent Court of International Justice showed a clear tendency in the opposite direction. With the exceptions of the *Phosphates in Morocco (Preliminary Objections)* case (Series A/B, No. 74), in which the wording of the declaration of signature of the Optional Clause left little room for doubt, and of the case of the *Readaptation of the Mavrommatis Jerusalem Concessions (Jurisdiction)* (Series A, No. 11), the Court interpreted jurisdictional clauses so as to assume jurisdiction rather than to deny it. In the *Mavrommatis Palestine Concessions* case it assumed jurisdiction grounded in a treaty which had not yet entered into force at the time when the Application submitting the case to the Court was filed; it did so for the reason that "the Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law". (Series A, No. 2, p. 34.) In the same case the Court gave a wide—not a restrictive—interpretation to the provision which conferred upon it jurisdiction only if negotiations had failed. It considered that abortive negotiations between the private party concerned and the defendant Government could be assimilated to negotiations between the two Governments in question. It expressed the view that "it would be incompatible with the flexibility which should characterize international relations to require the two Governments to reopen a discussion which has in fact already taken place and on which they rely". (Series A, No. 2, p. 15.) In the first phase of the case concerning *Certain German Interests in Polish Upper Silesia*, the Court refused to be hampered "by a mere defect of form"—that defect of form being such that it could be remedied at any time on the part of the plaintiff Government. (Series A, No. 6, p. 14.) In the second phase of that case, the Court went much further in interpreting extensively the clause conferring jurisdiction upon it. It held that jurisdiction given to it in the matter of the interpretation and application of the Convention gave it jurisdiction to decree and assess reparation in respect of the disregard of the obligations of the Convention. As reparation, it considered, was an indispensable complement of a failure to apply a treaty, it was not necessary that jurisdiction in respect of such reparation should be specifically provided for. Only an express provision to the contrary could have excluded that implied jurisdiction of the Court. (Series A, No. 9, p. 23.) In a less drastic manner, but equally by way of implication, the International Court of Justice held in the *Corfu Channel* case that the jurisdiction to determine the question whether there is any duty to pay compensation implied the competence to assess the amount of compensation. The Court held that the jurisdiction to decide what kind of *satisfaction* is due to *Albania* included the jurisdiction to decide the *amount of compensation* due to the *United Kingdom*. (I.C.J. Reports 1949, p. 26.) In giving that interpretation of the Special Agreement, the Court referred to

the ruling of the Permanent Court of International Justice in the *Free Zones* case (Series A, No. 22, p. 13), in which that Court expressed the opinion that "in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects".

There is no trace in all these pronouncements or, what is more important, in the unambiguous instances of assumption of jurisdiction, of any restrictive interpretation of jurisdictional clauses¹. It is not surprising that, in a period during which the Court was declining to adopt restrictive interpretations of jurisdictional clauses, an international arbitrator should have followed the practice of the Court and that he should have preferred expressly to dissociate himself from the view that such clauses must be interpreted restrictively. He said :

"The defendant Government maintains that, in case of doubt as to the meaning of an arbitral clause, the incompetence of the Arbitrator must be presumed, according to the general rule by which a State is not obliged to have recourse to arbitration except when a formal agreement to that effect exists. The Arbitrator cannot agree with this principle of interpretation of arbitral clauses. Such a clause should be interpreted in the same way as other contractual obligations. If analysis of the text and examination of its purpose show that the reasons in favour of the competence of the Arbitrator are more plausible than those which can be shown to the contrary, the former must be adopted." (Undén, Arbitrator, in the case between Greece and Bulgaria concerning the *Interpretation of Article 181 of the Treaty of Neuilly of 1920* (4th November 1931): *American Journal of International Law*, Vol. 28 (1934), p. 760 at p. 773².)

38. If the Court should decide, contrary to the contention of the United Kingdom Government, that the Persian declaration is limited to disputes which directly or indirectly concern the application of treaties or conventions accepted by Persia after 19th September 1932, the Court will recollect that, among the treaties and conventions relied upon by the Government of the United Kingdom (see paragraphs 9-13 of this Annex), there are some which were accepted by Persia after that date, namely :

- (a) the treaties between Persia and Denmark, Switzerland and Turkey respectively, referred to in paragraph 11, sub-paragraphs (d), (e) and (g) above ;
- (b) the Agreement between the Governments of the United Kingdom and Persia to compromise or settle the dispute then current

¹ The opposite is the case—not to mention the numerous cases in which the Court assumed jurisdiction by virtue of the conduct of the parties such as submissions made in a counter-case. See the case of the *Rights of Minorities in Upper Silesia (Minority Schools)* (Series A, No. 15, p. 24). See also the *Mavrommatis Jerusalem Concessions* case (Series A, No. 5, pp. 27-28), where the Court considered that a declaration made by Great Britain in the course of the proceedings was sufficient to invest the Court with jurisdiction on one aspect of the dispute on which it could not otherwise have had jurisdiction to pronounce.

² This paragraph follows rather closely portions of an article by Professor H. Lauterpacht in the *British Year Book of International Law*, 1949, at pp. 65-66.

between them before the Council of the League of Nations upon the conclusion of the 1933 Concession Convention between the Persian Government and the Anglo-Persian Oil Company, Limited, and the Concession Convention itself (see paragraph 9 (c) above).

39. *As to paragraph 38 (a) above*, the present dispute is upon the subject of situations or facts involving directly or indirectly the application of these treaties, since the Government of the United Kingdom is alleging that the conduct of the Iranian Government towards the Anglo-Iranian Oil Company, a British national (out of which the present dispute arose), is a breach of the principles and practice of general international law, which by those treaties Iran promised to observe towards Danish, Swiss and Turkish nationals and which consequently, by the operation of the most-favoured-nation clause in her treaties with the United Kingdom, she became *upon the coming into force of the said treaties* (i.e. on 21st March 1935, 1st July 1935, and some date in June 1937¹, respectively) bound to observe towards British nationals. The dispute concerns the application of those treaties in exactly the same way as the dispute between France and Great Britain over the *Tunis and Morocco Nationality Decrees* (Series B, No. 4) concerned the application of the Franco-Italian Consular Convention of 1896.

40. *As to paragraph 38 (b) above*, it was pointed out in paragraph 28 above that the construction put on the Persian declaration in the Iranian telegram to the United Nations did not affect the applicability of the declaration to the Concession Convention itself or to the implied contractual agreement between the two Governments which the United Kingdom contends came into existence at the same date as the Concession Convention or at the later date when the dispute was removed from the agenda of the Council of the League of Nations. (For the contentions of the Government of the United Kingdom that the Concession Convention had a double character and for the existence of this contractual relation, see paragraphs 6-6B of the Memorial.) There can be no doubt, it is submitted (in the light of the authorities cited in paragraphs 6-6B of this Memorial), that an *obligation of a contractual character* results from a compromise settling an international dispute and from a resolution of the Council of the League accepted by both contesting Governments. The only remaining question is therefore whether the word "*conventions*" in the Persian declaration is limited to formal treaties signed and ratified² or whether it extends to all obligations of a contractual character having the force of a treaty.

The Government of the United Kingdom submits that there is no reason to interpret the word "*conventions*" in any such limited sense. Clearly, it cannot be regarded as limited to instruments which happen to be called treaties and *conventions* as opposed to instruments described as agreements, acts, declarations, protocols, exchanges of notes, etc. Is there any reason to exclude from it other obligations of a contractual (conventional) character? The Government of the United Kingdom submits that there is no such reason. The proper sense of the Persian declar-

¹ See paragraph 11 (g) above.

² (In fact the Concession Convention was signed for the Persian Government and ratified by the Persian Parliament and His Imperial Majesty the Shah.)

ation is that it covered disputes arising out of conventional obligations and not disputes arising purely from acts which could be claimed to be international torts. In aid of such interpretation, the United Kingdom relies on the legal authorities referred to in paragraph 37 above, which support the view that instruments creating jurisdiction are not interpreted restrictively.

41. For all the above reasons, the Government of the United Kingdom contends that the Court has jurisdiction to deal with the merits of the present case.

Appendix No. 1 to Annex 2

TEXT OF THE ESTABLISHMENT CONVENTION CONCLUDED AT TEHRAN
BETWEEN IRAN AND TURKEY ON 14th MARCH 1937.

Convention d'établissement entre l'Empire de l'Iran et la République turque

Sa Majesté impériale le Schahinchah de l'Iran d'une part et le Président de la République turque d'autre part,

Animés du désir de régler les conditions d'établissement des ressortissants iraniens en Turquie et des ressortissants turcs en Iran, ont résolu de conclure, à cet effet, une convention et ont nommé pour leurs plénipotentiaires respectifs,

Sa Majesté impériale le Schahinchah de l'Iran :

Son Excellence Monsieur Enayatollah Samiy, ministre des Affaires étrangères,

Le Président de la République turque :

Son Excellence Monsieur Cemal Hüsnü Taray, ancien ministre, ancien délégué permanent à la Société des Nations, député à la Grande Assemblée nationale ; et

Son Excellence Monsieur Kemal Köprülü, ministre plénipotentiaire,

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit :

ARTICLE 1^{er}

Les ressortissants de chacune des Hautes Parties contractantes seront, sur le territoire de l'autre, reçus et traités, relativement à leurs personnes et à leurs biens, conformément au droit commun international. Ils y jouiront de la plus constante protection des lois et des autorités territoriales pour leurs personnes et leurs biens, droits et intérêts.

Ils auront le droit de s'y établir, de séjourner, d'aller, de venir et de circuler librement, en conformité des lois et règlements en vigueur dans le pays.

Les Hautes Parties contractantes se garantissent, en toutes ces matières, le traitement de la nation la plus favorisée.

Toutefois, en ce qui concerne l'immigration, chacune des Hautes Parties contractantes se réserve toute liberté d'action.

ARTICLE 2

Chacune des Hautes Parties contractantes se réserve le droit d'expulser par mesures individuelles, soit à la suite d'une sentence légale, soit d'après les lois et règlements de police, ainsi que pour des motifs de sûreté intérieure ou extérieure de l'État, dont d'ailleurs elle reste seule juge, les ressortissants de l'autre partie.

L'expulsion sera effectuée dans les conditions conformes à l'hygiène et à l'humanité.

Le transfert des personnes expulsées jusqu'à la frontière ou jusqu'au port d'embarquement de la partie qui prononce l'expulsion sera à la charge de cette dernière. Cette charge sera supportée par les expulsés s'ils sont à même de la couvrir.

ARTICLE 3

Les ressortissants de chacune des Hautes Parties contractantes, tout en se conformant aux lois et règlements du pays, jouiront sur le territoire de l'autre, en ce qui concerne le droit de posséder, d'acquérir, d'aliéner, de louer tous biens meubles et immeubles et d'en disposer de quelque manière que ce soit, du traitement de la nation la plus favorisée.

Ils ne pourront être assujettis dans les cas prévus à l'alinéa précédent à des impôts, taxes ou charges de quelque nature que ce soit, autres ou plus élevés que ceux qui sont ou seront appliqués aux nationaux.

Il leur sera également permis, en se conformant aux lois et règlements du pays, d'exporter librement leurs biens.

Ils ne seront assujettis en cette matière à aucune autre restriction ni à aucun droit autres ou plus élevés que ceux auxquels seraient soumis ou dont seraient redevables, en pareille circonstance, les ressortissants du pays le plus favorisé.

ARTICLE 4

Les ressortissants de chacune des Hautes Parties contractantes auront, sur le territoire de l'autre, aux mêmes conditions que les nationaux, le droit d'exercer toute sorte d'industrie et de commerce et de se vouer à tous métiers et professions quelconques, sauf ceux qui en vertu des lois et règlements locaux sont ou seront réservés aux seuls nationaux ou qui font ou feront l'objet d'un monopole d'État ou concédés par l'État.

ARTICLE 5

Les ressortissants de chacune des Hautes Parties contractantes n'auront à payer, sur le territoire de l'autre, pour leurs personnes et leurs biens, ainsi que pour l'exercice de toute sorte de commerce, industrie, métier et profession, aucun impôt, taxe ou charge, de quelque nature que ce soit, autres ou plus élevés que ceux perçus des nationaux.

Les dispositions de cette convention ne font pas obstacle à la perception, le cas échéant, des taxes afférentes au séjour des étrangers ainsi qu'aux formalités de leur enregistrement. Cette matière sera régie par le traitement de la nation la plus favorisée.

ARTICLE 6

Les ressortissants de chacune des Hautes Parties contractantes ne seront astreints, en temps de paix comme en temps de guerre, sur le

territoire de l'autre, à aucun service militaire, gardes ou milices nationales, ni à aucune contribution, charge ou obligation, soit en argent, soit en nature, destinée à tenir lieu du service militaire personnel.

Les ressortissants et les sociétés des Hautes Parties contractantes ne seront soumis, en temps de paix comme en temps de guerre, à d'autres réquisitions ou prestations que dans les mesures et conditions prescrites pour les nationaux.

La restitution des biens et s'il y a lieu l'indemnisation seront effectuées d'après la législation locale.

Les ressortissants de chacune des Hautes Parties contractantes seront, sur le territoire de l'autre, exempts de tous emprunts forcés.

En cas de calamité provenant des éléments de la nature, les ressortissants de l'une des Parties contractantes pourront être soumis sur le territoire de l'autre, à des prestations de travail.

Les ressortissants ainsi que les sociétés de l'une des Hautes Parties contractantes ne pourront, sur le territoire de l'autre, être expropriés de leurs biens, ni privés même temporairement de la jouissance de leurs biens, que pour une cause d'utilité publique, conformément aux prescriptions de la loi, et moyennant une juste indemnité suivant la procédure établie par la législation du pays.

ARTICLE 7

Les ressortissants et les sociétés de chacune des Hautes Parties contractantes auront, sur le territoire de l'autre, libre accès aux tribunaux aux fins de poursuivre et de défendre leurs droits, sans autres cautions, restrictions ou taxes que celles imposées aux nationaux, et jouiront, comme ceux-ci, de la liberté de choisir dans tous les procès, leurs avocats, avoués ou agents parmi les personnes admises à l'exercice de ces professions selon les lois du territoire en question.

Les ressortissants de chacune des Hautes Parties contractantes jouiront à charge de réciprocité sur le territoire de l'autre de l'assistance judiciaire et de l'exemption de la caution *judicatum solvi*.

ARTICLE 8

Toute société de commerce, y compris les sociétés industrielles, financières, d'assurances et de transport, qui ont leur siège social sur le territoire de l'une des Parties contractantes, qui y existent régulièrement d'après les lois de cette dernière, et qui y sont légalement reconnues comme jouissant de sa nationalité, verront reconnue par l'autre partie leur existence juridique. Lesdites sociétés pourront s'établir sur le territoire de l'autre, y créer des filiales, succursales ou agences en se soumettant aux lois et règlements qui sont ou seront en vigueur, et après avoir obtenu l'autorisation de l'État dans le cas où cette autorisation est exigée par les lois et règlements intérieurs.

L'activité desdites sociétés, en tant qu'elle s'exerce sur le territoire de l'autre Haute Partie contractante, sera soumise aux lois et règlements de celle-ci.

Pour tout ce qui concerne la protection légale et judiciaire de leurs biens, elles jouiront dans le pays d'établissement du même traitement que les sociétés nationales.

Les sociétés de chacune des Hautes Parties contractantes, ainsi que leurs filiales, succursales et agences ne seront pas soumises sur le territoire de l'autre, en ce qui concerne les droits, taxes et impôts, à une charge fiscale autre ou plus élevée que celle supportée par les sociétés nationales de même nature.

Toutefois, en ce qui concerne les impôts calculés sur le capital, le revenu, le chiffre d'affaires et les bénéfices, chacune des Parties contractantes se réserve le droit de taxer les sociétés de l'autre, selon la nature des impôts, sur la partie des capitaux investis sur son territoire et des revenus qui y sont produits, des biens qu'elles y possèdent ou des affaires qu'elles y font.

D'autre part, en se soumettant aux lois et règlements du pays, les sociétés de chacune des Hautes Parties contractantes pourront acquérir, sur le territoire de l'autre, toute espèce de biens meubles et immeubles nécessaires au fonctionnement de la société, mais ne sauraient bénéficier de ce droit les sociétés qui feraient de l'acquisition d'immeubles l'objet même de la société.

Il reste entendu que les dispositions de la présente convention ne sauraient autoriser à réclamer les privilèges spéciaux accordés de part et d'autre, à des sociétés dont les conditions d'activité sont réglées par des concessions spéciales.

D'autre part, les sociétés de l'une des Hautes Parties contractantes dont les conditions d'activité sur le territoire de l'autre sont réglées par des concessions spéciales, n'auront pas le droit, pour les points prévus par l'acte de concession, de réclamer des avantages accordés en vertu des traités et conventions en vigueur, ou découlant du régime de la nation la plus favorisée.

ARTICLE 9

La présente convention sera ratifiée et la ratification en sera communiquée par note à l'autre Partie contractante.

Elle entrera en vigueur 15 jours après la remise de la dernière note et aura une durée de trois ans.

Après l'expiration de ce délai, elle restera en vigueur, tant qu'elle n'aura pas été dénoncée par l'une des Hautes Parties contractantes, et la dénonciation ne produira ses effets que six mois après la date de sa notification.

Les instruments de ratification seront échangés à Ankara, aussitôt que faire se pourra.

En foi de quoi, les plénipotentiaires des Hautes Parties contractantes ont signé la présente convention.

Fait en double exemplaire, en français, à Téhéran, le quatorze mars 1937.

(Signé) SAMIY.

(Signé) CEMAL HÜSNÜ TARAY.
K. KÖPRÜLÜ.

Appendix No. 2 to Annex 2

EXCHANGE OF NOTES, DATED 10th MAY 1928, BETWEEN THE UNITED KINGDOM GOVERNMENT AND THE IMPERIAL PERSIAN GOVERNMENT REGARDING THE POSITION OF BRITISH NATIONALS IN PERSIA AFTER THE ABOLITION OF THE CAPITULATIONS

(i)

Acting Persian Minister for Foreign Affairs to Sir R. Clive

Téhéran, le 10 mai 1928.

M. le Ministre,

En réponse aux demandes adressées et au moment de la réalisation de sa résolution d'abolir le régime connu sous le nom de régime capitulaire, le Gouvernement impérial de Perse, animé du désir de dissiper les inquiétudes qui pourraient naître chez les ressortissants britanniques séjournant en Perse, en raison de la nouveauté du régime qui lui sera désormais appliqué, et désireux de mettre par votre intermédiaire vos ressortissants au courant des dispositions prises par la législation et le Gouvernement persans à leur égard, vous adresse, pour que vous en puissiez transmettre la teneur à vos ressortissants, la présente décision.

Il est inutile de vous dire que le Gouvernement persan lui-même, qui a pour intérêt et qui tient à cœur de procurer le plus de garanties possibles aux citoyens persans et d'avoir à cet effet un appareil judiciaire dont le fonctionnement approche autant que possible de la perfection, a accompli des réformes très appréciables quant au personnel et aux lois judiciaires.

Sans parler des lois qui sont connues de tout le monde, actuellement la possession de connaissances en matière de droit équivalant à celles que consacre le diplôme de licencié en droit, est une condition obligatoire pour l'entrée dans la carrière judiciaire.

Quant à la situation des ressortissants britanniques en Perse découlant des prescriptions des lois persanes, les dispositions suivantes prises par le Gouvernement persan leur seront appliquées à dater du 10 mai 1928 :

1. Sur la base d'une parfaite réciprocité, ils seront admis et traités sur le territoire persan conformément aux règles et pratiques du droit commun international, y jouiront de la plus entière protection des lois et des autorités territoriales et y bénéficieront du même traitement que les nationaux.

2. En tout procès civil ou commercial où une des parties est un ressortissant britannique, seule la preuve écrite sera admise.

En tout procès, même criminel, les jugements seront rédigés par écrit et contiendront les considérants de droit et de fait sur lesquels ils se fondent.

Les intéressés au procès ou les personnes autorisées de leur part auront droit à obtenir copie des témoignages et du jugement, sous condition d'acquitter les taxes réglementaires.

En matière criminelle, le témoignage oral étant un mode normal de preuve, les intérêts des inculpés restent sauvegardés par les articles 215 et 216 du Code pénal frappant le faux témoignage.

3. 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.

Seuls les tribunaux criminels relevant du ministère de la Justice pourront, en général, prononcer des peines d'emprisonnement contre les ressortissants britanniques.

Toutefois, dans le cas d'une proclamation d'état de siège, lorsque l'instruction d'un procès reviendra à un tribunal spécialement formé, ce tribunal pourra aussi connaître des cas où un ressortissant britannique sera prévenu.

De plus, en matière fiscale et en général dans une contestation entre une administration et un ressortissant britannique relative à une matière purement administrative, les tribunaux administratifs conservent leur compétence.

4. Les ressortissants britanniques ne seront en tout cas justiciables que des tribunaux laïques et les lois laïques leur seront seules applicables.

5. Les tribunaux de simple police ne seront compétents que dans les affaires de minime importance et pour des faits n'entraînant qu'une amende légère.

Ils ne pourront prononcer des peines d'emprisonnement, sauf le cas où les ressortissants britanniques demanderaient eux-mêmes de convertir en emprisonnement la peine d'amende qui aura été prononcée contre eux. Conformément à la loi, les tribunaux de simple police ne pourront jamais prononcer un emprisonnement de plus d'une semaine. Il est bien entendu qu'ils ne sont pas autorisés de prononcer des peines corporelles.

6. Un ressortissant britannique arrêté en flagrant délit pour un fait qualifié délit ou crime ne pourra être conservé en prison plus de 24 heures sans être amené devant l'autorité judiciaire compétente.

En dehors des cas de flagrant délit, aucun ressortissant britannique ne sera arrêté ou incarcéré sans un ordre émanant de l'autorité judiciaire compétente.

Ni la maison privée ni la maison de commerce d'un ressortissant britannique ne sera forcée ou perquisitionnée sans un mandat provenant de l'autorité judiciaire compétente avec des garanties à déterminer ultérieurement contre les abus.

7. Les ressortissants britanniques arrêtés et mis en prison auront le droit, conformément aux règlements des prisons, de communiquer avec leurs consuls les plus proches, et les consuls ou leurs représentants auront, en se conformant aux règlements des prisons, la permission de les visiter. Les autorités gouvernementales transmettront de suite à l'adresse telles demandes de communiquer avec eux.

8. Le Gouvernement impérial a pris en vue une généreuse réglementation en ce qui concerne la mise en liberté sous caution, qui sera de rigueur dans tous les cas, excepté en cas de crime (le crime tel qu'il est défini par le Code pénal).

La somme demandée comme cautionnement sera raisonnablement proportionnée au degré de l'infraction.

Lorsqu'une personne condamnée se pourvoira en appel, les mêmes facilités de liberté sous caution mentionnées ci-dessus lui seront accordées jusqu'à ce que le jugement d'appel ait été rendu.

9. Selon la loi persane, les audiences relatives au procès en général, et sauf dans des cas exceptionnels, étant publiques, les intéressés au procès et au sort des parties en cause ont donc le droit, toutefois, de se mêler aux débats.

10. En matière pénale, l'inculpé est absolument libre de choisir son ou ses défenseurs, qui peuvent être choisis même parmi ses compatriotes.

11. Le Gouvernement impérial a décidé d'améliorer les conditions des prisons, afin que ces dernières soient plus conformes aux usages modernes, et une somme d'argent suffisante pour l'aménagement des prisons en Perse remplissant les conditions hygiéniques nécessaires est déjà votée.

En attendant, les ressortissants britanniques qui seront condamnés à un emprisonnement de plus d'un mois — l'emprisonnement d'un mois ou moins étant convertissable en une peine d'amende — sur leur demande seront transférés dans une prison remplissant les conditions hygiéniques nécessaires.

12. La Grande-Bretagne accordant aux ressortissants persans dans l'Empire britannique et les territoires appartenant à Sa Majesté britannique en matière de statut personnel le traitement de la nation la plus favorisée, il est entendu entre la Perse et la Grande-Bretagne qu'en matière de statut personnel, c'est-à-dire pour toutes les questions concernant le mariage et la communauté conjugale, le divorce, la séparation de corps, la dot, la paternité, la filiation, l'adoption, la capacité des personnes, la majorité, la tutelle, la curatelle, l'interdiction ; *en matière mobilière*, le droit de succession testamentaire, ou *ab intestat*, partage et liquidation ; et, en général, le droit de famille, seuls seront compétents vis-à-vis des ressortissants britanniques non musulmans établis ou se trouvant en Perse leurs tribunaux nationaux. Quant aux ressortissants britanniques de la religion musulmane, en matière de statut personnel, les prescriptions des lois religieuses musulmanes, conformément aux codes persans, leur seront appliquées, en attendant que cette question soit définitivement réglée.

La présente disposition ne porte pas atteinte aux attributions spéciales des consuls en matière d'état civil d'après le droit international ou les accords particuliers qui pourront intervenir, non plus qu'aux droits des tribunaux persans de requérir et recevoir les preuves relatives aux questions reconnues ci-dessus comme étant de la compétence des tribunaux des parties en cause.

Par dérogation à l'alinéa 1, les tribunaux persans pourront également être compétents dans les questions visées audit alinéa, si les parties en cause se soumettent par écrit à la juridiction de ces tribunaux, lesquels statueront d'après la loi nationale des parties.

13. En matière d'impôt, les ressortissants britanniques seront traités sur un pied d'égalité avec les ressortissants persans et ne seront pas astreints à acquitter à quelque titre que ce soit des impôts, taxes ou autres redevances fiscales auxquels ne seront pas astreints les ressortissants persans.

14. En matière judiciaire, tous les jugements rendus par les anciens tribunaux, même s'ils n'ont pas été mis à exécution, sont considérés comme définitivement réglés et ne seront en aucun cas susceptibles d'un nouvel examen ; de même, tout jugement définitif rendu par les anciens tribunaux est reconnu exécutoire. En somme, tous les procès achevés sous le régime judiciaire ancien sont considérés comme définitivement réglés et ne sont en aucun cas susceptibles d'être ouverts à nouveau.

Les procès non achevés au tribunal du ministère des Affaires étrangères et aux tribunaux des gouverneurs des provinces seront achevés devant ces tribunaux, à moins que la partie de nationalité étrangère demande, avant la clôture des débats, à transférer le litige aux tribunaux judiciaires.

Le délai accordé par le Gouvernement impérial pour achever les procès non achevés devant lesdits tribunaux est au plus tard jusqu'au 10 mai 1929.

15. Toutes questions relatives à la caution *judicatum solvi*, à l'exécution du jugement, à la communication des actes judiciaires et extrajudiciaires, aux commissions rogatoires, aux condamnations aux frais et dépens, à l'assistance judiciaire gratuite et à la contrainte par corps sont réservées à des conventions à établir entre la Perse et la Grande-Bretagne.

16. Selon la loi persane, tous compromis et clauses compromissaires en matière civile ou commerciale étant permis et les décisions arbitrales ainsi rendues étant exécutoires sur l'ordre du président du tribunal de première instance, qui est tenu de donner cet ordre sauf dans les cas où la décision arbitrale serait contraire à l'ordre public, il est évident que les ressortissants britanniques jouiront entièrement de cette disposition légale.

17. Pour sauvegarder provisoirement des créances de droit civil, on ne pourra ni arrêter ni soumettre à des limitations de liberté individuelle les ressortissants britanniques, sauf dans les cas où l'exécution à opérer sur les avoirs appartenant aux débiteurs et se trouvant en Perse semblerait courir un danger sérieux venant de la part du débiteur et où elle ne pourrait être sauvegardée par aucun autre moyen.

18. En ce qui concerne les biens et droits de nature immobilière, il reste entendu que les ressortissants britanniques sur le territoire persan sont autorisés à acquérir, occuper ou posséder les immeubles nécessaires à leur habitation et à l'exercice de leur commerce et industrie.

Veillez agréer, etc.

(Signé) F. PAKREVAN.

[Translation]

Tehran, 10th May 1928.

M. le Ministre,

In reply to enquiries, and at the moment of the realization of their resolution to abolish the régime known as the capitulatory system, the Imperial Persian Government, animated by the wish to dispel the disquietude which might arise among British nationals resident in Persia, by reason of the novelty of the régime which will henceforth be applied to them, and desirous of keeping your nationals informed through you of the measures taken by Persian legislation and the Persian Government with regard to them, communicates the present decision in order that you may transmit its tenor to your nationals.

It is unnecessary to inform you that the Persian Government themselves, whose interest and earnest desire it is to obtain for Persian citizens as many guarantees as possible, and with this object to have a judicial system the working of which shall be as nearly perfect as possible, have accomplished considerable reforms in the judicial personnel and legislation.

Without mentioning laws which are known to everybody, the possession of knowledge in matters of law equivalent to that required for a legal diploma is at present an essential condition for anyone entering upon a judicial career.

As for the situation of British nationals in Persia resulting from the provisions of Persian law, the following measures taken by the Persian Government will be applied to them as from 10th May 1928 :

1. On the basis of perfect reciprocity, they will be admitted and treated on Persian territory in conformity with the rules and practice of international law, will enjoy the fullest protection of the laws and the authorities of the country and will receive the same treatment as nationals.

2. In all civil or commercial cases in which one of the parties is a British national, only written evidence will be admitted.

In all proceedings, even criminal proceedings, judgments will be reduced to writing and will contain the considerations of law and of fact on which they are founded.

Those interested in the proceedings, or the persons authorized by them, shall have the right to obtain a copy of the evidence and of the judgment, subject to payment of the prescribed charges.

In criminal matters, oral testimony being a normal method of evidence, the interests of the accused will be safeguarded, as at present, by Articles 215 and 216 of the Penal Code dealing with perjury.

3. To the exclusion of all other jurisdiction, only the courts and tribunals subordinate to the Ministry of Justice will be competent to deal with cases in which one of the parties is of British nationality.

Only the criminal tribunals subordinate to the Ministry of Justice will, generally speaking, be able to pronounce sentences of imprisonment on British nationals.

Nevertheless, in the event of the proclamation of state of siege, when a case is brought before a tribunal specially constituted, that tribunal will also be able to take cognizance of cases in which a British national is concerned.

Moreover, in fiscal matters and in general in a dispute between an administration and a British national relating to a purely administrative matter, the administrative tribunals will retain their competence.

4. British nationals will in every case be amenable only to lay (non-religious) tribunals, and lay laws alone will be applicable to them.

5. The ordinary police courts will only be competent in matters of trifling importance and for facts involving only a slight penalty.

They will not be able to order sentence of imprisonment, save in cases where British nationals themselves request that the sentence of a fine imposed on them shall be converted into imprisonment. According to the law, the ordinary police courts will never be able to order more than one week's imprisonment. It is clearly understood that they are not authorized to order corporal punishment.

6. A British national arrested *in flagrante delicto* shall not be kept in prison for more than twenty-four hours without being brought before the competent judicial authority.

Apart from cases of arrest *in flagrante delicto*, no British national will be arrested or imprisoned without a warrant emanating from the competent judicial authority.

Neither the private dwelling-house nor the business premises of a British national will be forcibly entered or searched without a warrant from the competent judicial authority with guarantees, to be determined later, against abuses.

7. British nationals arrested and imprisoned will have the right, in conformity with the prison regulations, to communicate with their nearest consuls, and the consuls or their representatives will have, subject to prison regulations, permission to visit them. Any requests so to communicate will at once be transmitted by the governmental authorities.

8. The Imperial Government has in contemplation generous regulations regarding release on bail, which will be compulsory in all cases, except cases of crime (crime as it is defined in the Penal Code).

The sum demanded as bail will be reasonably proportioned to the nature of the offence.

In cases of appeal, the same facilities of release on bail as those mentioned above will be given until judgment in the appeal has been pronounced.

9. According to Persian law, trials are, in general, and save in exceptional cases, held in public, and those interested in the trials and in the fate of the parties concerned have, therefore, the right to be present, save in exceptional cases, as spectators, without any right, however, to take part in the proceedings.

10. In criminal matters, the accused is absolutely free to choose his counsel, who may be chosen even from his compatriots.

11. The Imperial Government has decided to reform the conditions of the prisons, in order that these may conform to a greater extent to modern custom, and a sum sufficient to provide prisons in Persia which shall fulfil the necessary hygienic conditions has already been voted.

In the meantime, British nationals who may be condemned to imprisonment for more than one month—imprisonment for one month or less being convertible into a fine—shall be transferred at their request to a prison fulfilling the necessary hygienic conditions.

12. Whereas Great Britain accords most-favoured-nation treatment in matters of personal status to Persian nationals in the British Empire and the territories belonging to His Britannic Majesty, it is understood that in matters of personal status, i.e. all questions relating to marriage, conjugal rights, divorce, judicial separation, dower, paternity, affiliation, adoption, capacity, majority, guardianship, trusteeship and interdiction; in matters relating to succession to personalty, whether by will or on intestacy, and the distribution and winding up of estates; and family law in general, it is agreed between Persia and Great Britain that as regards non-Moslem British nationals established or being in Persia their national tribunals will alone have jurisdiction. As regards British nationals of the Moslem religion, the provisions of Moslem religious law, in conformity with the Persian codes, will be applied to them in matters of personal status, until this question has been finally settled.

The present stipulation does not affect the special attributions of consuls in matters of status in accordance with international law or special agreements which may be concluded, nor the right of Persian courts to request and receive evidence respecting matters acknowledged above as being within the competence of the national tribunals of the parties concerned.

By way of exception to the first paragraph, the Persian courts will also have jurisdiction in the matters referred to therein, if the parties concerned submit in writing to the jurisdiction of the said courts. In such case the Persian courts will apply the national law of the parties.

13. In matters of taxation, British nationals will be treated on a footing of equality with Persian nationals and will not be compelled to pay, under any pretext whatever, imposts, taxes or other fiscal dues which Persian nationals are not compelled to pay.

14. In judicial matters, all judgments given by the former tribunals, even if they have not been carried into execution, are considered as finally settled, and shall in no case be subject to fresh enquiry; in the same way, every final judgment given by the former tribunals is recognized as one to be put into execution. In short, all cases concluded under the former judicial régime are considered as finally settled and shall in no case be reopened.

Unfinished cases in the Tribunal of the Ministry for Foreign Affairs and in the courts of provincial Governors shall be finished before those tribunals, unless the foreign national concerned requests before the close of the discussions that the proceedings shall be transferred to the judicial tribunals.

The period allowed by the Imperial Government for the completion of unfinished cases before the said tribunals will not extend beyond the 10th May 1929.

15. All questions relating to security for costs, execution of judgments, service of judicial and extra-judicial documents, commissions rogatoires, orders for the payment of costs and expenses, free judicial assistance and imprisonment for debt are left to be regulated by separate conventions to be concluded between Persia and Great Britain.

16. Seeing that in civil or commercial matters Persian law allows arbitration and clauses in agreements providing therefor, and since arbitral decisions rendered in pursuance thereof shall be executed on order of the president of the Court of First Instance, who is obliged to issue that order unless the arbitral decision should be contrary to public order, it is clear that British nationals will be in complete enjoyment of this legal arrangement.

17. British nationals shall not be arrested or suffer restraint in their individual liberty in order provisionally to safeguard claims of a pecuniary nature, except in cases where any distraint to be made upon a debtor's possessions which are actually in Persia would be liable to be jeopardized by some action on the part of the debtor, and where they could not be safeguarded by any other means.

18. As regards immovable property and rights, it is understood that British nationals are permitted as in the past to acquire, occupy or possess such property on Persian soil as is necessary for their residence and for the exercise of their commerce and industry.

Please accept, etc.

(Signed) F. PAKREVAN.

(ii)

Sir R. Clive to Acting Persian Minister for Foreign Affairs

Téhéran, le 10 mai 1928.

M. le Gérant,

Me référant à la note de Votre Excellence en date du 21 ordibehecht 1306 (le 12 mai 1927), j'ai l'honneur de vous informer que mon gou-

vernement a donné une considération sympathique aux désirs exprimés par le Gouvernement impérial pour la résiliation des privilèges capitulaires dont jusqu'ici les ressortissants britanniques ont bénéficié.

Je prends acte des mesures judiciaires dont Votre Excellence a bien voulu me faire part dans votre lettre du 10 mai et vous informe que mon gouvernement compte absolument sur le fait que le Gouvernement impérial assurera sous le nouveau régime complète et adéquate protection aux ressortissants britanniques ainsi qu'à leurs droits et à leurs propriétés.

Je prends note que le Gouvernement impérial accorde un délai d'une année au tribunal du ministère des Affaires étrangères et aux tribunaux des gouverneurs pour que les affaires inachevées dans ces tribunaux y soient achevées. Je viens donc prier le Gouvernement impérial de bien vouloir accorder le même délai aux tribunaux consulaires britanniques afin que ces derniers puissent achever les affaires entre les ressortissants britanniques qu'ils n'ont pas pu conclure jusqu'aujourd'hui.

Je saisis, etc.

(Signé) R. H. CLIVE.

[Translation]

Tehran, 10th May 1928.

M. le Gérant,

With reference to Your Excellency's note dated the 21st Ordibehecht 1306 (the 12th May 1927), I have the honour to inform you that my Government have given sympathetic consideration to the wishes expressed by the Imperial Government for the cancellation of the capitulatory privileges by which British nationals have hitherto benefited.

I take note of the judicial measures which Your Excellency has been kind enough to communicate to me in your letter of the 10th May, and beg to inform you that my Government rely absolutely on the fact that the Imperial Government will ensure under the new régime complete and adequate protection to British nationals, their rights and their properties.

I note that the Imperial Government allow a period of one year to the Tribunal of the Ministry for Foreign Affairs and the Governors' courts in order that unfinished business in these tribunals may be completed. I now therefore request the Imperial Government to be so good as to allow the same period to the British consular courts in order that these may finish the cases between British nationals which they have not up to the present been able to complete.

I avail, etc.

(Signed) R. H. CLIVE.

(iii)

Acting Persian Minister for Foreign Affairs to Sir R. Clive

M. le Ministre,

Téhéran, le 10 mai 1928.

J'ai l'honneur de vous accuser réception de votre lettre en date du 10 mai courant.

Le Gouvernement de Sa Majesté britannique pourra être assuré que le nouveau régime judiciaire en Perse pourvoira une protection complète dans tous les sens aux ressortissants de l'Empire britannique.

En conformité avec le désir que vous m'avez exprimé au nom de votre gouvernement, le Gouvernement impérial accorde aux tribunaux consulaires britanniques un délai d'une année afin que les affaires des ressortissants britanniques qui y restent inachevées aujourd'hui puissent y être conclues.

Je saisis, etc.

(Signé) F. PAKREVAN.

[Translation]

M. le Ministre,

Tehran, 10th May 1928.

I have the honour to acknowledge the receipt of your letter of the 10th May.

His Britannic Majesty's Government can be assured that the new judicial régime in Persia will provide complete protection in all respects to the nationals of the British Empire.

In accordance with the wish which you have expressed to me in the name of your Government, the Imperial Government will allow to the British consular courts a period of one year for the completion in those courts of the unfinished cases of British nationals.

I avail, etc.

(Signed) F. PAKREVAN.

Annex 3

STATEMENT OF RELEVANT FACTS UP TO 1st MAY 1951

Introduction

Prior to 1935, Iran was known as Persia. In that year His Imperial Majesty the Shah asked the governments and press of foreign countries to employ the names "Iran" and "Iranian" instead of "Persia" and "Persian". The name of the Anglo-Persian Oil Company was accordingly altered to the Anglo-Iranian Oil Company. In this Annex, in dealing with events prior to 1935, His Imperial Majesty the Shah of Iran and the Imperial Iranian Government are referred to by the titles by which they were then known, namely His Imperial Majesty the Shah of Persia and the Imperial Persian Government. In the pre-1935 period the country itself is generally referred to as Persia.

I. Iran covers an area of 628,000 square miles. It is bounded on the north by Russia and the Caspian Sea, on the west by Turkey and Iraq, on the south-west and south by the Persian Gulf and Indian Ocean, and

on the east by Pakistan and Afghanistan. It is in the main mountainous country, being traversed by two mountain ranges, the Elburz in the north and the Zagros along the western and south-western borders; between these ranges lies the central plateau, which is from 2,000 to 6,000 feet above sea level and is largely desert. Khuzistan, the province in south-west Iran where the main operational areas of the Anglo-Iranian Oil Company are situated, was formerly a very productive and relatively thickly populated province; but the decay of the ancient irrigation system in the Middle Ages (11th to 16th centuries) through wars and neglect brought about a serious decline in its fortunes. It became for the most part desert and (save for a few small settlements) occupied only by nomadic tribesmen. Its climate in the summer is extremely hot, the sun temperatures reaching 170 degrees Fahrenheit. The land on which Abadan is built is alluvial and contains about 100 tons of salt to the acre; unless treated to remove the salt it will not support vegetation.

2. A map of Iran, showing the more important of the places mentioned in this Memorial (and in particular in this Annex), is attached to this Annex as Appendix No. 1.

3. For several thousand years before the beginning of the present century the inhabitants of Persia and neighbouring countries collected by primitive methods oil and bitumen from seepages. A description of the methods employed at Arderikka near Sousa (which was in what is now Khuzistan) is to be found in the sixth book of Herodotus at Chapter 119. The oil so obtained was used as fuel for lamps and as a medicament for the cure of such things as mange in camels. Bitumen was used in place of mortar in building and also as a setting for jewels. In ancient times temples were built over places where petroleum gas was escaping from vents in the ground and the jet was used to feed a perpetual flame at the summit in honour of God, whose nature was symbolized in the Zoroastrian religion by fire.

4. No steps were, however, taken to discover whether oil existed in sufficient quantities to justify commercial exploitation until the nineteenth century. In 1872 Baron Julius de Reuter obtained a concession from the Persian Government covering the whole country, which gave him the exclusive right (1) to form a bank, and (2) to prospect for and exploit certain minerals, including oil. Owing to pressure by Russia, the Persian Government, in 1873, cancelled this concession and confiscated the £40,000 which de Reuter had lodged with it in token of good faith. In 1884 the firm of Hotz and Company of Bushire, having obtained permission from the Persian Government, drilled a shallow well near the oil springs or seepages of Daliki, but found no oil. In 1889 Baron de Reuter obtained a second concession from the Persian Government. The concession, which was valid for 60 years, gave him the right to form a bank and the exclusive right to explore for and exploit certain minerals, including oil. The Persian Government was to get 16 per cent. of the net profits. On the strength of this concession, the Imperial Bank of Persia (now the British Bank of Iran) was formed and a concern known as the Persian Bank Mining Rights Corporation (a United Kingdom corporation) was formed to work the minerals. The Corporation drilled two unsuccessful wells at Daliki, near Bushire in the province of Fars, and another on Qishm Island in the Persian Gulf. In 1899 the Persian Government stated that the Corporation's mineral rights were no longer valid,

and in 1901 it went into liquidation. In 1901 the only oil produced in Persia was from pits sunk near oil seepages near Shushtar in Khuzistan, near Qasr-i-Shirin in western Persia and at Daliki. The method of production was primitive and the yield meagre.

The D'Arcy Concession

5. In 1901 Mr. William Knox D'Arcy, a British subject, impressed by the conclusions reached by a French archæologist and geologist named de Morgan in an article in the Paris periodical *Annales des Mines* in February 1892 on the oil deposits in the western part of Persia, decided to seek a concession from the Imperial Government of Persia. After negotiations in Tehran, an Agreement between the Government of His Imperial Majesty the Shah of Persia of the one part and Mr. D'Arcy of the other part, was signed on 28th May 1901 by His Imperial Majesty the Shah; the Agreement was also sealed by the Prime Minister of Persia, and the Minister of Foreign Affairs. A copy of the Agreement (which will be referred to hereafter in this Annex as the D'Arcy Concession) is attached hereto as Appendix No. 2.

6. By Article 1 of this Agreement, the Government of His Imperial Majesty the Shah granted to the concessionaire, Mr. D'Arcy, the special and exclusive right to search for, obtain, exploit, develop, render suitable for trade, carry away and sell natural gas, petroleum, asphalt and ozokerite throughout *the whole extent of the Persian Empire* for a period of 60 years from the date of signature of the Agreement, i.e. *up to 28th May 1961*. By Article 6 it was provided that the rights conferred by the Agreement should not extend to the provinces of Azarbaijan, Gilan, Mazandaran, Astarabad and Khorassan (which lie in the northern part of Iran), but this provision was expressed to be subject to the condition that the Imperial Persian Government would not grant to any other persons the right to construct a pipeline to the southern rivers or to the south coast of Persia.

7. By Article 2 of the Agreement there was conferred on the concessionaire the exclusive right of installing the necessary pipelines from the deposits where one or more of the specified products may have been found to the Persian Gulf.

8. By Article 7 of the Agreement it was provided that for the duration of the concession all land granted to the concessionaire by the Agreement or acquired by him in the manner provided thereby, and all the products exported from Persia, should be free from all imposts and taxes; and that all the material and apparatus required for the prospecting, exploitation and development of the deposits, and for the construction and development of the pipelines should enter Persia free of all taxes and customs duties.

9. By Articles 8, 9, 10 and 16 of the Agreement certain obligations were imposed on the concessionaire. By Article 9 the concessionaire was authorized to constitute one or more companies for the exploitation of the concession, and it was provided that the company or companies so formed should enjoy all the rights and privileges conferred, and should be subject to all the obligations and liabilities imposed on the concessionaire by the Agreement. Article 16 provided that if, after the lapse of two years from the date of signature of the Agreement, the concessionaire had not formed the first of such companies, the concession should be null and void. In conformity with these two Articles, the concession-

naire formed a company named the "First Exploitation Company", a company incorporated under the law of England, which was registered on 21st May 1903. This brought into play Article 10 of the Agreement, which provided that it should be stipulated in the contract between the concessionnaire and the Company that the latter should, within the term of one month as from the date of the formation of the first exploitation company, pay the Imperial Persian Government the sum of £20,000 sterling in cash and an additional sum of £20,000 sterling in paid-up shares of the first company. The Company should also pay the Government annually a sum equal to 16 per cent of the annual net profits of any company or companies that might be formed in accordance with Article 9 of the Agreement. It will thus be seen that the royalty payments to which the Imperial Government of Persia was entitled were related to profits rather than to production and that, as a result, although the Government might (and did) fare very well in good years, it had no guaranteed income in bad years. (See paragraph 41 below.)

10. Article 8 of the Agreement required the concessionnaire to dispatch at once to Persia at his own expense one or more experts to survey the regions where the specified products were believed to exist, and, in the event that the experts' report seemed to him to be satisfactory, to dispatch immediately to Persia at his own expense the necessary technical personnel, machinery and equipment to sink wells and to ascertain the value of the property. Even before the Agreement had been signed, a geologist dispatched to Persia by Mr. D'Arcy had started to examine certain areas in the south-west and west of the country. In consequence of his report, it was decided to drill at a place called Chiah Surkh, near the present Naft-i-Shah oilfield, some 300 miles north-west of the head of the Persian Gulf; owing to boundary adjustments Chiah Surkh is now in Iraq. Owing largely to transport difficulties due to the absence of roads, drilling operations did not begin until December 1902. Eighteen months later, after very heavy expenditure had been incurred and oil in small quantities had been struck, the drilling at Chiah Surkh was discontinued, since the oil struck was insufficient in quantity to justify the heavy expense of constructing a pipe-line to seaboard. Drilling was then begun in south-west Persia, near the present Haft Kel oilfields, but these operations proved unsuccessful. The next place selected was Maidan-i-Naftun in the hills of Khuzistan, on the site of the oilfield now known as Masjid-i-Sulaiman; there, after immense difficulties had been surmounted and further considerable sums expended, oil was struck in large quantities on 26th May 1908; further successful wells were drilled in the vicinity, and it was evident that a large and important oilfield had been discovered.

11. It will be apparent from the foregoing that the concession granted in 1901 involved the concessionnaire initially in the expenditure of considerable sums of money, running into hundreds of thousands of pounds, with no certainty of any commensurate return, or indeed of any return. There was no certainty, until oil was struck in 1908, that petroleum existed below the soil of Persia in sufficiently large quantities to justify commercial exploitation. Repeated experiments were necessary in numerous places before oil was found in quantity. Owing to the nature of the terrain, and the undeveloped state of the country, each experiment was difficult and costly. Large amounts of capital were therefore required, and the risk to be borne by those providing the capital was

considerable. It is to be noted that the Imperial Government of Persia provided none of the capital and bore none of the risks, although (as will be seen) in the event of success it was assured of a considerable revenue.

12. After the discovery at Maidan-i-Naftun (see paragraph 10 above), Mr. D'Arcy and his associates, in conformity with Article 9 of the Agreement, formed a further Company, called the Anglo-Persian Oil Company, a company incorporated under the law of England, which was registered on 14th April 1909, with its registered offices in London, and the rights and obligations under the D'Arcy Concession were transferred to this Company. The Company immediately began the construction of a refinery at Abadan and of a pipeline from Maidan-i-Naftun to Abadan: in 1912 production on a commercial scale began, and Persian oil began to flow out into the markets of the world.

Development 1912-1930

13. Under Article 10 of the D'Arcy Concession, the Imperial Persian Government was to receive annually a sum equal to 16 per cent. of the net profits of all the companies formed in conformity with Article 9 (see paragraph 9 above). For the years 1913-1919 (31st March) the total sum paid by way of royalty was £1,325,552; for the following years the figures were:

1st April 1919-31st March 1920 . . .	£ 468,718
1st April 1920-31st March 1921 . . .	585,290
1st April 1921-31st March 1922 . . .	593,429
1st April 1922-31st March 1923 . . .	533,251
1st April 1923-31st March 1924 . . .	411,322
1st April 1924-31st March 1925 . . .	830,754
1st April 1925-31st March 1926 . . .	1,053,929
1st April 1926-31st March 1927 . . .	1,400,269
1st April 1927-31st March 1928 . . .	502,080
1st April 1928-31st December 1928 . .	529,085 (9 months only)
1st January 1929-31st December 1929 .	1,436,764
1st January 1930-31st December 1930 .	1,288,312'

With regard to the above figures, it should be noted that the level of world prices fell considerably in 1927-1928 and that it was not until 1929 that more stable prices were achieved; this had a material effect on the Company's profits for those years and therefore on the royalties payable to the Imperial Persian Government.

14. In 1914 the Government of the United Kingdom acquired a considerable interest in the Anglo-Persian Oil Company, but, as is stated in the Memorial and in Annex 2, it is not as a shareholder in that Company (now the Anglo-Iranian Oil Company) that the Government of the United Kingdom is making the present application to the International Court of Justice.

15. During the period from 1912 to 1930, a steady but nevertheless considerable expansion of the Company's activities took place, and equally considerable sums of capital were needed for the purpose. The original Maidan-i-Naftun oilfield (renamed Masjid-i-Sulaiman in 1926) increased its production from 43,084 tons in 1912 to 1,106,415 tons in 1919; in 1926 it produced 4,556,157 tons. In 1928 a second field of even

greater richness and extent was proved at Haft Kel, some 50 miles to the south-east; in 1929 a pipeline was constructed from this field to join the main pipeline from Masjid-i-Sulaiman to Abadan near Ahwaz. The following table shows the growth of production in the whole concessional area year by year:

	<i>Long tons</i>		<i>Long tons</i>
1912 . . .	43,084	1922 . . .	2,327,221
1913 . . .	80,800	1923 . . .	2,959,028
1914 . . .	273,635	1924 . . .	3,714,216
1915 . . .	375,977	1925 . . .	4,333,933
1916 . . .	449,394	1926 . . .	4,556,157
1917 . . .	644,074	1927 . . .	4,831,800
1918 . . .	897,402	1928 . . .	5,357,800
1919 . . .	1,106,415	1929 . . .	5,460,955
1920 . . .	1,385,301	1930 . . .	5,939,302
1921 . . .	1,743,557		

During the same period, the capacity of the Abadan refinery was increased from 120,000 tons of annual capacity in 1913, to 1,000,000 tons in 1918, to 3,000,000 tons in 1925 and to 5,000,000 tons by 1930. In addition, fuel oil bunkering stations were built in the chief ports of the world, the tanker fleet of the British Tanker Company was created (the Company itself—a subsidiary of the Anglo-Persian Oil Company—was incorporated in 1915) and a world-wide marketing and distributing organization was set up. The deadweight tonnage of the shipping owned by the British Tanker Company, which was 101,288 tons (14 ships) in 1918, increased to 797,659 tons (82 ships) in 1932.

16. In all, during the years 1909 to 1930 the Company's capital expenditure in Persia on fixed assets from year to year amounted to £18,000,000, a sum which in terms of the present value of money is equivalent to a very much larger figure. In addition, during this period over £5,000,000 was expended on drilling and testing new areas in Persia, and considerable sums were spent on mobile assets for operations in Persia (mechanical transport, aircraft, drilling tools, service plant, etc.). These large sums were drawn partly from the proceeds of debenture and new share issues (subscribed for by persons of many nationalities, including the Government of the United Kingdom, but not by the Imperial Persian Government) and partly from earnings and reserves, including those derived from the operations of the Company outside Persia.

The Armitage-Smith Agreement

17. From time to time, differences of opinion arose between the Imperial Persian Government and the Anglo-Persian Oil Company, principally as to the meaning of the phrase "net profits" in Article 10 of the D'Arcy Concession. The inexact wording of the Concession Agreement laid open the way to differences of interpretation and to disagreements as to the sums payable by way of royalty thereunder. In addition, during the 1914-1918 war a dispute had arisen as to the application to certain events which had occurred of Article 14 of the D'Arcy Concession (which had imposed upon the Imperial Persian Government the duty to take all necessary measures to secure the safety of the plant necessary for the carrying out of the concession), and there was out-

standing a large claim by the Company against which the Company had withheld part of the royalty payments. In view of the settlement described in the next paragraph, it is unnecessary to enter into detail of this ancient dispute.

18. In 1919 and 1920 negotiations were conducted between the Company and the Imperial Persian Government. Finally, Mr. (later Sir Sydney) Armitage-Smith, who had in 1919 been appointed Financial Adviser to the Imperial Persian Government, was appointed, by a letter to him dated 29th August 1920, from the Under-Secretary of the Persian Ministry of Finance (attached hereto as Appendix No. 3), "representative of the Imperial Government to finally adjust all questions in dispute between the Anglo-Persian Oil Company and the Imperial Government of Persia", and on 22nd December 1920, an Agreement (attached hereto as Appendix No. 4) was signed between the Company and Sir S. Armitage-Smith as representative of the Imperial Persian Government. These negotiations were not in any way directed towards the modification of the D'Arcy Concession, but solely towards a definition of the basis on which the Company's profits were to be calculated for the future in determining the sum payable by way of royalty under Article 10 of that concession. The Agreement defined such basis, and provided *inter alia* that the royalty figure and the figures on which it was based might each year be checked on behalf of the Imperial Persian Government by a firm of chartered accountants in England. On the same day, a collateral agreement was signed under which the Company agreed to pay £1,000,000 in settlement of all outstanding questions between the Imperial Persian Government and the Company, including such royalties as were unpaid up to 31st March 1919.

19. The Agreement of 22nd December 1920 was at a later date challenged by the Imperial Persian Government on the grounds that Sir S. Armitage-Smith had exceeded his authority, and that the Agreement had never been ratified by the Majlis. In this connection it is pertinent to observe

- (1) that the first occasion on which the Imperial Persian Government challenged the Agreement was in April 1928 ;
- (2) of the £1,000,000 payable under the collateral agreement, £192,000 was paid by the Company in May 1920 and the balance of £808,000 was paid on the signature of the collateral agreement and accepted by the Imperial Persian Government ;
- (3) royalties determined by reference to "net profits" calculated on the basis laid down in the Agreement were paid in each of the years 1919-1920 to 1930 and were accepted by the Imperial Persian Government ;
- (4) chartered accountants appointed by the Imperial Persian Government in each of those years examined the royalty figure and the figures on which it was based, as provided by the Agreement ;
- (5) it is in any case doubtful whether under Persian law ratification by the Majlis was necessary, since the Agreement was not for the grant or modification of a concession.

Subsequent negotiations

20. Despite the clarification effected by the Armitage-Smith Agreement, from 1926 onwards further disputes arose on the subject of

royalties, and the suggestion was made by both the Company and the Government that the concession should be revised. As early as 1928, Sir John Cadman, for the Company, suggested to His Excellency Teymourtache, the Minister of Court to His Imperial Majesty the Shah, that an extension of the concession period would be necessary if the requisite capital was to be obtained, and Sir John Cadman and His Excellency Teymourtache agreed that it might be possible to exchange the D'Arcy Concession for a new one with a longer term but covering a reduced area. Discussions on the subject of a new concession were carried on with intermissions throughout 1929 and 1930, but finally came to an end in 1931, since the demands of the Persian Government were greatly in excess of anything which the Company could accept.

21. In November 1931, more limited negotiations were opened for a modification of Article 10 of the concession relating to the basis on which "net profits" were to be ascertained. In 1932, a preliminary agreement on principles was concluded between His Excellency Teymourtache, the Minister of Court to His Imperial Majesty the Shah, and the Company, and was approved by the Council of Ministers in February 1932. This agreement was provisional and was referred to lawyers and accountants representing the Imperial Persian Government and the Company respectively, to draft a final agreement. A formal draft royalty agreement was accordingly drafted and was initialled for the Imperial Persian Government by their authorized representative, His Excellency Mirza Eissa Khan, and for the Company. The draft agreement was sent to Tehran for ratification and arrived there on 29th May 1932, but was never ratified by the Majlis.

Cancellation of the D'Arcy Concession

22. In the year 1931, as a result of the economic depression which had set in in 1929 and which had affected practically every country in the world, the prices obtainable for oil were very much reduced. The Gulf of Mexico f.o.b. quotations for motor spirit fell from the equivalent of £6 15s. 2d. per ton in 1930 to £3 18s. 5d. in 1931, and the quotations for other petroleum products suffered a similar fall. By reason of this fall in prices, although the Company's production in 1931 fell by only 3.18 per cent below that for 1930 (as compared with a fall of 3.25 per cent in world production), and although sales were well maintained, the Company's net profits for 1931, like those of other oil companies, were much reduced. (The Standard Oil Company of New York made a loss of \$47,000,000.) Consequently, the sum payable to the Imperial Persian Government by way of royalty was much smaller than that for the preceding year. On 3rd June 1932, the Company's accounts were completed, and it became known that the royalty payment for 1931 would be only £306,872 as compared with £1,288,312 for 1930. The Imperial Government protested to the Resident Director of the Company at the smallness of the figure, and on 29th June refused to accept the royalty calculated on the existing basis. The Imperial Government had not exercised its right to have the 1931 royalty figure and the figures on which it was based checked by chartered accountants in London.

23. During the month of June 1932, the Imperial Persian Government indicated to the Company its view that the draft royalty agreement referred to in paragraph 21 above required further interpretation and redrafting, and asked that the Company should send its experts to

Tehran for conversations. The Company replied that this was unfortunately impossible and suggested talks in London. The Imperial Government then indicated, on 7th July, that it had new proposals to submit; on 16th November, the Company was informed that the new proposals were nearly ready. These proposals were never in fact submitted. Instead, on 27th November the Persian Minister of Finance addressed to the Resident Director of the Company a letter, a copy of which is attached hereto as Appendix No. 5, notifying the Company that the Imperial Government had cancelled the D'Arcy Concession and would consider it void. The letter went on to say that "should the Company be prepared, contrary to the past, to safeguard Persian interests, in accordance with the views of the Imperial Persian Government, on the basis of equity and justice, with the necessary security for safeguarding those interests, the Imperial Persian Government will not in principle refuse to grant a new concession to that Company". The decision to annul the D'Arcy Concession was formally approved and confirmed by the Majlis on 1st December 1932.

24. On 29th November 1932, the Resident Director replied to the letter, stating that the Company did not recognize the right of the Imperial Persian Government to cancel the concession (Appendix No. 6). On 1st December, the Minister of Finance replied (Appendix No. 7). On 2nd December, His Britannic Majesty's Minister in Tehran presented a note to the Imperial Persian Government from the Government of the United Kingdom, in which the latter Government, in the exercise of its right to protect a British national when injured by acts contrary to international law committed by another State, and to ensure in the person of its nationals respect for the rules of international law, protested and demanded the withdrawal of the Persian note which purported to cancel the concession (Appendix No. 8). On 3rd December, the Imperial Persian Government replied (Appendix No. 9). On 8th December, the Government of the United Kingdom addressed a further note to the Imperial Persian Government intimating that, unless the Persian note were withdrawn by 15th December, the Government of the United Kingdom would refer the dispute to the Permanent Court of International Justice (Appendix No. 10). On 12th December, the Imperial Persian Government replied disputing the jurisdiction of the Court (Appendix No. 11).

Proceedings before the Council of the League

25. Upon receipt of the note of 12th December, the Government of the United Kingdom, in view of the fact that in accepting the compulsory jurisdiction of the Permanent Court of International Justice the Imperial Persian Government had reserved the right to demand the suspension of proceedings before the Court in the case of a dispute which had been referred to the Council of the League of Nations, decided to refer the dispute to the Council under Article 15 of the Covenant. Accordingly, on 14th December 1932, by letter and telegram, the Government of the United Kingdom requested that, a dispute having arisen between the Government of the United Kingdom and the Imperial Persian Government in consequence of the Imperial Persian Government's action in purporting to cancel the Concession Agreement between the Imperial Persian Government and the Anglo-Persian Oil Company, a British company, and the Government of the United Kingdom being of opinion that the dispute was

likely to lead to a rupture, the matter should be submitted to the Council of the League of Nations in accordance with the terms of Article 15 of the Covenant of the League. (The letter and telegram are printed in the *League of Nations Official Journal*, 13th Year (December 1932), at pp. 2296-2297, Annexes 1419 and 1419A, and are attached hereto as Appendices 12 and 13.)

26. On 19th December, the Government of the United Kingdom submitted to the Council a memorandum setting out its case, which is printed at pp. 2298-2308 of the same volume of the *League of Nations Official Journal*, as Annex 1419C. On the same day, an extraordinary meeting of the Council was held, and the Council placed the question on the agenda for its next ordinary session, which was to start on 23rd January 1933; the proceedings are reported in the same volume at page 1987. On 18th January 1933, the Imperial Persian Government submitted to the Council a memorandum in reply to that submitted by the Government of the United Kingdom, which is printed in the *League of Nations Official Journal*, 14th Year (February 1933), at pages 289-303, Annex 1422B. On 24th January 1933, the Council, at the first meeting of its ordinary session, invited M. Beneš of Czechoslovakia to act as Rapporteur. On 26th January, at the third meeting of the session, the cases for the Government of the United Kingdom and the Imperial Persian Government respectively were presented orally to the Council by Sir John Simon and His Excellency M. Davar; the speeches are reported in the same volume at pages 197-211.

27. Following upon this meeting, strenuous efforts were made by the Rapporteur to discover some means of resolving the dispute.

28. On 3rd February, at the sixth meeting of the Council, the Rapporteur announced that the two Parties to the dispute, the Government of the United Kingdom and the Imperial Persian Government, had come to a provisional agreement in the following terms:

- “(1) 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.
- “(2) The two Parties agree that the Company should immediately enter into negotiations with the Persian Government, the respective legal points of view being entirely reserved.
- “(3) The two Parties agree that the legal standpoint of each of them, as stated before the Council in their memoranda and in their verbal statements, remains entirely reserved. 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.
- “(4) In accordance with the assurance given by the Persian Government in its telegram of 19th December 1932 to the President of the Council, it is understood that while negotiations are proceeding and until the final settlement of the question, the work and operations of the Company in Persia will continue to be carried on as they were carried on before 27th November 1932.”

29. The representatives at the Council of the Government of the United Kingdom and the Imperial Persian Government having indicated that they accepted the above agreement, the Council proceeded to pass a Resolution in the following terms:

“The Council,

Having had referred to it the dispute between His Majesty's Government in the United Kingdom and the Imperial Persian Government :

- (1) Takes note of the cases put before it by the two Parties concerned and reserves the right to study them.
- (2) Appreciates the wisdom for (*sic*) the two Parties to the dispute in refraining from any steps likely to aggravate the situation.
- (3) Approves the present report together with the conclusions of the provisional agreement to which the conversations between the Rapporteur and the two Parties have led.”

(The proceedings are reported in the same volume of the *League of Nations Official Journal* at pp. 252-253.)

30. It will be noted that the agreement of the Government of the United Kingdom to the suspension of the proceedings before the Council was conditional on the institution of negotiations between the Imperial Persian Government and the Company for a new concession ; that the Council remained seised of the dispute which had been referred to the Council by the Government of the United Kingdom under Article 15 ; and that in the event of the negotiations proving fruitless the Council would have further to consider the dispute. It is plain that it was only upon the conclusion of a new concession satisfactory to the Company that the Government of the United Kingdom was prepared to regard the dispute between the Government of the United Kingdom and the Imperial Persian Government as settled.

31. It was the original intention of the Rapporteur that negotiations should take place initially in a neutral capital, probably Prague, where he himself would be accessible to both Parties and available to act in a mediating rôle, and should not be transferred to London or Tehran until agreement on principles had been reached ; both the Imperial Persian Government and the Government of the United Kingdom had agreed to this. Discussions in fact started in Geneva on 4th February and were continued in Paris on 10th and 11th February between Their Excellencies Messieurs Davar and Hussein Ala representing the Imperial Persian Government and representatives of the Company, but they proved inconclusive owing to the vagueness of the Persian proposals. Later in the month, the Government of the United Kingdom and the Company agreed that the negotiations should be continued in Tehran, but on the understanding that the negotiations should continue to be carried on within the framework of the arrangement approved by the Council of the League, and that the Rapporteur should continue to exercise supervision over the negotiations and that either Party could have recourse to him. In two letters addressed to His Excellency M. Davar on 17th and 24th February (which are attached hereto as Appendices 14 and 15), M. Beneš confirmed that he conceived it to be his duty to remain in contact with the Parties, and to keep himself informed of the progress of the negotiations and to follow their course up to the moment when a definitive settlement was reached. He intimated that, though maintaining his view that the negotiations should not be transferred to London or Tehran until principles had been agreed, he would not

object to an earlier transfer if (1) the Company were willing to go to Tehran or the Persian Government to London, (2) the two Parties would continue to proceed in such a way as to be able to be in contact with him as Rapporteur, both to inform him periodically of the progress of the negotiations and if need arose to seek his interpretation of the provisional agreement.

The 1933 Concession Convention

32. On 4th April 1933, discussions began in Tehran between representatives of the Imperial Persian Government, headed by His Excellency Taqizadeh, Minister of Finance, and representatives of the Company, headed in the first instance by Mr. (later Sir) William Fraser (Deputy-Chairman). After considerable discussion between the representatives of the Imperial Persian Government and of the Company, in which His Imperial Majesty the Shah and Sir John (later Lord) Cadman (Chairman of the Company) took part in the later stages, a Convention was signed on 29th April. A copy of this Convention (which was made in the French language), containing also an English translation prepared for the use of the Company, is attached hereto as Appendix 16; it is also printed in the *League of Nations Official Journal*, 14th Year (December 1933), at pages 1653 to 1660, and was filed as Annex A to the Application of 26th May 1951 instituting proceedings in this case.

33. On 26th May 1933, M. Beneš, the Rapporteur, reported to the Council of the League of Nations the conclusion of an agreement for a new concession between the Imperial Persian Government and the Company, and informed the Council that, having got into touch with the two Parties to the dispute, the Government of the United Kingdom and the Imperial Persian Government, he had found that, as a result of the signature of the new concession, the dispute between the two Governments might be regarded as virtually settled. (*League of Nations Official Journal*, 14th Year, p. 827.) The Persian representative, M. Sepahbodi, informed the Council that the difficulties between his Government and the Company had been definitely settled, but M. Beneš asked leave to submit a further report at the next ordinary session of the Council on the complete and final liquidation of the dispute. Accordingly, on 12th October he reported that he had been informed by the Persian Government that the Persian Parliament had ratified the new concession to the Anglo-Persian Oil Company, and he appended a copy of the text of the new concession (which had been submitted to him by the Parties) to his report. "In these circumstances", he continued, "I am happy to say that the Council may take it that the dispute between His Majesty's Government in the United Kingdom and the Imperial Government of Persia is now finally settled." M. Foroughi, the Persian representative at the Council, said, "I have the honour to announce my Government's entire approval of the report placed before the Council. I have nothing further to add. I wish merely to express my happiness at having had this opportunity of making before the Council a statement testifying to the better relations between my Government and that of His Britannic Majesty. I cannot fail to renew the expression of gratitude tendered by my predecessor to the Council in connection with this incident nor to offer our warm thanks to the Rapporteur, M. Beneš, and to the Secretary-General for all the trouble they have taken and the impartiality they have shown."

Sir John Simon for the Government of the United Kingdom spoke in the same sense. The Council took note of the Rapporteur's report. (*League of Nations Official Journal*, 14th Year, December 1933.)

34. The Convention of 29th April (hereinafter referred to as "the 1933 Concession") was ratified by the Majlis on 28th May 1933, and received the Imperial Assent on 29th May 1933. It was published in the Official Gazette of the Ministry of Justice on 6th July 1933.

35. In August 1933, identical letters were, by agreement between the Imperial Persian Government and the Government of the United Kingdom, addressed to the Registrar of the Permanent Court of International Justice by the Persian Chargé d'Affaires in London on behalf of the Imperial Persian Government (Appendix No. 17) and by the Under-Secretary of State for Foreign Affairs on behalf of the Government of the United Kingdom (Appendix No. 18), bringing to the notice of the Court Article 22 of the Concession Convention, whereby the Parties agreed in certain circumstances to have recourse to the good offices of the President (or Vice-President) of the Court in connection with the nomination of an umpire or sole arbitrator, and asking the Court to accept these functions. By a letter dated 21st October 1933, the Registrar of the Court replied that the Court saw no obstacle to the acceptance by the President and Vice-President of the functions conferred upon them by Article 22 of the Concession Convention (Appendix No. 19).

36. The comparison of the terms of the D'Arcy Concession and the 1933 Concession respectively which follows shows that, in return for the extension by 32 years of the term of the Concession, which was a necessary condition for the sinking of further large capital sums in the installations in Persia, the Company accepted a severe curtailment of its rights under the D'Arcy Concession and the imposition upon it of fresh obligations. In particular, the Company agreed to a considerable reduction in the concessional area. Moreover, in order to meet the constant Persian complaints about, and the difficulties which had arisen out of, the basis on which royalties were to be calculated under the D'Arcy Concession, a new basis was substituted in the 1933 Concession.

37. Article 1 of the D'Arcy Concession (read with Article 6 thereof) had granted the exclusive right to search for, obtain, exploit, develop, render suitable for trade, carry away and sell natural gas, petroleum, asphalt and ozokerite throughout Persia (except for the five northern provinces), a total area of some 480,000 square miles. Article 1 of the 1933 Concession granted to the Company the exclusive right, within the territory of the Concession, to search for and extract petroleum (which is defined to mean "crude oil, natural gases, asphalt, ozokerite, as well as all products obtained either from these substances or by mixing these substances with other substances") as well as to refine or treat in any other manner and render suitable for commerce the petroleum obtained by it. The territory of the (1933) Concession was defined by Article 2: up to 31st December 1938, the territory to the south of the violet line drawn on a map annexed to the Agreement, and thereafter such area or areas within that territory, of a total area not exceeding 100,000 square miles, as the Company might on or before that date select. A map showing the areas which the Company did so select, and which are accordingly now the territory of the Concession,

is attached to this Annex as Appendix No. 20. Article 1 of the 1933 Concession further confers on the Company the non-exclusive right throughout Persia to transport petroleum, to refine or treat it in any other manner and render it suitable for commerce as well as to sell it in Persia and to export it.

38. Article 2 of the D'Arcy Concession had conferred (*inter alia*) the exclusive right to install the necessary pipelines from the deposits where one or more of the specified products might be found to the Persian Gulf, together with branch lines necessary for distribution. Moreover, it had been an express condition of the exclusion of the five northern provinces (by Article 6 of the D'Arcy Concession) that the Imperial Persian Government should not grant to any other person the right to construct a pipeline to the southern rivers or to the southern coast of Persia. The 1933 Concession conferred no such exclusive right, and does not contain the same or any similar condition. By Article 3 of the 1933 Concession, the Company was simply given the non-exclusive right to construct and to own pipelines.

39. The D'Arcy Concession had been granted for a period of 60 years from May 1901. The 1933 Concession was granted for the period beginning on the date of its coming into force and ending on 31st December 1993. Moreover, Article 21 of the 1933 Concession expressly provides that the Concession shall not be annulled by the Government and the terms therein contained shall not be altered either by general or special legislation in the future, or by administrative measures or any other acts whatever of the executive authorities; and Article 26 provides that before 31st December 1993 the Concession can come to an end only by reason of a surrender by the Company, or upon annulment by the Arbitration Court in the event of the Company being a month in arrear in the payment of a sum awarded to Persia by an arbitral award or going into liquidation. It was in return for this extension of the period of the D'Arcy Concession and in reliance on the above-quoted provision against cancellation that the Company agreed to a reduction in the area of the Concession and to the assumption of obligations heavier than those imposed by the D'Arcy Concession. Article 21 of the 1933 Concession further contains a declaration by the Contracting Parties that they base the performance of the Concession Convention on principles of mutual goodwill and good faith as well as on a reasonable interpretation of the Convention.

40. Article 9 of the 1933 Concession imposes on the Company an obligation, which was not in the D'Arcy Concession, to proceed with its operations in the province of Kermanshah through a subsidiary company with a view to producing and refining petroleum there.

41. Since it was the royalty provisions of the D'Arcy Concession which had been the principal cause of dissatisfaction to the Imperial Persian Government, owing both to the inexact wording of the Agreement and the difficulty of arriving at an agreed interpretation and to the wide fluctuations in the sums payable thereunder, the 1933 Concession substituted an entirely new basis for calculating the royalties due. The new basis was designed to meet the complaints of the Imperial Persian Government, and to provide a more stable income for that Government while at the same time enabling the Government to share in the prosperity of the Company in good years. Under the D'Arcy Concession, the Imperial Persian Government had been entitled to

receive annually 16 per cent of the net profits of the Company; there had been no guaranteed minimum payment, and the royalties had not been in any way related to production. Under the new Agreement :

- (1) The sum payable annually was to be made up of a royalty of four shillings per ton of petroleum sold for consumption in Persia or exported from Persia, together with a sum equivalent to 20 per cent of the distribution to ordinary stockholders in excess of £671,250 in any one year whether by way of dividend or out of reserves accumulated subsequently to 1932. (Article 10 (I) (a) and (b).)
- (2) There was to be a guaranteed minimum annual payment under Article 10 (I) (a) and (b) of £750,000. (Article 10 (I) (c).)
- (3) By Article 11, there was to be a further payment, in consideration of the exemption of the Company for 30 years from any taxation present or future of the State and of local authorities, of ninepence per ton on the first 6 million tons of petroleum sold for consumption in Persia or exported from Persia, and sixpence per ton on the remainder. After 15 years these figures were to become one shilling and ninepence respectively.
- (4) There was to be a guaranteed minimum annual payment under Article 11 of £225,000, rising after 15 years to £300,000.
- (5) There was provision for an automatic equivalent increase in the sums payable by way of tonnage royalty under Article 10 and the sums payable under Article 11 in the event of the value of sterling depreciating in terms of gold. (Article 10 (V) (a) and (b).)
- (6) Upon the expiry or surrender of the Concession, a sum equal to 20 per cent of the surplus difference between the amount of the reserves (General Reserve) and balances of the Company at the date of such expiry or surrender over the same reserves and balances at 31st December 1932 was to be paid to the Imperial Persian Government. (Article 10 (III).)

Furthermore, by Article 23, the Company agreed to pay £1,000,000 in full settlement of all claims of the Imperial Persian Government (except in regard to Persian taxation) up to the date of the coming into force of the Agreement, and to settle the payments due to the Government for 1931 and 1932 on the basis of the new Agreement, and to settle the Government's claims in respect of taxation on the same basis. These latter sums were duly paid by the Company on 6th June, within the time-limits laid down in the Convention, and were accepted by the Imperial Persian Government: £1,339,132 was thus paid on account of the year 1931, and £1,525,383 for the year 1932.

42. It will be noted that in one respect the provisions of Article 10 depart from the common pattern of concessional agreements. The participation of the Persian Government in the prosperity of the Company, by reason of its entitlement to a payment equivalent to 20 per cent of the sums distributed to stockholders over a certain figure, applies to all the profits of the Company, including those earned outside Persia, and even those derived from oil of other origin than Persian and in no way dependent on operations in Persia.

43. Article 12 of the 1933 Concession Convention imposed on the Company the obligation to employ all means customary and proper

to ensure economy in and good returns from its operations, to preserve the deposits of petroleum and to exploit its Concession by methods in accordance with the latest scientific progress.

44. Article 12 of the D'Arcy Concession had provided that, with the exception of technical personnel such as managers, engineers, borers and foremen, the Company's employees should be Persians. Article 16 of the 1933 Concession Convention provided that, while both Parties recognized that efficiency and economy of operations was the chief guiding principle in the performance of the Convention, the Company should recruit its artisans as well as its technical and commercial staff from among Persian nationals to the extent that it should find in Persia persons possessing the requisite competence and experience, and that its unskilled staff should be composed exclusively of Persian nationals. Furthermore, the Parties agreed to study and prepare a general plan of yearly and progressive reduction of the non-Persian employees with a view to replacing them in the shortest possible time and progressively by Persian nationals. The Company also agreed to make an annual grant of £10,000 in order to give in Great Britain to Persian nationals the professional education necessary for the oil industry.

45. By Article 19, the Company agreed to sell oil for internal consumption in Persia at especially favourable prices.

46. Article 22 provided for the reference to arbitration of any differences between the Parties of any nature whatever, and provided that the award should be based on the juridical principles contained in Article 38 of the Statute of the Permanent Court of International Justice and should be final.

Development 1933-1939

47. In reliance upon the peculiar sanctity of a Convention thus concluded through the good offices of the League of Nations Rapporteur, M. Beneš, by way of settlement of the dispute then pending between the Government of the United Kingdom and the Imperial Persian Government before the Council of the League of Nations, and upon the express guarantees against premature determination contained in the Convention, the Anglo-Persian Oil Company proceeded in the years between 1932 and 1939 to expend vast capital sums and greatly to expand the output of Persian oil. By 1934, Haft Kel was producing over 2,000,000 tons per year. In 1935, the small field at Naft-i-Shah in Kermanshah province in North-Western Iran was developed, in pursuance of the obligation imposed on the Company by Article 9 of the 1933 Concession. A pipeline was constructed to Kermanshah, where petroleum products for the north and north-west of Iran are refined. This development was effected through a subsidiary company (the Kermanshah Petroleum Company, Limited), which was registered in June 1934.

48. An idea of the growth in output can be gained from the annual production figures, which had increased from 5,730,498 long tons in 1931 to 6,445,808 long tons in 1932 (although world production in 1932 had continued to decline) and thereafter steadily increased until progress was halted by the onset of war conditions :

	<i>Long tons</i>
1933	7,086,706
1934	7,537,372
1935	7,487,697
1936	8,198,119
1937	10,167,795
1938	10,195,371
1939	9,583,286

49. Along with the development of the oil fields went an expansion of the refineries and other installations at Abadan. Refining capacity increased from 7 million tons annually in 1933 to 10 million tons in 1939. There was a corresponding growth in the tanker fleet of the British Tanker Company (a subsidiary of the Anglo-Iranian Oil Company) and in the marketing organization. In the case of the tanker fleet, tonnage rose from 786,869 tons (81 ships) in 1933 to 903,061 tons (89 ships) in 1939. And large sums were spent on the welfare, educational, recreational and medical facilities provided for employees and their families.

49A. It must be emphasized that the development which took place in these and subsequent years was carried out in strict conformity with the obligations imposed on the Company by Article 12 of the 1933 Concession. (See paragraph 43.) The methods used to exploit the Concession were in accordance with the latest scientific progress ; indeed, in some respects the Company was a pioneer in the invention of methods suitable to the peculiar conditions which exist in the Middle East. At the same time, all means customary and proper to ensure economy in and good returns from its operations and to preserve the deposits of petroleum were employed ; in particular

- (i) the system whereby there is a continuous flow of oil from the oil wells through the pipelines to and through the refinery and thence to the tank farms results in the greatest possible economy in operation ;
- (ii) careful steps are taken, by drawing oil only from those wells which produce oil with minimum gas content, by limiting the rate of production from particular wells and by various other means, to maintain the gas pressure in the oil reservoirs and also to ensure the ultimate maximum recovery of oil ;
- (iii) the Company has at all times employed throughout the whole production, pipeline and refining system the most up-to-date plant and equipment capable of giving the greatest practicable return of high quality products.

50. The expansion of the Company's activities resulted in a corresponding increase in the sums payable to the Imperial Persian Government under the 1933 Concession. The total sums paid for the years 1931-1938 inclusive under Articles 10 and 11 were as follows (the figures for 1931 and 1932 take into account the retrospective settlement in the 1933 Concession Convention) :

<i>Year</i>	<i>Amount</i>
	£
1931	1,339,132
1932	1,525,383
1933	1,812,442
1934	2,189,853
1935	2,220,648
1936	2,580,205
1937	3,545,313
1938	3,307,478

51. The new basis of calculation substituted by the 1933 Concession proved very satisfactory during this period ; the clarity of the terms gave few occasions for disputes and the relations between the Company and the Government continued harmonious. Such disputes as did arise were settled amicably. Particular mention may perhaps be made of a difference of opinion as to the meaning of the word "ton" in the 1933 Concession, Articles 10 and 11 ; the Company contended that the English (or long) ton of 2,240 lb. was intended, the Imperial Iranian Government that the metric (or short) ton of 2,000 lb. was intended. This question has a considerable effect on the amounts payable by way of royalty, which are to be calculated at the rate of so much per ton of petroleum sold for consumption in Iran or exported from Iran. On 30th July 1936, the Company, while maintaining its contention, agreed, in view of the good relations between the Government and the Company, to pay royalty on the basis of the metric ton. Towards the end of the pre-war period, the great increase in production of the previous years was halted, with a consequent halt in the increase of the sums payable to the Imperial Iranian Government ; the Government at the time expressed its disappointment at this trend, but it was entirely in keeping with the trend elsewhere in the world at that time. The effect of the outbreak of war, and the steps taken to ensure that Iran did not suffer by reason thereof, are described in paragraphs 65 *et seq.* of this Annex.

The General Plan

52. It will be recalled that Article 16 of the 1933 Concession Convention (see paragraph 44 above) provided that the Company and the Government should study and prepare a general plan of yearly and progressive reduction of the non-Persian employees with a view to replacing them in the shortest possible time and progressively by Persian nationals. Discussions to this end were started in 1933, and continued throughout 1934 and 1935 both in Tehran and in London. After further conversations in April 1936 in Tehran between His Excellency M. Davar, Minister of Finance of the Imperial Iranian Government, and Mr. (later Sir) W. Fraser, Deputy Chairman of the Company, a General Plan was approved ; a procès-verbal of the conversations, to which were attached as annexes the General Plan together with explanatory notes and schedules, was drawn up, and the procès-verbal and the annexes were signed by the Minister of Finance and the Deputy Chairman. The General Plan provided that, in application of the guiding principles laid down in Article 16, in conjunction with those prescribed in Article 12 (A), the artisans and technical and commercial staff of the

Company of non-Iranian nationality should be reduced within the shortest period and progressively

- (a) in so far as such reduction was compatible with the highest degree of efficiency and economy ;
- (b) to the extent that the Company should find in Iran persons of Iranian nationality who possessed the requisite competence and experience ;
- (c) in so far as such reduction was compatible with the duty of the Company to exploit its concession by methods in conformity with the latest scientific progress.

53. It was recognized by the Parties that factors then unforeseen and beyond the control of one or other of the Parties might affect the rate of reduction, and as examples of such factors there were instanced *inter alia* :

- (i) any important change in the scope or extent of the Company's operations in Iran ;
- (ii) the modern trend to be given to the development of plant and equipment necessary for meeting market requirements and the introduction of modern scientific processes which might necessitate the recruitment in the shortest possible time of employees possessing special skill irrespective of nationality ;
- (iii) the reorganization of the Company's methods and practices.

54. It was further recognized that it was impossible to foresee and to estimate the number of competent and experienced Iranians who might be recruited in Iran. Despite these uncertainties, there was included in the agreed Plan a declaration by the Company of its intention to accelerate the progressive reduction, and graphs were appended as part of the agreed Plan showing the reduction in the percentage of foreign employees in relation to the total staff (other than unskilled labour) which the Company declared that it hoped, and would make every effort, to achieve and even (consistently with Articles 12 (A) and 16 of the Concession) to exceed in the years 1936-1943. The reduction envisaged in the percentage of foreign employees in relation to the total staff, apart from unskilled labour, was from 17.25 per cent in 1936 to 13.5 per cent at the end of 1943.

55. Although the Concession imposed no obligation on the Company to train Iranians to fit them for employment in the Company's service, the Company in the General Plan declared its intention to continue, at its own expense and in the manner which it considered suitable, at its entire discretion, the scheme which it had voluntarily undertaken to carry out for the training of Iranians who might wish to qualify as more competent employees in the Company's service. The Parties, however, agreed that the Company should not be compelled to act in this way nor obliged to keep in their employment persons so trained. Details of the training facilities which the Company proposed to provide were given in the explanatory notes and schedules annexed to the General Plan ; they included not only training courses conducted by the Company, but the provision by the Company of primary and secondary schools and contribution to their maintenance.

56. In the years which followed, the Company not only fulfilled, but exceeded the training programme which it had declared its intention

of carrying out. There follows a brief summary of the training and educational facilities provided by the Company.

- (a) *Assistance to the Iranian Government's Department of Education*
- (i) The Company has built or provided buildings for 35 primary and secondary schools in Khuzistan, the province in which most of the Company's activities are located, and handed them over to the local education authorities. These schools are attended by some 20,000 children. The Company bears a very large part (in the region of 75 per cent) of the total cost of running these schools.
 - (ii) In 1939, the Company presented complete and up-to-date laboratory equipment to Tehran University, and since the recent war has completely re-equipped the Faculty of Engineering and Science to accepted international standards.
- (b) *Vocational training of artisans, foremen, clerks, draughtsmen, process operators, chemists, engineers, accountants, etc., in Iran*
- (i) In 1939, the Company completed and opened a Technical Institute at Abadan. It consists of a large modern building surrounded by gardens and sports grounds, and includes a main hall, reading room, library, classrooms and laboratories for the three technical departments (engineering, science and commerce). It is entirely financed and administered by the Company, but is academically governed by the Ministry of Education: its degrees and certificates are officially recognized, and its teaching forms an integral part of the Iranian national system of education. In 1949-1950, there were 1,204 students at the Institute.
 - (ii) The Company carries on a number of different vocational training courses designed to take account of the availability of youths with the requisite standard of education and the requirements of the Company for qualified personnel. There is a five-year course for artisan apprentices, carried out in the apprentice training shop and in different branches of the refinery, and designed to train youths of the 6th-class standard of primary education as artisans of the highest grade. There are four-year courses for commercial apprentices, carried out partly in the Institute and partly in the Company's offices. There are four-year courses for technical apprentices, in which the training is partly theoretical training in the Institute and partly practical training in the apprentice training shop and in different branches of the Company's works. The latter two courses are designed to train youths of the 2nd or 3rd class of secondary education up to the standard of the ordinary certificate. There are five-year courses in petroleum technology and engineering, in which the theoretical training in the Institute is supplemented by practical experience in the works for 7½ months in the year; these courses are designed for youths with 5th-class diplomas of the State Secondary Schools, and successful completion of them is recognized by the Ministry of Education as equivalent to an Iranian University degree. There are two-year

courses for graduates of Tehran University or Tehran Technical College, carried on in the works, and designed to supplement the theoretical knowledge of the trainees with practical experience. In all, in 1950 some 3,500 Iranians were under training. The approximate cost of maintaining the Company's training facilities is some £1,800,000 per annum.

- (iii) In addition, there are courses for youths and men of a lower educational standard, designed to produce artisans and skilled workers, and classes for illiterates organized in conjunction with the local education authority and financed by the Company.

(c) *Education in the United Kingdom*

Up to 1950, a total of 99 university and 133 non-university students had been sent to the United Kingdom for training; the number under training had been expanded greatly, and in 1950 there were actually 80 Iranian apprentices and students receiving training in British works, technical colleges and universities, the cost to the Company being no less than £37,362 in that year. At various times, particularly during the recent war years, the level of actual annual expenditure has unavoidably been below the figure for the annual grant mentioned in the Concession Convention (see paragraph 44 above). Unspent balances are, however, carried forward, and at the end of 1950 accumulated total expenditure was in excess of the accumulated total of the annual grants which the Company had undertaken to make.

57. The numbers passing through the various courses were often in excess of the figures given in the Company's proposals contained in the explanatory notes and schedules annexed to the general plan. Where they fell below these figures, this was due solely to the shortage of recruits possessing the requisite educational qualifications and physical fitness.

58. The Company has always realized, and it was recognized in the procès-verbal, that measures taken to recruit and train suitable employees are valueless unless measures are also taken to retain their services. Life in Khuzistan is inevitably difficult because of the great heat in summer, and the arid and desert nature of the country in which the oil-fields and the Abadan refinery lie and which prior to its development by the Company was practically uninhabited and totally lacking in amenities. The Company has therefore spent very considerable sums in assisting the Iranian Government and the local municipal authorities, and in itself providing amenities and social and other services.

Public services

59. In Abadan town, the Company has for many years past been carrying out, in agreement with the Government and local authorities, an extensive scheme of rehabilitation and town cleansing. Roads, surface water drainage, and electric power and drinking-water reticulations have been constructed by the Company, and the cost has been shared between the Company and the municipality. The Company has, entirely at its own cost, laid substantial sections of a main sewerage system.

No municipal facilities exist for the bulk supply of filtered water or for the generation and supply of electricity other than those made available by the Company: the Company supplies electricity and 1½ million gallons of treated drinking water daily to Abadan municipality at a nominal rate. The Company has offered to assist in the construction of civil buildings and houses for officials by lending large sums to the municipal authorities at a low rate of interest. In the villages round Abadan (where no substantial improvements have been effected by the Government or local authorities), the Company has offered to bear half the cost of improvements and also for the time being to bear the remaining half of the capital expenditure, the latter to be recovered by the Company from the municipality in instalments without interest over a period. In the oil field areas, the Company itself carries out the functions normally carried out by a municipal authority, since there are no municipal authorities except in Abadan and Ahwaz.

60. An outline is given in this paragraph of some of the amenities and social and other services which the Company has provided. An idea of their scale may be gathered from the fact that between 1946 and 1950 the sums spent on housing and ancillary services (water, power, sewage, etc.) and medical and educational buildings amounted to £26,500,000. If there is added to this sum the increase in establishment and overhead charges resulting from the work covered by this expenditure, the total is approximately £34,500,000.

Housing and amenities

- (i) Between 1936 and the present time, the Company has paid great attention to the provision of accommodation for employees, and continued to do so even during the war years, despite the inevitable shortage of materials and labour. In all, the Company has built over 21,000 houses for its employees, for the most part provided with electric light, treated water and proper drainage; 9,500 of these were built between 1945 and 1950.
- (ii) In addition, the Company has built shops, stores, canteens, restaurants, 35 cinemas, swimming pools (six in Abadan and at least one in each of the oil fields) and clubs, and has provided football fields (19 in Abadan alone) and other sports grounds. Since 1946, no less than £1,700,000 (or approximately £2,250,000 if an allowance is made for establishment and overhead charges) has been spent on such amenities. This item is not included in the expenditure figures for housing, medical and educational buildings quoted above.
- (iii) During the war, in a period of shortage and inflation, the Company made itself responsible for the import and distribution of food, clothing and other supplies and supplemented wages with free issues of food and sales at subsidized prices. The import and distribution of supplies continued after the war, and this, together with the reclamation and development of land for agricultural purposes undertaken by the Company, has assured a supply of the necessaries of life at reasonable prices. The 1950 report of the mission of the International Labour Office (to which reference is made in paragraph 61 below) makes very favourable comment on this particular scheme of the Company (see p. 77 of the report).

Medical and health services

- (iv) The Company provides not only a medical and hospital service, but also a public health and disease prevention service ; dental treatment is provided, and there is a scheme for training Iranian nurses. There is medical and nursing staff consisting of 101 medical officers (including 10 specialists), 7 dentists and 130 nursing staff (including 40 student nurses). There is a fully staffed research and diagnostic laboratory. There is a total of 853 hospital beds available in all the Company areas ; two fully-equipped hospitals (the only ones in the town) are maintained by the Company at Abadan, one with 350 beds for general treatment and the other with 250 beds for infectious diseases ; there are also modern hospitals at Masjid-i-Sulaiman and Agha Jari. In addition, 35 clinics and dispensaries are in operation, and since 1943 the Company has lent doctors and trained staff for a school medical service in Abadan.
- (v) The Assistant Secretary of the British Medical Association, who visited Abadan in March 1951, described the "medical service which the Company provides for its employees and the surrounding Iranian population" as "excellent", and went on : "The Company's clinics, or health centres, are the fulfilment of a general practitioner's dream. Altogether Abadan must be one of the best-cared-for industrial communities in the world." (*British Medical Journal*, 21st April 1951, *Supplement*, Vol. 1, p. 101.)
- (vi) The extent to which these services are employed is revealed by the following statistics for 1950 :
- Hospital admissions : 12,162 (6,955 employees, 5,206 non-employees).
 Dispensary attendances : 1,530,815 (504,418 employees, 1,026,397 non-employees).
 Major operations : 3,111.
 Minor operations : 15,080.
 Laboratory examinations : 91,709.
 X-ray examinations : 17,790.
 Trachoma treatments : 850,000.
- (vii) The Company has provided numerous bathhouses for employees and their dependants, and has carried out extensive anti-malarial measures.
- (viii) As a result of the services provided by the Company, a great reduction in the incidence of disease has occurred. It is expected that trachoma in children and young adults will be totally eliminated from the Company's areas within a generation. Diseases resulting from the attacks of intestinal worms have been largely eliminated. Malaria cases have fallen from 1,725 in 1947 to 335 in 1950. There has been no epidemic of cholera or plague during the last 25 years, and an epidemic of typhus in 1943 was speedily checked. Small-pox (which is endemic) is countered by mass vaccinations carried out with the co-operation of the Iranian Ministry of Health.
- (ix) The cost of maintaining the medical and health services in 1950 was approximately £2,000,000.

61. It will serve to shorten this account of the measures which the Company has taken to ensure, so far as lay within its power, the welfare of its employees and their dependants if reference is made to the report of a mission of the International Labour Office (of which one member was an Iranian) which visited South Iran at the invitation of the Iranian Government in 1950 with a view "to preparing a report giving an objective picture of social conditions in the oil industry and, if necessary, to framing recommendations which the Iranian Government might take into account in giving effect to the resolutions adopted by the Petroleum Committee" of the I.L.O. (*Labour Conditions in the Oil Industry in Iran*, Studies and Reports, New Series, No. 24, published by the I.L.O., Geneva, Switzerland, 1950). (This report is attached hereto as Appendix No. 21.) There follow some extracts from the report :

While recording that "housing is the most serious problem in the Company's areas and the one which gives most cause for concern", the report goes on to state that : "Looking objectively and soberly at the manner in which this problem (*scilicet*, housing in Abadan) has been tackled, the observer cannot fail to be impressed by the vast number of modern houses and amenities which the Company has been able to provide in a comparatively short time in spite of exceptionally unfavourable circumstances" (p. 31).

"No one who visits the Company's areas can fail to recognize the effort which the Company has made in organizing its health and medical services.... A great strain is thrown upon the Company's medical services by the fact that though they were designed primarily for the Company's own employees, they are in fact used extensively by the workers' families and even by people who have no connection with the Company" (p. 78).

"Remarkable progress (*scilicet*, in providing educational facilities) is, however, being made in some areas, and among these Abadan and Fields¹ take a high place, thanks to the combined efforts of the authorities and the Company. The future industrial and social development of Iran will be influenced in a high degree by the progress which is made in the sphere of education, and the efforts put forward in the Company's areas to provide increased educational facilities will produce their reward not only for the Company but for the country generally" (p. 79).

"One of the Company's most remarkable achievements has been the organization of its scheme for the distribution of food, clothing and other essential commodities.... There can be no doubt that this scheme has.... contributed towards holding down prices and supporting the purchasing power of wages" (p. 77).

"The mission was impressed by the extent of the Company's training scheme and the efficient way in which it is organized.... The Technical Institute at Abadan, which is the apex of the Company's training system, is considered to be one of the foremost educational institutions in the country.... On the whole, the mission formed the view that the Company's training scheme is adequate and will in time provide all the trained Iranian personnel required to fill any post in the Company's service" (p. 72).

62. A reference to the same publication will also obviate a survey of labour-management relations and conditions of work. It will suffice to quote two passages :

¹ I.e. the oil fields.

"The Company has given clear evidence of its desire to promote satisfactory industrial relations by its initiative in forming the joint departmental committees, by its full participation in the work of the factory councils and other statutory bodies, and by its scrupulous observance of the provisions of the labour law" (p. 61).

"Against this background (*scilicet*, conditions generally prevalent in Iran), the working and living conditions of the oil workers appear as an encouraging example of what can be done" (p. 83).

63. During the years following the agreeing of the 1936 General Plan, a vast expansion of the Company's activities took place, involving not only a great increase in the total number of its employees, but also the introduction of new and highly specialized machinery. Despite this fact, however, and despite the difficulties of obtaining and retaining the services of Iranian staff with the necessary qualifications, in view of the great demand for their services elsewhere in regions of Iran which are climatically and socially more congenial, there has been over the period a progressive reduction in the percentage of non-Iranian employees, as the following comparative figures of employees (excluding unskilled labour) will show :

	<i>Iranian</i>	<i>Non-Iranian</i>
1934	7,174	1,799
1950	43,080	4,503

The actual reduction in the number of foreign employees in relation to the total staff, apart from unskilled labour, achieved during the period 1936-1950, as compared with that envisaged in the General Plan (with a continuation after 1943 at the rate envisaged), is as follows :

<i>Year</i>	<i>Envisaged (%)</i>	<i>Actual (%)</i>
1936 (end).	16.63	14.84
1937	16.00	13.63
1939	15.00	12.69
1941	14.00	11.36
1943	13.50	15.12 ¹
1945	13.00	14.57 ¹
1947	12.50	11.85
1949	12.00	10.92
1950	11.75	10.45

64. In this connection, it is pertinent to cite the words of the I.L.O. commission, at pages 71-72 of their report :

"The arrangements made by the Anglo-Iranian Oil Company for the recruitment of its workers seem to correspond closely to the needs and conditions of the country.... There is no apparent overall shortage of recruits for the industry.... There is, however, a definite shortage of workers with the required skills. The problem

¹ Exceptional war-time conditions from 1943 temporarily affected the progress which had been made up to that time in reducing the proportion of foreign to total employees. From 1943, there was an enormous expansion in activity at a time when many other war-time projects in Iran were competing for both staff and labour. As a result, the Company had to import Indian artisans and to increase the number of foreign supervisory staff.

of recruitment.... is complicated by the high rate of turnover in some at least of the grades. It may be anticipated that as long as the general shortage of skilled labour in Iran persists, many trained workers will leave the Company's service every year in order to take jobs in more attractive areas or in their native towns and villages. Accordingly, the Company will presumably continue to enrol and train many more workers than would normally be needed for its own operations. On the other hand, it will be difficult to increase the rate at which Iranian nationals are recruited for employment in the higher categories of wage earners and as members of the supervisory staff. There is no reluctance on the part of the Company to recruit and promote Iranians for those categories. On the contrary, the mission understands that the positions are open to all who acquire the necessary qualifications and experience. In any case, the proportion of Iranians in the Company's employment is large, even in the higher categories, and it is increasing."

The 1939-1945 War

65. The outbreak of war in 1939 inevitably brought problems. Production had to be restricted owing to the loss of markets caused by the closing of the Mediterranean and the occupation of much of Europe by Germany, and the shortage of shipping. The Imperial Iranian Government was much concerned by the consequent fall in the amounts payable to them by way of royalty under the Concession. In response to representations made by the Imperial Iranian Government, the Company in August 1940 agreed to pay to the Government on 31st August 1940 an additional sum of £1,500,000 sterling in respect of 1939, and to make up the sums due on account of royalty tonnage, dividend participation, taxation and gold premium (i.e. under Articles 10 and 11 of the 1933 Concession Convention) to £4,000,000 sterling in total in respect of each of the years 1940 and 1941. In making this proposal, the Company expressly stipulated and the Government agreed that it should in no way affect the terms of the Concession and should not create a precedent. In May 1943, at the request of the Imperial Iranian Government, the Company undertook to continue this arrangement "in respect of each year in which the aggregate sum payable under Articles 10 and 11 of the Concession should not reach this figure (£4,000,000), up to and including the year in which hostilities between the United Kingdom and both Germany and Italy cease as the result of the conclusion of a general armistice, or if armistices are concluded with these Powers separately, the year in which the later armistice is concluded", but stipulated that thereafter all payments to be made by the Company should be regulated by the terms of the Concession. The Imperial Iranian Government accepted this undertaking and confirmed the arrangement. The figures included in paragraph 60 below show the special additional payments which were made to the Iranian Government in respect of the years 1939-1943: there was, of course, no obligation under the Concession itself to make these payments, and they were made at a time of great commercial uncertainty for the Company, entirely to assist the Iranian Government in its difficulties.

66. However, from 1942 onwards large demands began to be made on the Company to supply petroleum for war purposes. By 1944 production, which had fallen in 1941 to 6,605,000 tons, had risen again to

13,274,000 tons; in 1945 it rose to 16,839,490 tons and in 1946 to 19,189,551 tons. The payments to the Iranian Government due under the Concession Convention consequently greatly increased, and soon exceeded the £4,000,000 minimum which the Company had guaranteed. The total sums paid under Articles 10 and 11 in respect of the war years (including 1939 and the two following years 1946 and 1947) were as follows:

Year	Concessional	Additional	Total
	payments	payments	
	£	£	£
1939	2,770,814	1,500,000	4,270,814
1940	2,786,104	1,213,896	4,000,000
1941	2,025,364	1,974,636	4,000,000
1942	3,427,933	572,067	4,000,000
1943	3,617,917	382,083	4,000,000
1944	4,464,438	—	4,464,438
1945	5,624,308	—	5,624,308
1946	7,131,669	—	7,131,669
1947	7,103,792	—	7,103,792

The post-war period

67. The latter years of the war and the six years since the end of the war represent a period of unprecedented expansion in the world oil industry. It is against this background that the more recent relationship between the Iranian Government and the Company must be considered, and before reference is made to this relationship, it will be convenient to record the development that has taken place, in strict accordance with the obligations imposed by Article 12 of the 1933 Concession, in the Company's operations in Iran. Since 1938, world oil production has nearly doubled, the increase being from 268,123,000 tons in 1938 to 516,925,000 tons in 1950. Iranian production over the same period has in fact trebled, the increase being from 10,195,371 tons to 31,750,000 for the same years. In 1938, Iran's production was 4 per cent of the world figure: by 1950 it had risen to 6 per cent. The yearly Iranian production has been as follows (long tons):

1938	10,195,371	1945	16,839,490
1939	9,583,285	1946	19,189,551
1940	8,626,639	1947	20,194,836
1941	6,605,320	1948	24,871,058
1942	9,399,231	1949	26,806,564
1943	9,705,769	1950	31,750,147
1944	13,274,243		

After the initial set-backs to production following the outbreak of war, the recovery was extremely rapid, and it will be seen that the increase in production has continued ever since, and had it not been for recent events the figure for 1951 would have been of the order of 35 million tons. This extra production was largely made possible as a result of the development of the Agha Jari, Naft Safid and Gach Saran fields. The Gach Saran field (125 miles south-east of Haft Kel and 155 miles east of Abadan) commenced commercial production in 1940. The

Agha Jari field (north-west of Gach Saran) was joined by pipeline to Abadan in 1944, and the Naft Safid field (20 miles south of Masjid-i-Sulaiman) in 1945. In addition to the growth in housing and amenities already described, there has been a vast increase in the technical plant and equipment both in the oil fields and in connection with the pipeline, refining, storage and oil-loading arrangements. By 1951, the refining capacity had grown from 10 million tons of annual capacity in 1939 to 25 million tons, and Abadan had become the largest single refinery in the world. As regards the tanker fleet of the British Tanker Company, by the beginning of 1951 the heavy losses sustained during the war had not only been made good, but the deadweight capacity of the fleet had been increased to 1,660,186 tons (representing 139 ships) as compared with 903,061 tons (89 ships) at the beginning of 1939.

68. It will be apparent from this description that the capital sums which the Company, relying on the Concession Convention of 1933, has, to the knowledge and with the encouragement of the Imperial Iranian Government, sunk in Iran are enormous. Between the years 1931 and 1950 the capital expenditure incurred on fixed assets from year to year in Iran has amounted to £93 million. Expenditure on drilling and testing new areas in Iran during the same period amounted to over £10½ million; in addition, large sums (amounting to some £16 million during the period 1942-1950) have been spent on mobile assets in Iran (mechanical transport, drilling tools, service plant, etc.).

69. In 1946, a question was raised by the Imperial Iranian Government whether, in view of the fact that sterling was not convertible into gold or dollars and of the scarcity of goods on which it could be expended in the sterling area, the security envisaged by Article 10 (V) of the 1933 Concession Convention still existed. This question was discussed in conversations held in Tehran in October 1946 between representatives of the Imperial Iranian Government and the Company, and subsequently there were negotiations between representatives of the Imperial Iranian Government and the Government of the United Kingdom, and of the Central Banks of the two countries. The Imperial Iranian Government considered its interests properly secured by reason of the arrangements concluded between the two Governments and between the two Banks, and on 24th November 1946 the Minister of Finance stated in a letter to the Company that, in view of the arrangements made, the Imperial Iranian Government accepted that the Company was fulfilling its obligations under Article 10 (V) of the 1933 Concession Convention, during the period for which the arrangements would operate. When these arrangements expired in 1947, a further understanding to cover the succeeding period of 12 months was reached between the two Central Banks in October 1947, with the full knowledge and approval of the two Governments. This understanding was recorded in a Memorandum of Understanding and has been extended annually up to the present time and is still in force. The terms of the understanding, though not identical with those of the 1946 arrangements, provided an equal, or even greater, security for the interests of the Iranian Government. This Memorandum of Understanding has since been largely superseded by the withdrawal by the United Kingdom Government of the special benefits previously accorded to Iran because oil supplies from Iran were of assistance to the United Kingdom economy (see paragraph 2A of this Memorial).

69A. On 22nd October 1947, the Majlis passed a Single Article Law (a copy of which is appended hereto as Appendix No. 22), designed to prevent the Government of the Union of Soviet Socialist Republics from acquiring a share, directly or indirectly, in any oil concession in the northern provinces of Iran. The final clause of this Single Article Law might be regarded as directed against the Company, but the Iranian Government did not seek to enter into negotiations with the Company, or to take any other measures directed against the Company, in reliance on a purported execution of this clause. The Company accordingly did not consider it necessary to make any protest or take any action in regard to the clause.

Negotiations for a Supplemental Agreement

70. Towards the end of 1947 and in 1948, the Imperial Iranian Government from time to time indicated to the Company in a general way (and not by reference to the Single Article Law of October 1947) that there were questions arising from the relationship between the Government and the Company which it would wish to examine in conjunction with the Company, and in particular the question of a new General Plan. Talks on the General Plan were commenced, but there were changes of Government about this time and, as regards other questions, it was the Company which in June 1948 made a definite offer to enter into discussions on a possible difficulty for the Iranian Government which might result from the Company's adoption of the policy of dividend limitation. In accordance with the expressed wish of the Government of the United Kingdom that dividends of United Kingdom companies should be limited, the Company had maintained its dividend to ordinary stockholders for 1947 at 30 per cent, although the results would have justified a higher dividend. Large sums had in consequence been placed to the Company's general reserve. The result was to reduce the sums which otherwise might have been payable to the Imperial Iranian Government under Article 10 (I) (B) of the 1933 Concession Convention, which provides for a payment to the Government of a sum equal to 20 per cent. of the distribution to the ordinary stockholders in excess of £671,250 in any one year. Although the Imperial Iranian Government's position was well secured, in the event of any future distribution to stockholders from general reserve by the same Article (10 (I) (B)), and in any event by Article 10 (III) (which provides for payment at the end of the Concession of a sum equal to 20 per cent of reserves accumulated since 31st December 1932), the Company on 1st June 1948 indicated that, if the Imperial Iranian Government considered that hardship would result from this limitation of dividends, the Company would willingly discuss any proposals to remedy such hardship in accordance with the spirit of the mutual relations between the Government and the Company, and of the Concession. The Company accordingly offered to send representatives to Tehran for discussions, and on 19th August 1948 the Government informed the Company that talks would be welcomed.

71. Discussions were accordingly opened on 1st September 1948, and continued with intermissions until July 1949. The discussions covered a wide field, but dealt principally with questions concerning the amounts payable to the Government under the Concession, and also the General Plan revision to which reference has already been made. There was no

question in these discussions of altering the terms of the Concession, much less of denouncing or abrogating it, nor was its validity challenged. Moreover, the representatives of the Imperial Iranian Government were more than once at pains to point out that the Government was not alleging that the Company had failed to pay any of the sums due to the Government thereunder. The basis on which both Parties were working was that of making adjustments within the framework of the Concession, and of reaching agreement on payments additional to those due under the Concession to take account of the changes in economic conditions brought about by the war. At an early stage in the discussions (30th September 1948), the Company declared its willingness to make an additional payment. This offer was not taken up, and as the talks proceeded, this particular question came to be dealt with as a part of a more comprehensive settlement which was agreed to be necessary and which took the form of a Supplemental Agreement to the Company's 1933 Concession. This Supplemental Agreement was signed on behalf of the Imperial Iranian Government and the Company on 17th July 1949, after there had taken place a most thorough review of a great variety of matters which affected the relationships of the Government and the Company. A copy of the Agreement is attached to this Annex as Appendix No. 23.

The Supplemental Agreement

72. The Supplemental Agreement recites that the Government and the Company have after full and friendly discussion agreed that, in view of the changes in economic conditions brought about by the war, the financial benefits accruing to the Government under the 1933 Concession Agreement should be increased to the extent and in the manner hereinafter appearing, the principal provisions being as follows :

- (1) The tonnage royalty payable for the year 1948 and subsequent years under Article 10 (I) (a) of the 1933 Concession Agreement to be increased from four shillings to six shillings per ton of petroleum sold for consumption in Iran or exported from Iran (Clause 3 (a)).
- (2) An immediate payment of £5,090,909 to be made to the Government out of the sum of £14,000,000 shown in the balance sheet as constituting the general reserve of the Company as at 31st December 1947 (Clause 5 (a)), and thereafter the payment to the Government in 1948 and each subsequent year of 20 per cent of the sums (if any) placed to general reserve in the year in question, increased by such a proportion as would offset the effect of British income tax (Clause 4 (a)).
- (3) A guaranteed minimum payment (subject to events outside the Company's control preventing the export of petroleum) of £4 millions per annum in respect of payments under Article 10 (I) (b) of the 1933 Concession and Clause 4 (a) of the Supplemental Agreement (i.e. payments calculated by reference to dividends and allocations to general reserve) (Clause 4 (b)).
- (4) The rate of payment under Article 11 of the 1933 Concession in respect of Iranian taxation for 1948 and subsequent years to be increased to a flat rate of 1s. per ton instead of 9d. per ton in respect of the excess over the first 6,000,000 tons of production per annum (Clause 7 (a)).

- (5) The revised payments under (1) and (4) above to remain subject to adjustment for fluctuations in the price of gold as defined in Article 10 (V) of the 1933 Agreement.
- (6) The prices for the sale of oil products in Iran to consumers other than the Government to be 25 per cent below the basic prices instead of 10 per cent below, as provided by Article 19 of the 1933 Concession. (Clause 8 (b).) (Prices for sales to the Government had been 25 per cent below the basic prices all along, under the terms of the 1933 Concession.)

73. It was provided in the Supplemental Agreement that payments under Clauses 4 and 5 thereof should be in substitution for payments under Article 10 (I) (b) of the 1933 Concession in respect of distributions relating to the general reserve and payments under Article 10 (III) (a) on the expiration or surrender of the Concession. The amounts of the retrospective payments in respect of tonnage royalty and taxation under Clauses 3 and 7 for the year 1948 were agreed and stated in the Agreement, at £3,364,459 and £312,900 respectively. The Agreement was to come into force after ratification by the Majlis.

74. The effect of this Agreement on the sums payable to the Imperial Iranian Government would have been as follows :

- (1) There would have been the special payment of £5,090,909 in respect of the amount standing at general reserve at 31st December 1947.
- (2) The comparative figures for 1948, 1949 and 1950 would have been as follows :

	<i>1933 Concession</i>	<i>1933 Concession and Supplemental Agreement</i>
	£	£
1948	9,172,269	18,667,822
1949	13,489,271	22,890,261
1950	16,031,735	22,888,557 ¹

75. It is to be noted that the alterations to be effected by the Supplemental Agreement would not only have counteracted the effect of dividend limitation (Clause 4 (a) and 5 (a)), but also independently of that question greatly have increased the sums payable (Clauses 3 (a), 4 (b) and 7 (a)), and the other benefits derived by Iran from the Concession (Clause 8 (b)).

The new General Plan

76. During the series of conversations there was also (as has been stated in paragraph 71 above) discussion on the General Plan question. Although the Company and the Government had in 1936 agreed that the contents of the General Plan were (with certain exceptions) permanent and should be considered as governing the relations between the two Parties in all that concerned the interpretation of Article 16 (III) of the 1933 Concession during the whole period of the Concession, the

¹ As regards 1950, it should be noted that under the terms of the Supplemental Agreement there would almost certainly have been due a substantial extra payment in respect of allocation to general reserve for 1950. This figure cannot be calculated, as the Company's accounts for the year 1950 are not yet available.

proposals contained in the explanatory notes and schedules thereto (Part II) covered only the period 1936-1943. The Company in 1943 gave assurances that it did not intend to diminish the scale of these latter voluntary activities, although the period covered by the undertakings contained in Part II of the 1936 General Plan was about to expire. In fact, the training schemes contained therein were developed still further both as regards numbers and categories of men under training. From 1943 onwards, however, there were several exchanges of view between the Imperial Iranian Government and the Company, and as stated above particularly during the discussions which led up to the signing of the Supplemental Agreement. Finally, on 6th June 1949, the Company submitted a final draft of a new General Plan. This draft contained *inter alia* :

- (i) a reaffirmation of the principle that in effecting reductions in the numbers of employees of non-Iranian nationality, the Company must be guided by the provisions of the Concession, and in particular by Articles 12 (A) and 16. (See paragraph 54 above.)
- (ii) a declaration by the Company of its intention to reduce within 10 years from 1949 the proportion borne by its non-Iranian to its total (salaried) staff from 40 per cent to 33 per cent, and its non-Iranian artisans to its total labour (less unskilled labour) from 3 per cent to 1 per cent ;
- (iii) a recognition by the Parties that the rate of reduction might be retarded by an increase in the extent or a change in the scope of the Company's operations or by factors beyond the control of the Company.

77. In an explanatory note annexed to the draft, the Company set out some of the facilities already in existence and certain measures (involving the expenditure of many millions of pounds) which the Company was planning voluntarily to undertake in connection with the education and training of its employees and their children and with the provision of medical facilities, housing and amenities in its centres of operations, and the execution (in conjunction with the Government) of municipal improvements in Abadan town and the surrounding villages.

78. On 17th July 1949, a letter was signed on behalf of the Imperial Government of Iran and of the Company, which was expressed to be valid on condition of the ratification by the Majlis of the Supplemental Agreement and which (as amended by a letter of 9th October 1949) contained *inter alia* the following statements and provisions :

- (i) that the Government recognized that the essential principles of the (draft) General Plan, including the principle of percentage reduction, on which the General Plan prepared in accordance with Article 16 (III) of the (1933) Concession was based, were acceptable to the Government ;
- (ii) that if within a period of three months from the ratification of the Supplemental Agreement the (draft) General Plan was not agreed upon between the Government and the Company, the Parties would immediately refer to arbitration in accordance with Article 22 of the 1933 Concession any matter in connection with the General Plan upon which they could not agree.

Subsequent history of the Supplemental Agreement

79. In accordance with the law of Iran, the Supplemental Agreement was duly submitted to the Majlis, but that body was dissolved only a few days later before a decision could be reached. At no time, then or since, has the Agreement received the benefit of a sympathetic, detailed or objective examination during Majlis debate.

80. Much delay occurred over the elections to the next Majlis, which was not convened until 9th February 1950, and there was also a change of Government on 3rd April. The question of the Agreement was not again discussed until June 1950, when the Government proposed to the Majlis that it should be examined, before debate, by a Parliamentary Committee. The Majlis adopted this procedure and the Committee (under the chairmanship of Dr. Musaddiq, the present Prime Minister) held meetings from June until December. Shortly after the setting up of the Committee, the Prime Minister, His Excellency M. Ali Mansur, was succeeded by His Excellency M. Ali Razmara. On 12th December, the Committee submitted an advance report stating that it was not in favour of the Supplemental Agreement Bill on the grounds that it did not satisfactorily safeguard Iranian rights and interests. On 11th January 1951, the Majlis confirmed the report of the Committee and approved a motion which charged the Committee to prepare in the following two months a further report as to the course which the Government should take in the matter. This decision was confirmed by the Senate on 31st January. In the meantime, the Government had withdrawn the Supplemental Agreement Bill on 26th December.

81. On 31st December 1950, the Saudi-Arabian Government and the Arabian-American Oil Company concluded an agreement which, generally speaking, provided for the equal sharing between them of the profits derived from that Company's operations in Saudi-Arabia after deduction of United States taxation. The terms of this agreement attracted some attention in Iran, and in discussion with the new Prime Minister about the end of January, the Anglo-Iranian Oil Company expressed its willingness to examine with the Government a new agreement on the basis of an equal sharing of the profits arising from its operations in Iran, or for that matter any other reasonable proposal. It is of interest that royalties based on trading profits had in fact been provided for in the D'Arcy Concession, but from earlier paragraphs it will be clear that experience during the depression years had proved conclusively that there were considerable disadvantages in such a system, owing to wide fluctuations in annual payments due to changes in market prices, and difficulties in arriving at mutually acceptable assessments of net profits.

Events leading up to the Oil Nationalization Act

82. On 19th February 1951, Dr. Musaddiq (Chairman of the Oil Committee) formally proposed to the Committee that the oil industry throughout Iran should be nationalized, and on 8th March (the day following Razmara's assassination) the following resolution was adopted :

“In view of the fact that, among the proposals received by the Oil Committee, the proposal to nationalize the oil industry throughout the country has been considered and accepted by the Com-

mittee¹, and since the time left for studying the execution of this proposal is not enough, the Special Oil Committee requests the Majlis to grant an extension of two months for this purpose."

On 15th March, the Majlis approved a Single Article in the following terms: "The Majlis confirms the Special Oil Committee's decision of 8th March, and approves the extension of the Committee's term of office for two months." On 20th March, the Senate also approved the Single Article. In the meantime, following the assassination of His Excellency M. Ali Razmara, on 7th March, His Excellency M. Hussein Ala had been made Prime Minister in his place.

83. The new turn that events had taken was a matter of deep concern to the Government of the United Kingdom, as was shown by the text of a note (attached as Appendix No. 24 hereto) which the British Ambassador delivered to His Excellency M. Hussein Ala on 14th March. As stated in that note, for a variety of reasons successive Iranian Governments had failed to present the case for the Supplemental Agreement in a manner which would enable the Iranian public to understand it and to realize not only that it was fair but also how much it would be to their advantage. The Company's Information Office in Tehran suitably publicized the terms and advantages of the Agreement through the medium of the Iranian press, radio, etc., but its efforts in this direction were handicapped by the reluctance of the Iranian authorities to undertake any similar publicity measures.

84. After the Iranian New Year recess at the end of March, the Oil Committee resumed its sittings, and on 26th April the Committee unanimously approved the text of a Bill giving immediate effect to the principle of nationalization. The following day His Excellency M. Hussein Ala resigned from office as Prime Minister, and Dr. Musaddiq, with the approval of the Majlis, succeeded him. On 28th April, Dr. Musaddiq secured the passage through the Majlis of a Bill substantially as recommended by the Oil Committee, providing, *inter alia*, for the taking possession of the installations of what was described in the Bill as the "late Company". The Senate the next day approved the appointment of Dr. Musaddiq as Prime Minister, and on 30th April approved the Nationalization Bill; on 1st May, His Imperial Majesty the Shah gave his assent both to the "legal decision concerning the nationalization of the Oil Industry throughout the country and an extension for two months for a study of execution of the article and the decision adopted by the Oil Committee which was approved by the Majlis and the Senate on 17th March²", and to the Oil Nationalization Bill approved by the Senate on 30th April. (A copy of the Oil Nationalization Act of 1st May is appended hereto as Appendix No. 25. It also appears as Annex C of the Application Instituting Proceedings of 26th May 1951.)

¹ The proposal referred to is that accepted by the Committee on 29th November 1950, which reads as follows: "For the sake of the prosperity of the Iranian nation and with a view to ensuring world peace, the undersigned propose that the oil industry be entirely nationalized; i.e. the entire operations for exploration, exploitation and extraction to be controlled by the Government."

² This refers to the Single Article referred to in paragraph 82 above. The 17th March was the date on which the Senate Standing Committees on Foreign Affairs and Finance reached agreement on it.

Certain other assistance extended to Iran

85. It has been the practice of the Company to make advances to the Iranian Government (at the request of that Government) against the payments which would become due from the Company under Articles 10 and 11 of the 1933 Concession. This has in fact frequently resulted in the Government receiving a large part of its concessional payments well in advance of the due date of payment, and in the case of the large advances of the past few years, no interest at all has been charged by the Company. For instance, in August 1943 an advance of £2,675,000 was made and recovered, together with interest at the agreed rate of 2½ per cent, by the retention of sums due in February and March 1944. In 1944-1945, advances totalling £3,737,500 were made, and in each of the years 1946 and 1948 further advances of £1,000,000. In October 1949, the Company agreed to make advances totalling £6,000,000 against amounts due in February 1950, and to forgo interest thereon. In May 1950, the Company agreed to make advances totalling £6,000,000 during the period May to July 1950, and in September 1950 agreed to make yet further advances totalling £8,000,000 during the period September 1950 to January 1951; all these advances agreed in 1950 were to be free of interest and were repayable "by deduction from all future concessional payments as they accrue to the Government". These latter two advances, totalling £14,000,000, were actually made, and were recovered against the payments due by virtue of the Concession Convention in 1950 and in 1951, the final recovery being effected on 28th February 1951. During February 1951, the Company agreed to make still larger advances which would have amounted to £25,000,000 in 1951, starting with £5,000,000 in February 1951 and thereafter being at the rate of £2,000,000 per month up to the end of 1951. Two payments were made, £5,000,000 in February and £2,000,000 in March; but since the Imperial Government in April then made it plain that it regarded these advances as sums which would be carried into account "as partial payments against the Imperial Iranian Government's claims against the Company in respect of the past", and not as advances to be recovered in the agreed and usual manner by way of deduction from all future concessional payments, further payments were discontinued.

86. In addition, the Imperial Government of Iran has secured substantial benefits from the purchases of rials by the Company. By reason of decrees of 26th July 1948 and 10th January 1949:

- (i) The Company has been obliged to obtain the Iranian rials essential for its operations in Iran by selling foreign exchange at a rate considerably lower than that which could be obtained by other sellers of exchange in Iran.
- (ii) The Bank-i-Melli was authorized to sell, at the much higher rates payable by importers, foreign exchange which had been purchased from the Company at the official rate.
- (iii) The Ministry of Finance was empowered to use the profit thus made by the Bank-i-Melli for the purpose of reducing taxation in Iran.

Conclusion

87. The foregoing records the sequence of events and also makes clear the great benefits, financial and otherwise, which the Iranian Government and nation have derived from the operations of the Company in Iran. Many of these benefits extend far beyond what was laid down as obligatory under the terms of the two Concession Conventions which have been in force from 1901 to the present time. Moreover, these benefits have been largely due to the enormous monetary investments which the Company, in reliance upon the sanctity of the 1933 Concession Convention, has made in Iran. The Iranian Government's annual revenue from the Company's royalties has risen nearly tenfold since 1933. In virtue of the Company's nation-wide distribution system, the Iranian public is assured of supplies of high-quality oil products at reasonable prices. The Company has made a considerable contribution to the education and training of Iranians, many of whom, having taken advantage of the facilities provided by the Company, have found employment outside its areas, thus benefiting industry elsewhere. Inside those areas, many thousands of Iranians have assured employment at generous rates and under most favourable conditions. It is no exaggeration to say that, but for the Anglo-Iranian Oil Company and its activities and investments in Iran, that country would be in a far less developed and prosperous condition than it actually is at the present day.

Appendix No. 1 to Annex 3

MAP OF IRAN

*[Not reproduced]**Appendix No. 2 to Annex 3*

THE D'ARCY CONCESSION DATED 28th MAY 1901

Below is given the French text, which is the only authoritative text (see Article 18 of the Concession). An English translation is given on the following page.

Entre le Gouvernement de Sa Majesté impériale le Schah de Perse d'une part et William Knox D'Arcy, rentier demeurant à Londres, n° 42 Grosvenor Square (ci-après désigné par l'expression « le concessionnaire ») d'autre part.

Il est par ces présentes convenu et arrêté ce qui suit, savoir :

ART. I

Le Gouvernement de Sa Majesté impériale le Schah octroie au concessionnaire par ces présentes le privilège spécial et exclusif de rechercher,

obtenir, exploiter, développer, rendre propres pour le commerce et emporter et vendre le gaz naturel, le pétrole, l'asphalte et l'ozokérite, dans toute l'étendue de l'Empire persan, pour une durée de soixante années à découler de la date des présentes.

ART. 2

Ce privilège comprendra le droit exclusif d'installer les « pipelines » nécessaires des gisements, où il serait trouvé l'un ou plusieurs desdits produits, jusqu'au golfe Persique, ainsi que les embranchements de distribution nécessaires. Il comprendra aussi le droit de construire et entretenir tous puits, réservoirs, stations et services de pompes d'accumulation et de distribution, usines et autres travaux et agencements qui seraient jugés nécessaires.

ART. 3

Le Gouvernement impérial persan concède gratuitement au concessionnaire tous les terrains non cultivés appartenant à l'État que les ingénieurs du concessionnaire jugeront nécessaires pour la construction de tout ou partie des travaux ci-dessus mentionnés, quant aux terrains cultivés appartenant à l'État, le concessionnaire devra les acheter au prix équitable et courant de la province.

Le Gouvernement accorde également au concessionnaire le droit de faire acquisition de tous autres terrains ou bâtiments nécessaires pour le même objet, du consentement des propriétaires, aux conditions qui pourront être arrêtées entre lui et eux sans qu'il leur soit permis d'élever des prétentions de nature à surcharger les prix ordinairement en usage pour les terrains situés dans leurs localités respectives.

Les lieux saints et toutes leurs dépendances dans un rayon de deux cents archines persans sont formellement exclus.

ART. 4

Comme trois mines de pétrole situées à Schouster, à Kassre-Chirine — province de Kermanschahan — et Daleki près de Bouchir, sont actuellement affermées à des particuliers et produisent annuellement un revenu de deux mille tomans au profit du Gouvernement, il a été convenu que ces trois susdites mines sont comprises dans l'acte de concession, conformément à l'art. 1, à condition que, outre les seize pour cent mentionnés à l'art. 10, le concessionnaire payera chaque année la somme fixe de 2000 (deux mille) tomans au Gouvernement impérial.

ART. 5

Le tracé des « pipelines » sera fixé par le concessionnaire et ses ingénieurs.

ART. 6

Nonobstant ce qui est contenu ci-dessus, le privilège accordé par les présentes ne s'étendra pas aux provinces d'Azerbadjan, Ghilan, Mazendaran, Asdrabad et Khorassan, mais à la condition explicite que le Gouvernement impérial persan n'accordera à aucune autre personne le droit de construire un « pipeline » aux fleuves du sud ou à la côte méridionale de la Perse.

ART. 7

Tous les terrains accordés, par ces présentes, au concessionnaire ou qui seront acquis par lui de la manière prévue aux articles 3 et 4 des présentes, ainsi que tous les produits exportés seront francs de tous impôts et taxes pendant la durée de la présente concession. Tous les matériaux et appareils nécessaires pour l'exploration, l'exploitation et le développement des gisements et pour la construction et le développement des « pipelines » entreront en Perse francs de tous taxes et droits de douane.

ART. 8

Le concessionnaire devra faire partir immédiatement pour la Perse et à ses propres frais, un ou plusieurs experts dans le but d'explorer la région où existent, comme il le croit, lesdits produits, et dans le cas où le rapport de l'expert serait, selon l'opinion du concessionnaire, d'une nature satisfaisante, ce dernier devra envoyer immédiatement en Perse, et à ses propres frais, tout le personnel technique nécessaire avec le matériel d'exploitation et les machines nécessaires pour forer et foncer des puits et prouver la valeur de la propriété.

ART. 9

Le Gouvernement impérial persan autorise le concessionnaire à fonder une ou plusieurs sociétés pour l'exploitation de la concession.

Les noms, les statuts et le capital de ces sociétés seront fixés par le concessionnaire, et les administrateurs seront choisis par lui, à la condition expresse qu'à la constitution de chaque société, le concessionnaire donnera avis officiel de cette constitution au Gouvernement impérial par l'intermédiaire du commissaire impérial, et remettra les statuts avec l'indication des lieux où cette société doit fonctionner. Cette société ou ces sociétés jouiront de tous les droits et privilèges accordés au concessionnaire, mais elles devront prendre à leur charge tous ses engagements et responsabilités.

ART. 10

Il sera stipulé au contrat entre le concessionnaire d'une part, et la société d'autre part, que cette dernière devra, dans le délai d'un mois à partir de la constitution de la première société d'exploitation, payer au Gouvernement impérial persan une somme de vingt mille livres sterling, espèces, et une somme additionnelle de vingt mille livres sterling en actions entièrement libérées de la première société, fondée en vertu de l'article précédent : elle devra payer également audit gouvernement, annuellement, une somme égale au seize pour cent des bénéfices annuels nets de toute société ou de toutes sociétés qui pourraient être constituées conformément audit article.

ART. 11

Ledit gouvernement sera libre de nommer un commissaire impérial lequel sera consulté par le concessionnaire et les administrateurs des sociétés à former, il fournira tous les renseignements utiles en son pouvoir et leur indiquera la meilleure ligne de conduite à suivre dans l'intérêt

de l'entreprise. Il établira, d'accord avec le concessionnaire, le contrôle qu'il jugera utile pour sauvegarder les intérêts du Gouvernement impérial.

Les susdites attributions du commissaire impérial seront indiquées dans les statuts des sociétés à créer.

Le concessionnaire paiera au commissaire ainsi nommé une somme annuelle de mille livres sterling pour ses services à partir de la date de la constitution de la première société.

ART. 12

Les ouvriers employés au service de la société devront être sujets de Sa Majesté impériale le Schah, exception faite du personnel technique tel que les directeurs, ingénieurs, perforateurs et contremaîtres.

ART. 13

Dans tout lieu où il pourrait être établi que les habitants du pays obtiennent actuellement du pétrole pour leur propre usage, la société devra leur fournir gratuitement la quantité de pétrole qu'ils se procuraient eux-mêmes auparavant : cette quantité sera établie d'après leurs propres déclarations, sous la réserve du contrôle de l'autorité locale.

ART. 14

Le Gouvernement impérial s'oblige à prendre toutes les mesures qui seraient nécessaires pour assurer la sûreté et l'exécution de l'objet de cette concession, du matériel et des appareils dont il est fait mention pour les objets de l'entreprise de la société et protéger les représentants, agents et employés de la société. Le Gouvernement impérial ayant ainsi exécuté ses engagements, le concessionnaire et les sociétés créées par lui ne pourront, sous aucun prétexte, réclamer des dommages-intérêts au Gouvernement persan.

ART. 15

A l'expiration de la durée de la présente concession, tous les matériaux, bâtiments et appareils dont il serait fait alors usage par la société pour l'exploitation de son industrie deviendront la propriété dudit gouvernement, et la société n'aura droit à aucune indemnité de ce chef.

ART. 16

Si dans le délai de deux ans à partir de la présente date, le concessionnaire n'a pas établi la première desdites sociétés autorisées par l'article 9 de la présente convention, la présente concession sera nulle et non avenue.

ART. 17

Dans le cas où il viendrait à s'élever entre les parties intervenant à la présente concession toute question ou tout différend au sujet de son interprétation ou des droits ou responsabilités de l'une ou de l'autre des parties en résultant, cette question ou ce différend sera soumis à deux arbitres, à Téhéran, dont l'un sera nommé par chacune des parties,

et à un tiers-arbitre qui sera désigné par les arbitres avant de procéder à l'arbitrage. La décision des arbitres, ou dans le cas où ces derniers ne tomberaient pas d'accord, du tiers-arbitre, sera concluante.

ART. 18

Cet acte de concession fait en double est écrit en langue française et traduit en langue persane avec la même signification.

Mais dans le cas où il viendrait à surgir toute contestation relative à cette signification, ce sera le texte français qui seul prévaudra. Téhéran le Séfer 1319 de l'Hégire, soit le mai mil neuf cent un.

Opposite the signature of William Knox D'Arcy, under the Persian, is a signature in Persian. The following certificate is written opposite the signature:

(Signé) WILLIAM KNOX D'ARCY,

"Certified that this writing is the visé or sign manual of H.I.M. Muzaffer es Din Shah of Persia.

By his Attorney,

(Signé) ALFRED L. MARRIOTT.

(Sgd.) GEORGE GRAHAME,
Vice-Consul,
Tehran,
6th June 1901.

Certifié que les signatures ci-dessus ont été apposées en ma présence au consulat général britannique à Gulaket près Tehran, ce quatrième jour du mois de juin 1901, par Alfred Lyttelton Marriott, fondé de pouvoirs de William Knox D'Arcy, conformément à l'acte de notaire daté du 21 mars 1901 et vu par moi.

(Signé) GEORGE GRAHAME,
Vice-Consul.

Certified that this Seal is that of Amines-Saltan Atabek-i-Azam, Prime Minister of Persia.

Certified that this Seal is that of Mushir ed Douleh, Minister of Foreign Affairs, Persia.

(Sgd.) GEORGE GRAHAME,
Vice-Consul,
Tehran,
6th June 1901.

(Sgd.) GEORGE GRAHAME,
Vice-Consul,
Tehran,
6th June 1901.

Certified that the writing in the Persian and French languages on this and the preceding seven pages was registered in the Archives (Register Book) of H.M.'s Legation, Tehran, on pages 117 to 124 on the 5th June 1901. Dated at Gulaket, near Tehran, this sixth day of June 1901.

(Signed) GEORGE GRAHAME,
Vice-Consul.

[Translation]

Between the Government of His Imperial Majesty the Shah of Persia of the one part and William Knox D'Arcy of independent means residing in London at No. 42 Grosvenor Square (hereinafter called "the Concessionnaire") of the other part.

The following has by these presents been agreed on and arranged, viz. :

ARTICLE I

The Government of His Imperial Majesty the Shah grants to the Concessionnaire by these presents a special and exclusive privilege to search for, obtain, exploit, develop, render suitable for trade, carry away and sell natural gas, petroleum, asphalt and ozokerite throughout the whole extent of the Persian Empire for a term of 60 years as from the date of these presents.

ARTICLE 2

This privilege shall comprise the exclusive right of laying the pipelines necessary from the deposits where there may be found one or several of the said products up to the Persian Gulf, as also the necessary distributing branches. It shall also comprise the right of constructing and maintaining all and any wells, reservoirs, stations and pump services, accumulation services and distribution services, factories and other works and arrangements that may be deemed necessary.

ARTICLE 3

The Imperial Persian Government grants gratuitously to the Concessionnaire all uncultivated lands belonging to the State which the Concessionnaire's engineers may deem necessary for the construction of the whole or any part of the above-mentioned works. As for cultivated lands belonging to the State, the Concessionnaire must purchase them at the fair and current price of the Province.

The Government also grants to the Concessionnaire the right of acquiring all and any other lands or buildings necessary for the said purpose, with the consent of the proprietors, on such conditions as may be arranged between him and them without their being allowed to make demands of a nature to surcharge the prices ordinarily current for lands situate in their respective localities. Holy places with all their dependencies within a radius of 200 Persian archines are formally excluded.

ARTICLE 4

As three petroleum mines situate at Schouster Kassar-Chirine in the Province of Kermanschahan and Daleki near Bouchir are at present let to private persons and produce an annual revenue of two thousand tomans for the benefit of the Government, it has been agreed that the three aforesaid mines shall be comprised in the Deed of Concession in conformity with Article 1, on condition that over and above the 16 per cent mentioned in Article 10 the Concessionnaire shall pay every year the fixed sum of 2,000 (two thousand) tomans to the Imperial Government.

ARTICLE 5

The course of the pipelines shall be fixed by the Concessionnaire and his engineers.

ARTICLE 6

Notwithstanding what is above set forth, the privilege granted by these presents shall not extend to the Provinces of Azerbadjan, Ghilan, Mazendaran, Asdrabad and Khorassan, but on the express condition that the Persian Imperial Government shall not grant to any other person the right of constructing a pipeline to the southern rivers or to the south coast of Persia.

ARTICLE 7

All lands granted by these presents to the Concessionnaire or that may be acquired by him in the manner provided for in Articles 3 and 4 of these presents, as also all products exported shall be free of all imposts and taxes during the term of the present Concession. All material and apparatuses necessary for the exploration, working and development of the deposits and for the construction and development of the pipelines shall enter Persia free of all taxes and custom-house duties.

ARTICLE 8

The Concessionnaire shall immediately send out to Persia and at his own cost one or several experts with a view to their exploring the region in which there exist, as he believes, the said products, and in the event of the report of the expert being in the opinion of the Concessionnaire of a satisfactory nature, the latter shall immediately send to Persia and at his own cost all the technical staff necessary with the working plant and machinery required for boring and sinking wells and ascertaining the value of the property.

ARTICLE 9

The Imperial Persian Government authorizes the Concessionnaire to found one or several companies for the working of the Concession.

The names, "statutes" and capital of the said companies shall be fixed by the Concessionnaire, and the directors shall be chosen by him on the express condition that on the formation of each company the Concessionnaire shall give official notice of such formation to the Imperial Government through the medium of the Imperial Commissioner and shall forward the "statutes" with information as to the places at which such company is to operate. Such company or companies shall enjoy all the rights and privileges granted to the Concessionnaire, but they must assume all his engagements and responsibilities.

ARTICLE 10

It shall be stipulated in the contract between the Concessionnaire of the one part and the Company of the other part that the latter is within the term of one month as from the date of the formation of the first exploitation company to pay the Imperial Persian Government the sum

of £20,000 sterling in cash and an additional sum of £20,000 sterling in paid-up shares of the first company founded by virtue of the foregoing Article. It shall also pay the said Government annually a sum equal to 16 per cent of the annual net profits of any company or companies that may be formed in accordance with the said Article.

ARTICLE 11

The said Government shall be free to appoint an Imperial Commissioner who shall be consulted by the Concessionnaire and the directors of the companies to be formed. He shall supply all and any useful information at his disposal and he shall inform them of the best course to be adopted in the interest of the undertaking. He shall establish by agreement with the Concessionnaire such supervision as he may deem expedient to safeguard the interests of the Imperial Government.

The aforesaid powers of the Imperial Commissioner shall be set forth in the "statutes" of the companies to be created.

The Concessionnaire shall pay the Commissioner thus appointed an annual sum of £1,000 sterling for his services as from the date of the formation of the first company.

ARTICLE 12

The workmen employed in the service of the Company shall be subjects of His Imperial Majesty the Shah, except the technical staff such as the managers, engineers, borers and foremen.

ARTICLE 13

At any place in which it may be proved that the inhabitants of the country now obtain petroleum for their own use, the Company must supply them gratuitously with the quantity of petroleum that they themselves got previously.

Such quantity shall be fixed according to their own declarations, subject to the supervision of the local authority.

ARTICLE 14

The Imperial Government binds itself to take all and any necessary measures to secure the safety and the carrying out of the object of this Concession, of the plant and of the apparatuses of which mention is made for the purposes of the undertaking of the Company and to protect the representatives, agents and servants of the Company. The Imperial Government having thus fulfilled its engagements, the Concessionnaire and the companies created by him shall not have power under any pretext whatever to claim damages from the Persian Government.

ARTICLE 15

On the expiration of the term of the present Concession, all materials, buildings and apparatuses then used by the Company for the exploitation of its industry shall become the property of the said Government, and the Company shall have no right to any indemnity in this connection.

ARTICLE 16

If within the term of two years as from the present date the Concessionnaire shall not have established the first of the said companies authorized by Article 9 of the present Agreement, the present Concession shall become null and void.

ARTICLE 17

In the event of there arising between the parties to the present Concession any dispute or difference in respect of its interpretation or the rights or responsibilities of one or the other of the parties therefrom resulting, such dispute or difference shall be submitted to two arbitrators at Teheran, one of whom shall be named by each of the parties, and to an Umpire who shall be appointed by the arbitrators before they proceed to arbitrate. The decision of the arbitrators or, in the event of the latter disagreeing that of the umpire, shall be final.

ARTICLE 18

This Act of Concession made in duplicate is written in the French language and translated into Persian with the same meaning.

But in the event of there being any dispute in relation to such meaning, the French text shall alone prevail. Teheran Sefer 1319 of the Hegire, that is to say May 1901.

(Signed) WILLIAM KNOX D'ARCY,

By his Attorney,

(Signed) ALFRED L. MARRIOTT.

Certified that the above signatures were affixed in my presence at the British Consulate General at Gulaket near Teheran, on this 4th day of the month of June 1901 by Alfred Lyttelton Marriott, Attorney of William Knox D'Arcy, in accordance with the Notarial Act dated 21st March 1901, and seen by me.

(Signed) GEORGE GRAHAME,
Vice-Consul.

Thus far translation.

Here follows in English.

Certified that the writing in the Persian and French languages on this and the preceding seven pages were registered in the Archives (Register Book) of H.M.'s Legation, Tehran, on pages 117 to 124, on the 5th June 1901.

Dated at Gulaket near Tehran this 6th day of June 1901.

(Signed) GEORGE GRAHAME,
Vice-Consul.

Appendix No. 3 to Annex 3

LETTER OF 29th AUGUST 1920 FROM THE UNDER-SECRETARY OF THE PERSIAN MINISTRY OF FINANCE APPOINTING SYDNEY ARMITAGE ARMITAGE-SMITH, ESQ., C.B., AS "REPRESENTATIVE OF THE IMPERIAL GOVERNMENT TO FINALLY ADJUST ALL QUESTIONS IN DISPUTE BETWEEN THE ANGLO-PERSIAN OIL COMPANY AND THE IMPERIAL GOVERNMENT OF PERSIA"

This letter was written in French and its text is given below.

Téhéran, le 29 août 1920.

N° 18059

Monsieur,

J'ai l'honneur de vous notifier que par la présente vous êtes nommé comme représentant du Gouvernement impérial pour régler définitivement toutes les questions en litige entre The Anglo-Persian Oil Company et le Gouvernement impérial de Perse.

Dans le cas où vous jugerez qu'un accord amical sur toutes les questions pendantes, de nature à satisfaire entièrement aux droits et aux intérêts de la Perse, ne soit possible, vous avez l'autorisation d'avoir recours à l'arbitrage au sujet des revendications du Gouvernement impérial contre la compagnie et d'admettre également ce même procédé, si ladite compagnie en exprime le désir, concernant ses propres revendications.

Pour le Ministre des Finances,
Le Sous-Secrétaire d'État,
(Signé) EISSA.

S. E. Monsieur S. A. Armitage-Smith, C. B.,
Conseiller financier du Gouvernement
impérial de Perse.

[Translation]

Tehran, the 29th August 1920.

No. 18059.

Sir,

I have the honour to notify you that you are hereby appointed as the representative of the Imperial Government to finally adjust all questions in dispute between the Anglo-Persian Oil Company and the Imperial Government of Persia.

Should you think that an amicable arrangement in relation to all questions pending, of a nature to fully satisfy the rights and interests of Persia, is not possible, you are authorized to have recourse to arbitration in connection with the claims of the Imperial Government

against the Company, and also to agree to this same procedure if the Company expresses the wish therefor with regard to its own claims.

For the Finance Minister,
The Under-Secretary of State,
(Signed) EISSA.

To His Excellency Mr. S. A. Armitage-Smith, C.B.,
Financial Adviser of the Imperial
Government of Persia

Appendix No. 4 to Annex 3

AGREEMENT CONCLUDED ON 22nd DECEMBER 1920 BETWEEN THE ANGLO-PERSIAN OIL COMPANY, LIMITED, AND SYDNEY ARMITAGE ARMITAGE-SMITH, ESQ., C.B., AS REPRESENTATIVE OF THE IMPERIAL PERSIAN GOVERNMENT

Agreement dated December 22nd one thousand nine hundred and twenty between the Imperial Persian Government and the Anglo-Persian Oil Company, Limited, with respect to determining the manner in which the annual sum or royalty payable to the Persian Government under the D'Arcy Concession dated in May one thousand nine hundred and one shall as from the thirty-first March one thousand nine hundred and nineteen be ascertained.

Definitions

In this Agreement, unless the context otherwise requires, "Persian Oil" shall be deemed to mean oil won pursuant to the said concession within the territory of the Persian Empire covered by the concession and any product of such oil.

"The Government" means the Imperial Persian Government.

"The Company" means the Anglo-Persian Oil Company, Limited.

"Subsidiary Company" shall be deemed to mean (a) any company of which "the Company" owns whether directly or through some other subsidiary company a number of shares sufficient to give to "the Company" the control of more than fifty per cent of the total votes which can be cast at a general meeting of shareholders of such company; (b) any company more than one-half of the directors of which are nominated or appointed by "the Company" and/or by any subsidiary company and in addition in the case of shipping companies; (c) any company which is managed by "the Company"; "a controlling interest" is the interest of "the Company" in a subsidiary company.

Article I.—Subject to the conditions, limitations and exceptions hereinafter mentioned, the Imperial Persian Government (hereinafter referred to as "the Government") is entitled to receive from the Anglo-Persian Oil Company, Limited (hereinafter referred to as "the Company"), the royalty of sixteen per cent of all the annual net profits arising from the winning, refining and marketing of Persian oil, whether all the stages

of the above processes be handled by the Company itself or through subsidiary companies or by means of pooling schemes or other arrangements, and whether the refining and marketing takes place within the Persian Empire or not, subject always to the single exception that the Government is not to receive royalty on the profits arising from the transporting of oil by means of ships, but subject to the conditions and limitations hereafter mentioned, the profits however arising from the employment of lighters and other small craft in the Persian Gulf will be subject to the above-mentioned royalty.

Article 2.—In ascertaining the net profits arising from Persian oil, freight costs will, when the oil is carried in tankers of "the Company" or of any subsidiary company, be based upon the ordinary market time charter rates for tankers similar to those employed in carrying the oil, irrespective of the freights actually paid, such time charter rates to be fixed year by year on the first day of April for the ensuing twelve months at the rate current on that date.

For the purpose of computing such freight costs, voyage rates shall be charged based on the time charter rates and full account shall be taken of all other freight earned by the ships during the voyage in question. If at any time during the months of January, February and March in any year either of the parties hereto shall give notice in writing to the other that in the opinion of that party there is no free market in time charters for oil tankers, then, failing agreement between the parties, that question and if it be decided in the affirmative also the question of what will be a fair and proper rate of freight to be charged as from the first day of April next following the giving of such notice against Persian oil for the purposes of this Agreement shall be submitted to a single arbitrator whose decision shall be final. Such arbitrator shall, in default of agreement between the parties, be nominated by the President for the time being of the Chamber of Shipping in London. As regards the royalty accounts for the years ending thirty-first March one thousand nine hundred and twenty and thirty-first March one thousand nine hundred and twenty-one, the parties will as soon as possible after signature of this Agreement agree rates or, failing agreement within three months of the date hereof, rates shall be settled by an arbitrator as above provided.

Article 3.—The provisions of this and the next following Article of this Agreement shall apply to subsidiary companies refining, distributing or dealing with Persian oil outside Persia, and to any other company refining, distributing or dealing with Persian oil outside Persia where "the Company" is able to procure the necessary accounts to be prepared by such company and the necessary facilities for inspection to be given by such company to the Government. In the case of any company to which this clause applies, the following deductions shall be made from the net profits ascertained as hereafter provided on which royalty is to be calculated before computing the amount of the royalty, viz. :

(a) In the case of refining companies :

A deduction of six shillings per ton in respect of the first three-quarters of a million tons throughput of Persian oil per annum, a deduction of five shillings and sixpence per ton on all throughput of Persian oil between three-quarters of a million tons and one million

tons per annum, and a deduction of five shillings per ton on all throughput of Persian oil in excess of one million tons per annum.

(b) In the case of distributing companies :

<i>Qualities</i>	<i>Quantities of Persian oil distributed by a single company in any year Tons</i>	<i>Rate of deduction per gallon, per pound, or per ton of Persian oil</i>
Kerosene	150,000	$\frac{1}{8}$ d. per gallon
Spirit	200,000	1d. „
Liquid fuel	300,000	$\frac{1}{8}$ d. „
Gas oil	25,000	$\frac{1}{2}$ d. „
Lubricants and all other oils not otherwise specified	20,000	1d. „
Wax and candles	4,000	$\frac{1}{8}$ d. per lb.
Pitch	50,000	2s. 6d. per ton.
Medicinal oils	100	6d. per gallon

In the event of the quantities of any quality distributed by any company exceeding the quantities above stated by not more than fifty per cent, then the rate of deduction on such excess for that quality shall be reduced by one-eighth, and, in the event of the quantities of any quality distributed by any of the companies exceeding the above quantities by more than fifty per cent, then the rate of deduction on such excess over fifty per cent for that quality shall be reduced by one-quarter.

(c) The above deductions shall be made from the total net profits of any company arising from Persian oil before calculating the royalty, and if such deductions more than absorb the whole of the profit, then any deficiency so caused shall not be carried forward to any subsequent year and any such deficiency in the case of one company shall not be set against the net profit in the case of any other company. PROVIDED ALWAYS that such deductions shall only be made once for refining in respect of any quantity of oil and once for marketing, distributing or dealing with any "quality".

Article 4.—In cases where a refining or distributing company to which this Article applies handles other oil or oil products in addition to Persian oil, the net profits on Persian oil on which royalty is to be paid shall be ascertained each year as follows :

(a) In the case of refining companies :

1. When the refining company does not buy the oil but refines the oil for payment, then the cost of refining Persian oil (including a proper proportion of overhead charges other than those which are not chargeable under this Agreement) shall be ascertained as nearly as possible from the books of the refining company, and the net profits attributable to Persian oil shall be obtained by deducting such cost from the charges made for refining such oil.
2. When the refining company purchases the oil, then the actual price paid by the refining company for the Persian oil refined during the year shall be ascertained from the books.

The cost of refining the Persian oil (including such overhead charges as aforesaid) will be ascertained as nearly as possible from the books and added to the said price, and the total will be deducted from the selling value of the products of such refining, the balance being the profit or loss on Persian oil; for the purpose of ascertaining the selling value of the refined products from Persian oil the total quantities of the refined products from Persian and other oils shall be allocated between Persian and other oil on the basis of the respective outputs from the respective crude oils if refined separately. If Persian and other crude oils are mixed for refining purposes, then the allocation shall be made on the basis of the quantities of each class so refined, and the respective qualities as determined by chemical analysis. The selling value of refined products sold during the year shall be taken at the prices realized. Refined products not sold during the year shall be taken at the prices subsequently realized.

(b) In the case of distributing companies:

The prices realized for Persian and other oil products distributed during any year shall be kept separately, and there shall be deducted therefrom in each case the price paid for such products by the distributing company in order to arrive at the respective gross profits on Persian and other oils.

The total net profit of the distributing company from the distribution of all classes of oil during the year shall be ascertained as hereinafter provided (Article 7), and shall be apportioned between Persian and other oil in proportion to the respective gross profits ascertained as aforesaid.

In cases where a company both refines and distributes oil, the accounts of such company for the purposes of this Agreement shall be made out as if the two branches of the business were carried on by separate companies.

“The Company” shall keep and shall procure that all companies to which this and the preceding clause apply shall keep proper books of account and other records to enable the necessary calculations of costs and profits to be made for the purposes of this Agreement.

Article 5.—(a) In the case of any subsidiary company in which the Company holds the whole of the share capital, the total net profits arising from Persian oil (arrived at in accordance with this Agreement) shall be included in the royalty statement, subject to and shewing the deductions provided for in Clause 3. In the case of any other subsidiary company or of any other company to which the provisions of Articles 3 and 4 apply, the net profits arising from Persian oil shall be determined in accordance with this Agreement, but the Government shall only be entitled in respect of any year to royalty on a proportion of the net profits from Persian oil for such year after making the deductions provided for in Clause 3, bearing the same relation to the whole of such profits as the proportion of the whole profits of such company for such year which “the Company” would receive in respect of its shareholding or otherwise if the whole profits were distributed bears to the whole of such profits. If “the Company’s” interest in any company has been increased or diminished during any year, then an allowance shall be

made in respect thereof, having regard to all material circumstances.

(b) In the case of companies in which "the Company" is interested but to which Articles 3 and 4 do not apply, "the Company" shall include in the statement of net profits on which royalty is to be calculated a fair commercial profit in respect of all Persian oil sold to any such other company, having regard to the period of the contract, the quantities and qualities of oil to be supplied and all other terms of any material agreement. Any difference as to what is a fair commercial profit shall be referred to arbitration as hereafter provided.

Article 6.—All directors' fees and office charges of "the Company" shall be allocated fairly as between "the Company" and all subsidiary companies as may be agreed by the parties or as may be settled by arbitration.

Article 7.—The net profits of "the Company" and of subsidiary companies or other companies to which Articles 3 and 4 hereof apply shall be taken for the purposes of this Agreement to be the net profits for each year as adjusted for income tax purposes, subject to the following conditions, viz :

- (i) Any adjustments made in respect of any period prior to thirty-first March one thousand nine hundred and nineteen shall be excluded.
- (ii) Depreciation shall only be allowed to the extent to which it may be allowed for income tax purposes and shall not include any sums in respect of depreciation carried forward from any period prior to thirty-first March one thousand nine hundred and nineteen.
- (iii) No deduction shall be made in respect of excess profits, duty corporation profits tax, income tax or any other taxation of a similar nature imposed by the British Government or by any Colonial or Foreign Government (other than the Persian Government).
- (iv) No deductions shall be made from the profits for interest or dividends of any description paid, and interest and dividends received shall be excluded from the profits on which royalty is payable.
- (v) Where for the purposes of this Agreement it is necessary to determine the profits of any company which is not liable to British taxation, the profits of that company shall be determined as nearly as may be in the same manner as they would be if the company were liable to British income tax.
- (vi) No deduction shall be allowed in respect of royalty payable under this Agreement by "the Company" or any subsidiary company, and no deduction shall be allowed in respect of payments relating to dividends guaranteed by the Company, except in so far as such dividends are themselves brought into account as part of the receipts of some other company on which royalty is calculated.
- (vii) No deduction shall be made in respect of the annual value of lands and buildings owned and occupied under Schedule A.
- (viii) The net profits and losses for each year ascertained as aforesaid (and subject to the provisions relating to deductions referred

to in Article 3) shall be aggregated and royalty shall be payable on the balance (if any) of profit after deducting the losses, but if in any year the aggregate losses exceed the aggregate profits, the excess shall not be carried forward to a subsequent year, except to the extent that such loss is due to depreciation allowed under sub-clause (ii) of this clause.

Article 8.—Royalty shall be deemed to have accrued due on thirty-first March each year in respect of the twelve months ending on that day, but such royalty shall not become payable until the date of the holding of the general meeting of “the Company” for passing the accounts for such year. The royalty shall carry interest at the rate of six per cent per annum free of tax from thirty-first March on, which it accrued due until payment; “the Company” will endeavour to secure that the accounts of all subsidiary and other companies to which Articles 3 and 4 apply shall be made up to the thirty-first March in each year, but if in any cases this is not found practicable, then, for the purposes of this Agreement the net profits of such company for its financial year last preceding the thirty-first March shall be substituted for the net profits to the thirty-first March, and any necessary adjustment shall be made.

Article 9.—A statement of the royalty payable shall be prepared by “the Company” each year and shall be submitted to a person to be designated in that behalf by the Government fourteen days before the date of the holding of the annual meeting of the Company. Such statement shall be deemed to be correct except as regards any items challenged by the Government within six calendar months of the delivery of the statement or any supplemental statement delivered in explanation or amplification thereof.

If the statement of royalty is in the opinion of the nominee of the Government not sufficient to enable him to judge whether the terms of the Concession and of this Agreement have been fulfilled, then the Company undertakes to give the nominee of the Government access to all information which he may reasonably require for that purpose.

In the event of any dispute arising in connection with the said statement or the calculation of royalty hereunder or as to any apportionment or adjustment to be made hereunder or otherwise arising out of or under this Agreement, the question or questions in dispute shall be submitted to a chartered accountant to be nominated by the President for the time being of the Institute of Chartered Accountants in England, who shall be empowered to decide the dispute having regard to the terms of the Concession and of this Agreement and to the generally accepted view of what constitutes “nett profits” where a percentage thereof is payable to another party. The decision of such arbitrator shall be final.

Article 10.—The Government undertakes to use its best endeavours to facilitate the work of “the Company” and its subsidiary companies, and the Company agrees that it will not enter into any fictitious or artificial transaction which would have the effect of reducing the amount of royalty payable.

As Witness the hands of the respective duly authorized representatives of the Government and the Company the day and year first above written.

Signed by Sydney Armitage Armitage-Smith, the Financial Adviser to the Imperial Persian Government for and on behalf of the Imperial Persian Government in the presence of

(Sgd.) WILLIAM MCLINTOCK,
Chartered Accountant,
Bond Court House,
Walbrook, London.

(Sgd.) SYDNEY ARMITAGE
ARMITAGE-SMITH.

Signed by
for and on behalf of the Anglo-Persian Oil Company, Limited, in the presence of

(Sgd.) FRED G. WATSON,
23, Gt. Winchester St.,
London, E.C.2,
Solicitor.

For and on behalf of the Anglo-Persian Oil Company, Limited.

(Sgd.) C. GREENWAY,
Chairman.
F. MACINDOE,
Secretary.

Appendix No. 5 to Annex 3

LETTER, DATED 27th NOVEMBER 1932, FROM THE PERSIAN MINISTER OF FINANCE TO THE RESIDENT DIRECTOR IN TEHRAN OF THE ANGLO-PERSIAN OIL COMPANY

The Anglo-Persian Oil Company has been repeatedly informed by the Persian Government that the D'Arcy Concession of 1901 does not protect the interests of the Persian Government and that it is necessary to place relations between the Imperial Persian Government and the Company on a new basis which will provide for the real interests of Persia. The defects and shortcomings of the D'Arcy Concession and its disagreement with Persian interests have been repeatedly pointed out, and of course the Persian Government cannot legally and logically consider itself bound to the provisions of a concession which was granted prior to the establishment of a constitutional régime in view of the manner in which such concession was obtained and granted at that time. However, the Persian Government, in the hope that the Company would take into consideration the needs of the time and the present position of Persia, and secure her interests in accordance with those needs, has so far refrained from exercising its rights to cancel the D'Arcy Concession. Unfortunately, in the face of the patience displayed by the Persian Government, the Company not only took no practical steps to protect the interests of Persia, but the more the Company's expansion increased the more Persian interests were endangered.

Therefore the Persian Government has lost hope of achieving the object in view by means of negotiations with the Company, and therefore the only way to safeguard its rights is by a cancellation of the D'Arcy Concession, and this Ministry, in accordance with the decision of the Persian Government, has to notify you that as from this date it has cancelled the D'Arcy Concession and will consider it void. At the same time, as the Persian Government has no other intention except to safeguard Persian interests, should the Anglo-Persian Oil Company be prepared contrary to the past to safeguard Persian interests, in accordance with the views of the Persian Government, on the basis of equity and justice, with the necessary security for safeguarding those interests, the Persian Government will not in principle refuse to grant a new concession to that Company.

(Signed) HASAN TAQIZADEH.

Appendix No. 6 to Annex 3

LETTER, DATED 29th NOVEMBER 1932, FROM THE RESIDENT DIRECTOR
IN TEHRAN OF THE ANGLO-PERSIAN OIL COMPANY TO THE PERSIAN
MINISTER OF FINANCE

I have by telegram submitted to the Directors of the Anglo-Persian Oil Company in London the text of Your Excellency's letter dated the 27th November. I am instructed respectfully to inform your Excellency that the Company does not admit that the terms of the D'Arcy Concession do not protect the interests of the Persian Government, nor do they admit that even if that were the case the Government has the right to cancel the Concession. I may remind Your Excellency that the validity of the D'Arcy Concession has been recognized by successive Persian Governments before and after the establishment of the constitutional régime, not only by acceptance for many years of the royalty provided for therein but also in many other ways. You will understand that the Company cannot recognize the right claimed by the Persian Government to cancel the Agreement, such contention having no foundation either in law or in equity. I am instructed to remind Your Excellency that, relying upon the good faith of the Persian Government and the rights conferred upon the Company by the Concession, the Company has expended in Persia many millions of pounds sterling. The benefits received by the Persian Government from this expenditure cannot be ignored in considering whether the terms of the Concession are fair to the Government, nor can they be ignored in any discussions between the Government and the Company which are to be based on equity and justice. The Company takes the strongest exception to the statements in Your Excellency's letter that the Company has failed to take into consideration the needs of the time and the present position of the Persian Government. The Company has at all times shown itself willing by friendly negotiations to endeavour to meet the views and the needs of the Persian Government, and so far as accord has not been reached the failure has certainly not been due to any want of effort or goodwill on the part of the Company. The

Company must point out that the publication of the Government announcement in the press will have most damaging repercussions on the Company's business, and the Directors venture to hope that on further consideration the Government will immediately withdraw this announcement.

For Anglo-Persian Oil Co., Ltd.,
(Signed) T. L. JACKS,
Resident Director.

Appendix No. 7 to Annex 3

LETTER, DATED 1ST DECEMBER 1932, FROM THE PERSIAN MINISTER OF FINANCE TO THE RESIDENT DIRECTOR IN TEHRAN OF THE ANGLO-PERSIAN OIL COMPANY

In reply to your letter of 29th November, I deem it necessary to state that the Persian Government does not admit the statements and reasons as mentioned in the said letter and considers itself entitled with sufficient reasons to cancel the D'Arcy Concession and that it remains its final decision which has been communicated under this Ministry's letter of 27th November.

(Signed) HASAN TAQIZADEH.

Appendix No. 8 to Annex 3

NOTE, DATED 2ND DECEMBER 1932, PRESENTED BY HIS BRITANNIC MAJESTY'S MINISTER IN TEHRAN TO THE IMPERIAL PERSIAN GOVERNMENT

(1) His Majesty's Government in the United Kingdom have taken cognizance of the terms of the letter addressed by the Minister of Finance to the Resident Director of the Anglo-Persian Oil Company on 27th November. His Majesty's Government consider the action of the Persian Government in cancelling the Company's concession to be an inadmissible breach of its terms; they take a most serious view of the conduct of the Persian Government, and have instructed me to demand the immediate withdrawal of the notification issued to the Company.

(2) Furthermore, I am directed to state that, while His Majesty's Government still hope that the Persian Government will be at pains to reach an amicable settlement in direct negotiations with the Company, His Majesty's Government will not hesitate, if the necessity arises, to take all legitimate measures to protect their just and indisputable interests.

(3) Finally, I have the honour to state that His Majesty's Government will not tolerate any damage to the Company's interests or interference with their premises or business activities in Persia.

Appendix No. 9 to Annex 3

NOTE, DATED 3rd DECEMBER 1932, PRESENTED BY THE PERSIAN MINISTER FOR FOREIGN AFFAIRS TO HIS BRITANNIC MAJESTY'S MINISTER IN TEHRAN

In reply to your respected note of 2nd December, I have the honour to state:

(1) The Persian Government regards itself as within its rights in cancelling the D'Arcy Concession and does not agree to withdraw the note of the Minister of Finance to Mr. Jacks, the Director of the Anglo-Persian Oil Company, announcing the cancellation of the Concession. The Imperial Persian Government is of opinion that for some time past it has been entitled to take steps to cancel the D'Arcy Concession and for a long time past the Persian Government has repeatedly pointed out the fact that the stipulations of the above-mentioned concession are not in accord with the legitimate interests of Persia, and that it has not been satisfied with the situation arising from the above-mentioned Concession and within the conduct of the Anglo-Persian Oil Company; but, in the hope that the above-mentioned Company would be prepared to amend their ways so as to satisfy the mind of the Government in the desired manner, it has waited in patience.

(2) As the Minister of Finance has pointed out in the note announcing the cancellation of the D'Arcy Concession to the Anglo-Persian Oil Company, the Persian Government has not refused to enter into direct discussions with the above-mentioned Company with a view to the negotiation of a new concession which would safeguard in an equitable manner the rights and interests of Persia; hence the attainment of the desired result in this matter depends upon the good faith which the Company shows in this respect.

(3) In reply to paragraph 3 of your respected note, I have the honour to state that the Persian Government does not regard itself as responsible for any damage accruing to the Company, and responsibility for any damage which the Company may possibly suffer will rest on the Company itself.

Appendix No. 10 to Annex 3

NOTE, DATED 8th DECEMBER 1932, PRESENTED BY HIS BRITANNIC MAJESTY'S MINISTER IN TEHRAN TO THE IMPERIAL PERSIAN GOVERNMENT

(1) His Majesty's Government in the United Kingdom have had under consideration Your Excellency's note of 3rd December, replying to my note of 2nd December in regard to the Persian Government's cancellation of the Anglo-Persian Oil Company's Concession. I have the honour to inform Your Excellency that His Majesty's Government are unable to admit the validity of a unilateral cancellation of this Concession. Such a cancellation is a confiscatory measure and a clear breach of international law committed against a British company, and His Majesty's Government feel obliged to take the matter up in the exercise of their rights to protect the interests of their nationals. His Majesty's Government have from the outset, as pointed out in

my note of 2nd December, and as repeated in the statement made by the Under-Secretary of State for Foreign Affairs in the House of Commons on 5th December, been anxious that an amicable settlement may be reached between the Persian Government and the Anglo-Persian Oil Company. His Majesty's Government cannot, however, regard the Persian Government's note of 3rd December as offering any satisfactory basis for such a settlement. As I explained on 2nd December, His Majesty's Government consider the action of the Persian Government in cancelling the Concession to be an inadmissible breach of the terms of that instrument, and have therefore requested the withdrawal of the notification to the Company of 27th November. Since the Persian Government in their reply adduce no argument which can be regarded as in any way justifying their action, His Majesty's Government must reiterate their request.

(2) Should the Persian Government be unwilling to withdraw their notification of the cancellation of the Concession within one week from the date of the present note, i.e. Thursday, 15th December, His Majesty's Government will have no alternative but referring the dispute which has arisen between them and the Persian Government in regard to the legality of the Persian Government's action to the Permanent Court of International Justice at The Hague, as a matter of urgency, under the Optional Clause. In so doing, His Majesty's Government would request the Court to indicate, under Article 41 of the Statute, the provisional measures which ought to be taken to preserve their rights.

(3) Further, I am instructed to state that my Government do not accept the attitude outlined in paragraph 3 of your note to the effect that the Persian Government cannot regard themselves as responsible for any damage accruing to the Company. On the contrary, I have the honour to inform Your Excellency categorically that His Majesty's Government will hold the Persian Government directly responsible for any damage to the Company's interests, any interference with their premises or business activities in Persia, or any failure to afford the Company adequate protection, and, in the event of any such damage occurring, His Majesty's Government will regard themselves as entitled to take all such measures as the situation may demand for that Company's protection.

Appendix No. II to Annex 3

NOTE, DATED 12th DECEMBER 1932, PRESENTED BY THE PERSIAN MINISTER FOR FOREIGN AFFAIRS TO HIS BRITANNIC MAJESTY'S MINISTER IN TEHRAN

In reply to Your Excellency's note of 17 Azar, 1311 (8th December 1932), No. 604, which was a reply to my note of 12 Azar, I have the honour to communicate to you the following :

The first paragraph of your note concludes by stating that the Persian Government has adduced no argument which can be regarded as in any way justifying its action in cancelling the D'Arcy Concession,

and that His Britannic Majesty's Government must therefore reiterate its request for the withdrawal of this cancellation.

In reply, I wish to state that the Persian Government has several times indicated the causes of its dissatisfaction with the action of the Company holding the Oil Concession, and I thought it unnecessary to repeat them. I need hardly say that, should the Persian Government be unable to conclude a new and satisfactory agreement with the Company, and should it think it necessary, in order to uphold its right to denounce the D'Arcy Concession, to refer the case to a court, it would not hesitate a moment to submit its arguments in detail.

The Persian Government has always displayed good faith in this question, and it was with the best intentions that, in its previous note concerning the denunciation of the D'Arcy Concession, it refrained from going into details. It is regrettable that this repugnance of the Imperial Government to embark upon discussions and arguments has been interpreted by the British Government as a proof that the Persian Government could not found its action on any legitimate basis.

In order that His Britannic Majesty's Government should not think that the Imperial Government refuses to give the reasons that have led it to cancel the contract, I shall briefly indicate a few of them below :

Not only was the D'Arcy Concession incompatible in itself with the interests of Persia, whose legitimate rights have been disregarded, but the Concession was granted at a time when the interests and welfare of the country were unfortunately not taken into consideration in drawing up contracts of this kind, and when those who wished to obtain them took great advantage of the ignorance of the authorities in charge. Furthermore, in order to obtain these concessions, all sorts of threats and pressure were used at the time, and, as a result of these threats and this pressure, the authorities that granted concessions were unable to refuse them.

Your Excellency and His Britannic Majesty's Government will no doubt admit that the world to-day attaches no value to contracts obtained in this way and does not consider them as binding on their signatories.

In addition to the defects mentioned above, the Company, in its relations with the Persian Government, did not even observe the stipulations of the Concession, which was already so detrimental to Persia. The Company has failed to respect the rights of the Government as laid down in this burdensome and obsolete Concession. In doing so, it has infringed the rights of the Persian Government.

As an example I may quote the following fact :

Under the D'Arcy Concession, the Company was to pay to the Persian Government 16 per cent of all its profits and of those of all its subsidiaries without exception. The logical result of this stipulation was to give the Persian Government the right to supervise the expenditure which was to be deducted from the Company's gross profits in order to arrive at the amount of the net profits, and also the right to express its opinion on the justification of this expenditure. Otherwise, Persia ran the risk of suffering continual reductions in the royalty which was due to her.

Unfortunately, the Company, which has been conspicuous by its prodigality and extravagance, has never consented to the Persian

Government's having a right of supervision over the operating expenditure before the payment of its royalty.

I do not wish to expatiate on the fact that the expenditure, for the most part unjustified, in which the Company indulged, has a very great effect on the royalty accruing to the Persian Government and reduced it to a ridiculously small amount.

More than this, the Company has never hitherto submitted to the Persian Government or its representative any detailed accounts or other evidence of its expenditure, and of the expenditure of all its subsidiaries, which would enable the Persian Government to check the calculation of its royalties. It has also refused, contrary to the express conditions of the contract, to pay the Persian Government its share in the profits earned by its subsidiaries. It has further granted to some of its subsidiaries large subsidies taken from its profits, including these sums in its accounts as expenditure and thus appreciably diminishing the Persian Government's share. Consequently, the Company has manifestly violated the clauses of the Concession and has thereby caused the Government considerable loss.

I could mention many other circumstances in which the Company has shown a lack of sincerity in its relations with the Persian Government. If Your Excellency will refer to the reports submitted by various British experts, you will find that on numerous occasions the Company has acted in such a way as to injure Persia's interests.

Another proof that the Company has not respected the stipulations of the D'Arcy Concession is provided by the following facts :

Although, during the Great War, the price of oil and of oil products constantly rose and the demand grew greater and greater (Persian oil being considered as an important factor in the Allied fleets) ; and although the sale of Persian oil at world rates brought the Company enormous profits, the Company, despite the explicit terms of the Concession, failed to pay the Persian Government the sums which were its due, thus, in practice, completely invalidating the contract.

The Persian Government has on various occasions endeavoured to recover these royalties and to secure a settlement of the accounts of arrears, but without obtaining any satisfactory result.

Your Excellency is also aware that, under the D'Arcy Contract, the Company was not entitled to any exemption from taxation in Persia (with the exception of certain Customs taxes) and that it was subject to all the laws of the country.

Although an income tax has been in force in Persia since 1309 (1930) and although the Company was bound to submit to the laws of the country, it has hitherto refused to pay the tax in question and has thus shown its contempt for the laws of my country.

I have no need to inform Your Excellency of the development of the Company, of its present expansion and of its wealth. This wealth is obviously derived from Persian soil. Nevertheless, if the profits obtained by the Persian Government are compared with those of the Company, it will be seen to what extent the interests of the Persian State have been sacrificed, in what an unjust manner the country has been deprived of its revenue, and how the Company has employed the wealth extracted from Persia in foreign oil undertakings, thus endangering the future of Persian oil.

Although the Company derives all its profits from the Persian oil wells, and although the Persian people might legitimately expect to obtain the oil which they require for their industry or transport at a reasonable price, the oil and its derivatives are sold by the Company in this country and in the very area in which they are extracted at a price above that ruling in other countries. Hence, the needs of Persian industry are not satisfied.

I can quote yet another example of the Company's indifference to Persian interests.

Although, under the D'Arcy Contract, the Company is entitled to extract oil in all parts of Persia with the exception of five northern provinces, and although the existence of oil deposits all over the country cannot be questioned, the Company, far from centralizing its activities in Persia and increasing its exploitation (thus augmenting the share of the profits accruing to the Persian Government), has, on the contrary, limited its exploitation in Persia and continually extended its activities outside Persia.

Despite the above-mentioned violations, the Persian Government has, on various occasions, endeavoured to place its relations with the Company on a stable and fair basis and to put an end to all controversies. Unfortunately, the Persian Government's efforts have not led to any practical result. Last summer the Persian Government even expressed the desire that the Company should send its representative to Tehran in order to arrive at a final agreement but the Company, taking the general crisis as an excuse, refused to send him.

In view of the Company's conduct towards the Persian Government, and the fact that it has refused to pay Persia her due, and has displayed no willingness to proceed to a revision of the contract, how can His Britannic Majesty's Government consider the Imperial Government's action as unjustifiable and feel entitled to exert pressure on the Persian Government?

In view of all these circumstances, the Persian Government found itself justified, as I stated in my previous note, in denouncing the D'Arcy Concession. It therefore sees no reason for withdrawing its notice of cancellation.

I would specially draw your attention to the fact that the Persian Government has always respected its international obligations and has always made a point of basing its actions on the principles of law and justice. But it cannot tolerate its most indisputable rights being disregarded or permit the interests of the country to be sacrificed.

Because the Persian Government hopes that, in the world to-day there are ears to hear reasonable and just claims, it has never refused—indeed, it has always shown its willingness—to state its claims and to submit to the competent international courts the infringements which the rights of the country have suffered. In the present instance, as Your Excellency in the name of your Government and basing yourself on Article 36 of the Statute of the Permanent Court of International Justice alludes to a reference to that Court, I deem it my duty to draw Your Excellency's attention to the fact that, if the stipulations of the article referred to had placed the examination of such question within the competence of that Court, the Persian Government, of course, would not have hesitated at all to accept a reference to that Court; but it appears that the Permanent Court of International Justice is not competent for the examination

of differences which have arisen between the Persian Government and the Company, because Article 36 of the said Statute designates the competence of that Court in such a way, in all cases where reference to the Permanent Court is made on the basis of the Optional Clause, that the circumstances of the present case do not correspond with them.

Your Excellency repeats in paragraph 3 of your note that you consider the Persian Government as responsible for losses which the Company may suffer.

The Persian Government cannot understand how, while, on the one hand, they have no participation whatever in the activities of the Company and, on the other hand, they have not interfered and do not interfere with the affairs of the Company nor cause them any inconvenience, any responsibility can devolve on them ; and it is on the above grounds that I have the honour to reiterate that the Company itself is responsible for any losses which it may suffer.

Coming now to the allusion constantly made by Your Excellency in your letters to the necessity of establishing friendly relations with the Company, I beg to draw your attention to the fact that the Persian Government has never refused, and still does not refuse, to conclude a new agreement equitably safeguarding the interests of the two parties. It has already given practical proof of its good faith in this connection, and the reason why the Persian Government did not take measures after the cancellation of the D'Arcy Concession to interfere with the Company's operations, and still hold for the time being to the same decision in the hope of attaining the desired result, is that my Government has hoped that the Company, instead of entering into the sphere of disputes over principles and of legal controversies, would not lose the opportunity of sending their duly authorized representative to Tehran in order that he might enter into negotiations forthwith with the Persian Government with a view to concluding an agreement which would safeguard the legitimate interests of Persia. But, in practice, it appears, unfortunately, that His Majesty's Government are perhaps not in favour of such an agreement between the Persian Government and the Company, because the threats and intimidation which His Majesty's Government are bringing to bear on my Government and the unacceptable demands that are put forward prevent, in practice, both the Persian Government and the Company from taking a single step towards reaching a mutual agreement.

Although the British Legation has so far not interfered in the discussions between the Persian Government and the Company, it has now become an obstacle between the two parties, and has adopted an attitude which does away with any hope for success in the conclusion of a new agreement with the Company ; and the authorities of the Persian Government cannot but regret that, although His Majesty's Government are certainly aware of the disappointment felt by the Persian Government and of their losses, far from advising and encouraging the Company to take advantage of the good faith of the Persian Government and to hasten the amelioration of their situation, are, on the contrary, encouraging the Company to resist by pressure that they bring to bear on the Persian Government.

The Persian Government consider this attitude of His Majesty's Government as incompatible with the spirit of uprightness and the desire for peace which should prevail amongst friendly Powers and

Members of the League of Nations, and consider themselves within their rights in bringing to the notice of the Council of the League of Nations the threats and pressure which have been directed against them.

(Signed) M. A. FOROUGHÍ.

Appendix No. 12 to Annex 3

LETTER, DATED 14th DECEMBER 1932, FROM THE UNITED KINGDOM GOVERNMENT TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS

Sir,

Geneva, 14th December 1932.

On behalf of His Majesty's Government in the United Kingdom, I request that you will insert on the agenda of the Council the following item :

"Dispute which has arisen between His Majesty's Government in the United Kingdom and the Imperial Government of Persia in consequence of the Persian Government's action in purporting to cancel the concession held by the Anglo-Persian Oil Company, a British company."

I am to express the hope that the Council may be able to take this matter into consideration at a very early date.

(Signed) JOHN SIMON.

Appendix No. 13 to Annex 3

TELEGRAM, DATED 14th DECEMBER 1932, FROM THE UNITED KINGDOM GOVERNMENT TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS

London, 14th December 1932.

A dispute having arisen between His Majesty's Government in the United Kingdom and the Imperial Government of Persia in consequence of the Persian Government's action in purporting to cancel the concession held by the Anglo-Persian Oil Company, a British company, and His Majesty's Government being of opinion that this dispute is likely to lead to a rupture, I have the honour to request, under instructions from His Majesty's Government, that the matter may be submitted to the Council of the League of Nations in accordance with the terms of Article 15 of the Covenant of the League. A statement of the case of His Majesty's Government will be communicated to you at the earliest possible moment, and His Majesty's Government hope that the Council may find it possible to deal with the matter on 19th or 20th December.—
VANSITTART.

Appendix No. 14 to Annex 3

LETTER, DATED 17th FEBRUARY 1933, FROM DR. EDVARD BENEŠ, RAP-
PORTEUR OF THE COUNCIL OF THE LEAGUE OF NATIONS, TO M. DAVAR,
REPRESENTATIVE OF THE IMPERIAL GOVERNMENT OF PERSIA
BEFORE THE COUNCIL

Mon cher Ministre,

Genève, le 17 février 1933.

Je viens d'avoir, comme rapporteur devant le Conseil sur le différend anglo-persan, une conversation avec le représentant du Gouvernement britannique. Il a quelques inquiétudes au sujet des négociations entre le Gouvernement persan et la compagnie qui sont en cours. Il m'a demandé des nouvelles à ce sujet, et lui-même m'a mis au courant de ce qu'il sait de la part de la compagnie.

En le remerciant pour les informations données, je lui ai dit que je me mettrai en contact avec Votre Excellence pour voir si et dans quelle forme mon intervention est nécessaire dans l'état actuel des choses, vu que mon rôle consiste d'abord à donner des interprétations de l'accord survenu entre les deux parties — évidemment si cela est nécessaire et si je suis demandé de le faire — et ensuite de rester en contact avec les deux parties pour voir le développement des négociations et tenir au courant les bureaux du Secrétariat qui ont pour devoir de suivre l'affaire.

Le délégué britannique m'a dit que des difficultés ont surgi au sujet de l'endroit des négociations. Je lui ai répété ce que nous avons établi entre nous à ce sujet, ici à Genève, en maintenant mon point de vue, à savoir qu'il existe un danger si les négociations étaient transportées immédiatement, soit à Londres, soit à Téhéran, avant que les lignes directrices et de principe de l'accord ne fussent tracées.

J'ai, toutefois, constaté qu'il ne m'appartient pas de faire à ce sujet des objections formelles quelconques, sous deux conditions, à savoir : 1) si les deux parties se mettent d'accord à ce sujet et si la compagnie est prête à envoyer son représentant à Téhéran ou si les délégués persans sont prêts à se rendre à Londres, et 2) si les deux parties continuent à procéder de telle façon pour qu'elles puissent être en contact avec moi comme rapporteur, soit pour m'informer périodiquement de la marche des négociations, soit pour avoir des interprétations de l'accord si besoin s'en fait voir.

Voilà, mon cher Ministre, ce que j'ai voulu vous communiquer en ce moment, en vous priant de vouloir bien me faire savoir l'état actuel des négociations et si, de votre côté, il y a quelque chose où mon intervention est nécessaire. Mon devoir est, en effet, de demander des renseignements de tous les deux côtés pour pouvoir rester le rapporteur absolument impartial et objectif. Je suis, du reste, convaincu qu'il n'y a pas et qu'il n'y aura pas de difficultés quelque peu sérieuses dans vos négociations.

Veillez, etc.

(Signed) DR. EDVARD BENEŠ.

Appendix No. 15 to Annex 3

LETTER, DATED 24th FEBRUARY 1933, FROM DR. EDVARD BENEŠ,
RAPPORTEUR OF THE COUNCIL OF THE LEAGUE OF NATIONS,
TO M. DAVAR, REPRESENTATIVE OF THE IMPERIAL
GOVERNMENT OF PERSIA BEFORE THE COUNCIL

Mon cher Ministre,

Genève, le 24 février 1933.

En vous remerciant de votre aimable lettre en date du 20 courant ainsi que des informations relatives au départ du président de la compagnie, ce qui prouve que les négociations se poursuivent régulièrement, je m'empresse de vous répondre aussitôt à propos de certains doutes que vous manifestez dans votre lettre, et je tiens à les dissiper immédiatement, parce qu'il s'agit de la fonction de rapporteur.

Si je saisis bien votre réserve, vous avez des doutes au sujet de la légitimité de l'intervention britannique auprès du rapporteur. Si tel était le cas, il y aurait un malentendu en ce qui concerne le rôle de rapporteur dans une question dont la Société des Nations a été saisie. Puisque, à la fin des négociations, le rapporteur aura à présenter un rapport définitif, soit sur leur réussite, soit sur leur échec, il est de son devoir de se tenir au courant de la marche de ces négociations en s'enquérant auprès de l'une et de l'autre partie. Aussi est-il de mon devoir de m'informer auprès de l'une des parties si l'autre me présente des observations. C'est la loi d'objectivité et d'impartialité qui me le commande, ainsi que le devoir qui m'incombe de suivre, jusqu'à la conclusion de l'accord final, la marche des négociations.

En outre, de par sa fonction, le Secrétariat est tenu d'établir le dossier de toute affaire en cours, et moi, comme rapporteur, je dois y verser toute pièce qui touche mon rôle de rapporteur et que je reçois comme celui qui est responsable de suivre cette affaire jusqu'à ce que son règlement définitif en droit soit obtenu.

Voilà, mon cher Ministre, ce que j'ai tenu à vous dire, étant convaincu que je sers objectivement et impartialement la cause des deux parties. Je procéderai de la même façon, si vous voulez bien vous adresser à moi, en me présentant des observations concernant l'attitude de l'autre partie ou en me faisant parvenir des informations sur la marche des négociations en cours.

Inutile de faire remarquer que je ne dépasserai jamais le rôle qui m'est dévolu, en intervenant de ma propre initiative soit dans les négociations, soit auprès de l'une ou de l'autre partie. Ce serait donc mal interpréter les choses si l'on supposait que s'il se produisait une intervention d'un côté ou de l'autre, tenue strictement dans le cadre que je viens de vous indiquer, le rapporteur ne devrait pas intervenir auprès de l'autre partie.

Persuadé que nous sommes entièrement d'accord à ce sujet, puisque Votre Excellence a bien vu avec quel souci d'impartialité j'ai agi pendant toutes les négociations qui se sont déroulées jusqu'à présent, je la prie, etc.

(Signed) BENEŠ.

Appendix No. 16 to Annex 3

CONVENTION CONCLUDED BETWEEN THE IMPERIAL GOVERNMENT OF PERSIA AND THE ANGLO-PERSIAN OIL COMPANY, AT TEHRAN, ON 29th APRIL 1933

[N.B.—This convention was concluded in the French language and the French text is the sole authoritative text. An English translation is given in the following pages.]

PRÉAMBULE

Dans le but d'établir une nouvelle concession en remplacement de celle qui avait été accordée en 1901 à William Knox D'Arcy, la présente concession est octroyée par le Gouvernement persan et acceptée par l'Anglo-Persian Oil Company, Limited.

Cette concession réglera pour l'avenir les rapports entre les deux parties ci-dessus mentionnées.

DÉFINITIONS

Les définitions ci-dessous de certains termes employés dans la présente convention sont applicables aux fins de celle-ci, abstraction faite de toute signification différente qui peut ou pourrait leur être attribuée pour d'autres fins.

« Le gouvernement »

signifie le Gouvernement impérial de Perse.

« La compagnie »

signifie l'Anglo-Persian Oil Company, Limited, et toutes ses sociétés subordonnées.

« L'Anglo-Persian Oil Company, Limited »

signifie l'Anglo-Persian Oil Company, Limited, ou toute autre personne morale à laquelle, avec le consentement du gouvernement (article 26), cette concession pourrait être transférée.

« Société subordonnée »

signifie toute société pour laquelle la compagnie a le droit de nommer plus de la moitié des administrateurs directement ou indirectement, ou dans laquelle la compagnie possède, soit directement soit indirectement, un nombre d'actions suffisant pour lui garantir plus de 50 % de la totalité des droits de vote dans les assemblées générales d'une telle société.

« Le pétrole »

signifie l'huile brute, les gaz naturels, les asphaltes, les ozokérites, ainsi que tous les produits obtenus soit de ces substances soit en mêlant celles-ci à d'autres substances.

« Opérations de la compagnie en Perse »

signifie toutes les opérations industrielles, commerciales et techniques faites par la compagnie exclusivement aux fins de cette concession.

ARTICLE 1

Le gouvernement octroie à la compagnie, aux termes de cette concession, le droit exclusif, dans le territoire de la concession, de rechercher et d'extraire le pétrole ainsi que de raffiner ou traiter de toute autre manière et rendre propre pour le commerce le pétrole obtenu par elle.

Le gouvernement octroie également à la compagnie, dans l'étendue de de la Perse, le droit non exclusif de transporter le pétrole, de le raffiner ou traiter de toute autre manière et de le rendre propre pour le commerce, ainsi que de le vendre en Perse et l'exporter.

ARTICLE 2

A) Le territoire de la concession, jusqu'au 31 décembre 1938, sera le territoire au sud de la ligne violette tracée sur la carte signée par les deux parties et annexée à la présente convention.

B) La compagnie devra, au plus tard le 31 décembre 1938, choisir dans le territoire ci-dessus mentionné un ou plusieurs espaces de telle forme et telle grandeur situés dans tels endroits que la compagnie jugera convenir. L'ensemble de la superficie du ou des espaces choisis ne doit pas dépasser cent mille milles carrés anglais (100,000 milles carrés), chaque mille simple correspondant à 1609 mètres.

La compagnie informera le gouvernement par écrit le 31 décembre 1938, ou avant cette date, de l'espace ou des espaces qu'elle aura choisis comme il est prévu ci-dessus. Seront jointes à chaque information les cartes et les données nécessaires pour identifier et délimiter l'espace ou les espaces qu'aura choisis la compagnie.

C) Après le 31 décembre 1938, la compagnie n'aura plus le droit de rechercher et d'extraire le pétrole que dans l'espace ou les espaces choisis par elle selon le paragraphe B) ci-dessus, et le territoire de la concession, après cette date, signifiera seulement l'espace ou les espaces ainsi choisis et dont le choix aura été notifié au gouvernement comme il est prévu ci-dessus.

ARTICLE 3

La compagnie aura le droit non exclusif de construire et d'avoir des pipelines. Il lui appartient de fixer le tracé de ses pipelines et de les exploiter.

ARTICLE 4

A) Tous terrains non utilisés appartenant au gouvernement, que la compagnie jugera nécessaire pour ses opérations en Perse et dont le gouvernement n'aura pas besoin pour des buts d'utilité publique, seront cédés gratuitement à la compagnie.

La manière d'acquérir lesdits terrains sera la suivante : chaque fois qu'un terrain devient nécessaire à la compagnie, cette dernière doit envoyer au ministère des Finances une ou plusieurs cartes sur lesquelles le terrain dont la compagnie a besoin sera indiqué en couleur. Le gouvernement s'engage à donner son approbation dans un délai de trois mois après avoir reçu la demande de la compagnie, s'il n'a pas d'objection à faire.

B) Les terrains utilisés appartenant au gouvernement, et dont la compagnie aura besoin, seront demandés au gouvernement de la manière

indiquée à l'alinéa précédent, et le gouvernement, au cas où il n'aurait pas lui-même besoin de ces terrains et n'aurait aucune objection à formuler, donnera, dans un délai de trois mois, son approbation à la vente sollicitée par la compagnie.

Le prix de ces terrains sera payé par la compagnie ; ce prix devra être raisonnable et ne pas dépasser le prix courant des terrains de même nature et de même emploi dans la même région.

C) En l'absence d'une réponse de la part du gouvernement aux demandes prévues aux alinéas A et B précités, après l'expiration de deux mois à partir de la date de la réception desdites demandes, un rappel sera adressé par la compagnie au gouvernement ; à défaut de réponse de la part du gouvernement à ce rappel dans un délai d'un mois, son silence sera considéré comme approbation.

D) Les terres qui n'appartiennent pas au gouvernement et qui sont nécessaires à la compagnie seront acquises par elle, d'accord avec les intéressés, et par l'intermédiaire du gouvernement.

Dans le cas où l'on ne se mettrait pas d'accord sur les prix, le gouvernement ne permettra pas aux propriétaires desdites terres de réclamer un prix plus élevé que les prix ordinairement courants pour des terres voisines de même nature. En évaluant les terres susmentionnées, on ne s'occupera point de l'emploi que la compagnie voudra en faire.

E) Les lieux saints et les monuments historiques, ainsi que tous les endroits et sites ayant un intérêt historique, sont exclus des dispositions qui précèdent, de même que leurs dépendances à une distance d'au moins deux cents mètres.

F) La compagnie a le droit non exclusif de prendre dans le territoire de la concession, mais pas ailleurs, dans tout terrain non utilisé appartenant à l'État, et d'employer gratuitement pour toutes les opérations de la compagnie, toutes espèces de terre, sable, chaux, gypse, pierre et autres matières de construction. Il est entendu que si l'utilisation desdits matériaux était préjudiciable à des droits quelconques appartenant à des tiers, la compagnie dédommagerait les ayants droit.

ARTICLE 5

Les opérations de la compagnie en Perse seront restreintes de la manière suivante :

- 1) La construction de toute nouvelle ligne de chemins de fer et de tout port nouveau sera subordonnée à un accord préalable entre le gouvernement et la compagnie.
- 2) Si la compagnie désire augmenter son service actuel de téléphones, télégraphe, T. S. F. et aviation en Perse, elle ne pourra le faire que moyennant le consentement préalable du gouvernement.

Si le gouvernement a besoin d'utiliser les moyens de transport et de communication de la compagnie pour la défense nationale ou dans d'autres circonstances critiques, il s'engage à entraver aussi peu que possible les opérations de la compagnie, et à lui verser une légitime compensation pour tous les dommages causés par l'utilisation ci-dessus prévue.

ARTICLE 6

A) La compagnie est autorisée de faire, sans licence spéciale, toutes les importations nécessaires pour les besoins exclusifs de son personnel, moyennant le paiement des droits de douane et autres droits et taxes en vigueur au moment de l'importation.

La compagnie prendra les mesures nécessaires pour empêcher la vente ou la cession des produits importés à des personnes ne faisant pas partie de son personnel.

B) La compagnie aura le droit d'importer, sans licence spéciale, l'équipement, le matériel, les instruments médicaux et chirurgicaux et les produits pharmaceutiques, nécessaires à ses dispensaires et hôpitaux en Perse, et sera exempté de ce chef de tous droits de douane et autres droits et taxes en vigueur au moment de l'importation, ou paiements de quelque nature que ce soit à l'État persan ou aux autorités locales.

C) La compagnie aura le droit d'importer, sans aucune licence et exempt de tous droits de douane et de toutes taxes ou paiements de quelque nature que ce soit à l'État persan ou aux autorités locales, tout ce qui sera nécessaire exclusivement pour les opérations de la compagnie en Perse.

D) Les exportations de pétrole jouiront de la franchise douanière, et seront exemptes de toutes taxes ou paiements de quelque nature que ce soit à l'État persan ou aux autorités locales.

ARTICLE 7

A) La compagnie et ses employés jouiront de la protection légale du gouvernement.

B) Le gouvernement donnera, dans les limites des lois et règlements du pays, toutes les facilités possibles pour les opérations de la compagnie en Perse.

C) Si le gouvernement accorde à des tiers des concessions ayant pour objet l'exploitation d'autres mines dans le territoire de la concession, il devra faire prendre les précautions nécessaires afin que ces exploitations ne produisent aucun dommage aux installations et travaux de la compagnie.

D) La compagnie aura à sa charge de déterminer la zone dangereuse pour la construction des habitations, des boutiques et des autres constructions, afin que le gouvernement puisse prévenir les habitants de ne pas s'y installer.

ARTICLE 8

La compagnie ne sera pas obligée de changer en monnaie persane une partie quelconque de ses fonds, notamment les produits de la vente de ses exportations de Perse.

ARTICLE 9

La compagnie prendra immédiatement ses dispositions pour procéder à ses opérations dans la province de Kermanschah au moyen d'une compagnie subsidiaire en vue d'y produire et d'y raffiner le pétrole.

ARTICLE 10

I) Les sommes à payer au gouvernement par la compagnie en vertu de cette convention (outre celles prévues dans les autres articles) sont déterminées comme suit :

- a) Redevance annuelle, commençant le 1^{er} janvier 1933, de quatre shillings par tonne de pétrole vendu pour la consommation en Perse ou exporté de Perse ;
- b) Paiement d'une somme égale à vingt pour cent (20 %) de la distribution aux actions ordinaires de l'Anglo-Persian Oil Company Ltd., excédant la somme de six cent soixante et onze mille deux cent cinquante Livres Sterling (£ 671.250), que la distribution soit faite comme dividendes pour une année quelconque ou qu'elle se rapporte aux réserves de la même compagnie, excédant celles qui, d'après ses livres, existaient au 31 décembre 1932 ;
- c) Le montant total à payer par la compagnie pour chaque année calendaire (chrétienne) selon les alinéas a) et b) ne peut jamais être inférieur à sept cent cinquante mille Livres Sterling (£ 750.000).

II) Les paiements de la compagnie selon cet article seront faits comme suit :

- a) Les 31 mars, 30 juin, 30 septembre et 31 décembre de chaque année, chaque fois cent quatre-vingt-sept mille cinq cents Livres Sterling (£ 187.500). (Le paiement relatif au 31 mars 1933 sera effectué immédiatement après la ratification de la présente convention.)
- b) Le 28 février 1934, et ensuite à la même date de chaque année, le montant de la redevance pour l'année précédente sur le tonnage prévu dans l'alinéa I a), après déduction de la somme de sept cent cinquante mille Livres Sterling (£ 750.000) déjà payée selon l'alinéa II a).
- c) Toute somme due au gouvernement selon l'alinéa I b) de cet article lui sera payée en même temps que s'effectuera la répartition aux actions ordinaires.

III) A l'expiration de cette concession, ainsi qu'en cas de renonciation par la compagnie selon l'article 25, celle-ci paiera au gouvernement une somme égale à vingt pour cent (20 %) :

- a) de la différence en plus entre le montant des réserves (*general reserve*) de l'Anglo-Persian Oil Company Ltd., à la date de l'expiration de la concession ou de sa renonciation, et le montant des mêmes réserves à la date du 31 décembre 1932 ;
- b) de la différence en plus entre le solde à nouveau reporté par l'Anglo-Persian Oil Company Limited à la date de l'expiration de la concession ou de sa renonciation, et le solde à nouveau reporté par la même compagnie le 31 décembre 1932. Tout paiement dû au gouvernement d'après cet alinéa sera effectué dans le délai d'un mois après la date de l'assemblée générale de la compagnie, subséquente à l'expiration ou à la renonciation de la concession.

IV) Le gouvernement aura le droit de contrôler les décomptes se rapportant à l'alinéa I a) qui lui seront envoyés au plus tard le 28 février pour l'année précédente.

V) Pour garantir le gouvernement contre toute perte pouvant résulter, des fluctuations de la valeur monétaire anglaise, les parties ont convenu ce qui suit :

- a) Si, à un moment quelconque, le prix de l'or à Londres dépasse six Livres Sterling par once (*ounce troy*), les paiements à effectuer par la compagnie en vertu de la présente convention (à l'exception des sommes revenant au gouvernement en vertu des alinéas I *b*) et III *a*) et *b*) du présent article et de l'alinéa I *a*) de l'article 23) seront augmentés d'un mille quatre cent quarantième ($\frac{1}{1440}$) pour chaque penny d'augmentation du prix de l'or audessus de six Livres Sterling (£ 6) par once (*ounce troy*) au jour de l'échéance des paiements.
- b) Si, à un moment quelconque, le gouvernement estime que l'or a cessé d'être la base générale des valeurs et que les paiements mentionnés ci-dessus ne lui donnent plus la garantie qui est dans les intentions des parties, celles-ci se mettront d'accord au sujet d'une modification de la nature de la garantie susmentionnée ou, à défaut d'un tel arrangement, soumettront la question au tribunal arbitral (article 22) qui déclarera si la garantie prévue à l'alinéa *a*) ci-dessus doit être changée, et dans l'affirmative déterminera les conditions qui y seront substituées et fixera la période à laquelle celles-ci s'appliqueront.

VI) En cas d'un retard au delà des dates fixées dans la présente convention, éventuellement apporté par la compagnie dans le versement des sommes dues par elle au gouvernement, un intérêt de cinq pour cent (5 %) par an sera payé pour la durée du retard.

ARTICLE II

I) La compagnie sera complètement exempte, pour ses opérations en Perse pendant les trente premières années, de toute imposition actuelle ou future au profit de l'État et des autorités locales ; en échange, les versements suivants seront effectués au gouvernement :

- a) Pendant les quinze premières années de cette concession, le 28 février de chaque année et pour la première fois le 28 février 1934, neuf pence pour chacune des premières six millions (6.000.000) tonnes de pétrole, pour lesquelles la redevance prévue à l'article 10, I, *a*) est payable pour l'année calendrière chrétienne précédente, et six pence pour chaque tonne au-dessus du chiffre de six millions (6.000.000) tonnes indiqué ci-dessus.
- b) La compagnie garantit que le montant payé en vertu de l'alinéa précédent ne sera jamais inférieur à deux cent vingt-cinq mille Livres Sterling (£ 225.000).
- c) Pendant les quinze années suivantes, un shilling pour chacune des premières six millions (6.000.000) tonnes de pétrole, pour lesquelles la redevance prévue à l'article 10, I, *a*) est payable pour l'année calendrière précédente, et neuf pence pour chaque tonne au-dessus du chiffre de 6.000.000 tonnes indiqué ci-dessus.
- d) La compagnie garantit que le montant payé en vertu de l'alinéa précédent *c*) ne sera jamais inférieur à trois cent mille Livres Sterling (£ 300.000).

II) Avant l'année 1963, les parties se mettront d'accord sur les montants des versements annuels à effectuer, en échange de l'exemption complète de la compagnie pour ses opérations en Perse de toute imposition au profit de l'État et des autorités locales, pendant la seconde période de trente ans s'étendant jusqu'au 31 décembre 1993.

ARTICLE 12

A) La compagnie, pour ses opérations en Perse en vertu de la présente convention, se servira de tous les moyens qui sont d'usage et convenables, pour assurer l'économie et le bon rendement de ses opérations, pour conserver les gisements de pétrole et pour exploiter sa concession par les méthodes conformes aux progrès scientifiques du jour.

B) Si, dans le territoire de la concession, se trouvent d'autres substances minérales que le pétrole ou des bois et forêts appartenant au gouvernement, la compagnie ne pourra les exploiter en vertu de la présente concession, ni s'opposer à leur exploitation par d'autres personnes (à condition de respecter les dispositions du littéra C) de l'article 7) ; mais la compagnie aura le droit d'utiliser lesdites substances ou les bois et forêts susvisés s'ils sont nécessaires à l'exploration ou à l'extraction du pétrole.

C) Tous les sondages qui, n'ayant pas abouti à la découverte de pétrole, produisent des eaux ou des matières précieuses, doivent être réservés au gouvernement, qui sera immédiatement avisé de ces découvertes par la compagnie, et le gouvernement l'informerait aussitôt que possible s'il veut en prendre possession. Dans l'affirmative, il veillera à ce que les opérations de la compagnie ne soient pas entravées.

ARTICLE 13

La compagnie s'engage à remettre, à ses propres frais et dans un délai raisonnable, au ministère des Finances, chaque fois que le représentant du gouvernement le demandera, des copies exactes de tous les plans, cartes, profils et toutes autres données, soit topographiques, géologiques ou de sondage, se rapportant au territoire de la concession, qui se trouvent en sa possession.

En outre, la compagnie communiquera au gouvernement pendant toute la durée de la concession toutes les données importantes scientifiques et techniques résultant de ses travaux en Perse.

Tous ces documents seront considérés par le gouvernement comme confidentiels.

ARTICLE 14

A) Le gouvernement aura le droit de faire inspecter à son gré, à tout temps raisonnable, l'activité technique de la compagnie en Perse, et de nommer à ce but des experts-spécialistes techniques.

B) La compagnie mettra à la disposition des experts-spécialistes nommés à cette fin par le gouvernement, toute sa documentation relative aux données scientifiques et techniques, ainsi que toutes les installations et moyens de mesurage, et ces experts-spécialistes auront, en outre, le droit de demander toutes informations dans tous les bureaux de la compagnie et sur tous les territoires en Perse.

ARTICLE 15

Le gouvernement aura le droit de nommer un représentant qui sera désigné « délégué du Gouvernement impérial ». Ce représentant aura le droit :

- (1) d'obtenir de la compagnie toutes les informations auxquelles ont droit les actionnaires de la compagnie ;
- (2) d'assister à toutes les séances du conseil d'administration, de ses comités et à toutes les séances des assemblées générales, convoquées pour délibérer sur toute question résultant des relations entre le gouvernement et la compagnie ;
- (3) de présider *ex officio*, avec vote décisif, le comité à créer par la compagnie dans le but de distribuer l'allocation et de surveiller l'éducation professionnelle en Grande-Bretagne des ressortissants persans visés à l'article 16 ;
- (4) de demander que des réunions spéciales du conseil d'administration soient convoquées à un moment quelconque, pour délibérer sur toute proposition que le gouvernement lui soumettra. Ces réunions seront convoquées avec un délai de 15 jours à dater de la réception par le secrétaire de la compagnie d'une demande écrite à cette fin.

La compagnie paiera au gouvernement pour couvrir les dépenses incombant à celui-ci du chef de la rémunération et des dépenses du délégué susmentionné une somme annuelle de deux mille Livres Sterling (£ 2.000). Le gouvernement avertira par écrit la compagnie de la nomination de ce délégué et, éventuellement, de son remplacement.

ARTICLE 16

I) Les deux parties reconnaissent et acceptent comme principe directeur de l'exécution de cette convention la suprême nécessité, dans leur intérêt mutuel, de maintenir le plus haut degré d'efficacité et d'économie dans l'administration et les opérations de la compagnie en Perse.

II) Il est toutefois entendu que la compagnie recrutera ses artisans ainsi que son personnel technique et commercial parmi les ressortissants persans pour autant qu'elle trouve en Perse des personnes possédant la compétence et l'expérience requises. Il est également entendu que le personnel non qualifié sera composé exclusivement de ressortissants persans.

III) Les parties se déclarent d'accord pour étudier et préparer un plan général de réduction annuelle et progressive des employés non persans afin de leur substituer dans le plus bref délai possible et progressivement des ressortissants persans.

IV) La compagnie fera une allocation annuelle de dix mille Livres Sterling pour donner en Grande-Bretagne, à des ressortissants persans, l'éducation professionnelle nécessaire à l'industrie pétrolière.

La susdite allocation sera dépensée par un comité qui sera constitué suivant l'article 15.

ARTICLE 17

La compagnie se chargera de l'organisation, et en supportera les frais d'installation, de contrôle et d'entretien, des mesures sanitaires et de

santé publique, selon les exigences de l'hygiène la plus moderne pratiquée en Perse, sur tous les terrains de la compagnie et dans tous les bâtiments et habitations, affectés par elle à l'usage de son personnel, y compris les ouvriers employés dans le territoire de la concession.

ARTICLE 18

Lorsque la compagnie fera des émissions d'actions dans le public, les listes de souscription devront être ouvertes à Téhéran en même temps qu'ailleurs.

ARTICLE 19

La compagnie vendra pour la consommation intérieure en Perse, y compris les besoins du gouvernement, l'essence (*motor spirit*), le lampant (*kerosene*) et le mazout (*fuel oil*), produits du pétrole persan, sur la base suivante :

- a) Le premier juin de chaque année, la compagnie établira les moyennes des prix f. o. b. Roumanie pour l'essence, le lampant et le mazout et les moyennes des prix f. o. b. du golfe du Mexique pour chacun des mêmes produits pendant la période précédente de douze mois prenant fin le 30 avril. On choisira de ces moyennes celles qui ont été les plus basses. Celles-ci seront « les prix de base ». pour une période d'une année commençant le 1^{er} juin. « Les prix de base » seront considérés comme étant les prix à la raffinerie.
- b) La compagnie vendra : 1) au gouvernement pour ses propres besoins, et non pas pour la revente, l'essence, le lampant et le mazout aux prix de base, prévus à l'alinéa a) ci-dessus, avec déduction de vingt cinq pour cent (25 %) ; 2) aux autres consommateurs aux prix de base avec déduction de dix pour cent (10 %).
- c) La compagnie aura le droit d'ajouter aux prix de base mentionnés à l'alinéa a), tous les frais réels de transport et de distribution et de vente, ainsi que tous impôts et taxes sur lesdits produits.
- d) Le gouvernement interdira l'exportation des produits du pétrole vendus par la compagnie sous le régime du présent article.

ARTICLE 20

I) a) Pendant les dix dernières années de la concession ou pendant les deux années du préavis précédant la renonciation à la concession prévue par l'article 25, la compagnie ne pourra vendre ou autrement aliéner, sauf à des sociétés subordonnées, un ou plusieurs de ses immeubles situés en Perse. Pendant la même période, la compagnie ne pourra aliéner ou exporter une quelconque de ses propriétés mobilières, à l'exception de celles devenues inutilisables.

b) Pendant toute la période précédant les dix dernières années de la concession, la compagnie ne pourra aliéner aucun terrain obtenu par elle gratuitement du gouvernement ; elle ne pourra non plus exporter de la Perse aucune propriété mobilière, excepté dans le cas où celle-ci serait devenue inutilisable ou ne serait plus nécessaire pour les opérations de la compagnie en Perse.

II) A la fin de la concession, soit par expiration ordinaire soit d'une autre manière, toute la propriété de la compagnie en Perse deviendra propriété du gouvernement dans un état convenable d'exploitation et libre de tous frais et de toutes charges.

III) L'expression « toute la propriété » comprend tous les terrains, bâtiments et usines, constructions, puits, jetées, routes, pipelines, ponts, systèmes d'égout et de distribution d'eau, machines, installations et équipements (y compris les outils) de toute sorte, tous les moyens de transport et de communication en Perse (y compris par exemple automobiles, voitures, avions), tous stocks et tous autres objets en Perse que la compagnie utilise d'une manière quelconque pour les buts de la concession.

ARTICLE 21

Les parties contractantes déclarent baser l'exécution de la présente convention sur les principes réciproques de bonne volonté et de bonne foi ainsi que sur une interprétation raisonnable de cette convention.

La compagnie s'engage formellement à avoir égard en tous temps et en tous lieux aux droits, privilèges et intérêts du gouvernement et s'abstiendra de toute action ou omission préjudiciable à ceux-ci.

Cette concession ne sera pas annulée par le gouvernement et les dispositions y contenues ne seront altérées ni par une législation générale ou spéciale future, ni par des mesures administratives ou tous autres actes quelconques des autorités exécutives.

ARTICLE 22

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 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.

ARTICLE 23

I) En entière liquidation de toutes les réclamations de toute nature du gouvernement pour ce qui concerne le passé jusqu'à la date de l'entrée en vigueur de cette convention (sauf en ce qui touche les impôts persans), la compagnie: *a*) paiera dans le délai de trente jours à compter de ladite date la somme d'un million de Livres Sterling (£ 1.000.000) et en outre *b*) réglera les paiements dus au gouvernement pour les exercices 1931 et 1932 sur la base de l'article 10 de cette convention et non sur celle de l'ancienne concession D'Arcy, après déduction de deux cent mille Livres Sterling (£ 200.000) payées en 1932 au gouvernement comme avance sur les redevances et £ 113.403 3s. 10d. mises en dépôt à la disposition du gouvernement.

II) Dans le même délai, la compagnie paiera au gouvernement en entière liquidation de toutes ses réclamations en matière d'impôts pour la période du 21 mars 1930 jusqu'au 31 décembre 1932 une somme calculée sur la base de l'alinéa *a*) du paragraphe 1 de l'article 11, mais sans la garantie prévue à l'alinéa *b*) du même paragraphe.

ARTICLE 24

Si, en raison de l'annulation de la concession D'Arcy, il se produit des litiges entre la compagnie et des particuliers au sujet de la durée des contrats de baux passés en Perse avant le 1^{er} décembre 1932 dans les limites permises par la concession D'Arcy, le litige sera tranché suivant les règles interprétatives suivantes :

- a*) Si le contrat doit finir, d'après ses propres termes, à la fin de la concession D'Arcy, il gardera sa valeur jusqu'au 28 mai 1961, nonobstant l'annulation de ladite concession.
- b*) Si on a prévu dans le contrat qu'il sera valable pour la durée de la concession D'Arcy et dans l'éventualité de son renouvellement pour la durée de la concession renouvelée, le contrat gardera sa valeur jusqu'au 31 décembre 1993.

ARTICLE 25

La compagnie aura le droit de renoncer à cette concession à la fin de toute année calendrière chrétienne, moyennant notification écrite au gouvernement par un préavis de deux ans.

A l'expiration du délai ci-dessus prévu, la totalité de la propriété de la compagnie en Perse (définie à l'article 20, III) deviendra gratuitement et sans charge propriété du gouvernement dans un état convenable d'exploitation, et la compagnie sera libérée de tout engagement pour l'avenir. Dans le cas où il y aurait des litiges entre les parties concer-

nant leurs engagements avant l'expiration du délai ci-dessus prévu, le différend sera tranché par l'arbitrage prévu à l'article 22.

ARTICLE 26

Cette concession est octroyée à la compagnie pour la période commençant le jour de son entrée en vigueur et expirant le 31 décembre 1993.

Avant la date du 31 décembre 1993, cette concession ne pourra prendre fin que dans le cas où la compagnie renoncerait à la concession (art. 25) ou dans le cas où le tribunal arbitral déclarerait annulée la concession par suite de faute de la compagnie dans l'exécution de la présente convention.

Ne seront considérés comme fautes dans ce sens que les cas suivants :

- a) si une somme quelconque allouée à la Perse par le tribunal arbitral n'a pas été payée dans le délai d'un mois à compter de la sentence ;
- b) si la liquidation volontaire ou forcée de la compagnie est décidée.

En tous autres cas d'infraction à la présente convention par l'une ou l'autre partie, le tribunal arbitral fixera les responsabilités et en déterminera les conséquences.

Tout transfert de la concession sera subordonné à la ratification du gouvernement.

ARTICLE 27

Cette convention entrera en vigueur après avoir été ratifiée par le Medjlesse et promulguée par le décret de Sa Majesté impériale le Chah. Le gouvernement s'engage à soumettre cette convention, le plus tôt possible, à la ratification du Medjlesse.

Fait à Téhéran le vingt-neuf avril mil neuf cent trente-trois.

(Signé) S. H. TAQIZADEH,

Pour le Gouvernement impérial de la Perse.

For and on behalf of the Anglo-Persian Oil Company, Limited,

(Signed) JOHN CADMAN, Chairman.

(Signed) W. FRASER, Deputy Chairman.

CONVENTION CONCLUDED BETWEEN THE IMPERIAL GOVERNMENT OF PERSIA AND THE ANGLO-PERSIAN OIL COMPANY, LIMITED, AT TEHRAN, ON THE 29th APRIL 1933

[Translation]

PREAMBLE

For the purpose of establishing a new Concession to replace that which was granted in 1901 to William Knox D'Arcy, the present Concession is granted by the Persian Government and accepted by the Anglo-Persian Oil Company Limited.

This Concession shall regulate in the future the relations between the two parties above-mentioned.

DEFINITIONS

The following definitions of certain terms used in the present Agreement are applicable for the purposes hereof without regard to any different meaning which may or might be attributed to those terms for other purposes.

"The Government"

means the Imperial Government of Persia.

"The Company"

means the Anglo-Persian Oil Company, Limited, and all its *subordinate companies*.

"The Anglo-Persian Oil Company, Limited"

means the Anglo-Persian Oil Company, Limited, or any other body corporate to which, with the consent of the Government (Article 26), this Concession might be transferred.

"Subordinate Company"

means any company for which *the Company* has the right to nominate directly or indirectly more than one-half of the directors, or in which *the Company* holds, directly or indirectly, a number of shares sufficient to assure it more than 50 % of all voting rights at the general meetings of such a company.

"Petroleum"

means crude oil, natural gases, asphalt, ozokerite, as well as all products obtained either from these substances or by mixing these substances with other substances.

"Operations of the Company in Persia"

means all industrial, commercial and technical operations carried on by *the Company* exclusively for the purposes of this Concession.

ARTICLE I

The Government grants to *the Company*, on the terms of this Concession, the exclusive right, within the territory of the Concession, to search for and extract *petroleum* as well as to refine or treat in any other manner and render suitable for commerce the *petroleum* obtained by it.

The Government also grants to *the Company*, throughout Persia, the non-exclusive right to transport *petroleum*, to refine or treat it in any other manner and to render it suitable for commerce, as well as to sell it in Persia and to export it.

ARTICLE 2

(A) The territory of the Concession, until 31st December 1938, shall be the territory to the south of the violet line* drawn on the map signed by both parties and annexed to the present Agreement.

* The violet line here referred to may be seen on the map filed as Appendix No. 20 to Annex 3 of this Memorial.

(B) *The Company* is bound, at latest by 31st December 1938, to select on the territory above mentioned one or several areas of such shape and such size and so situated as *the Company* may deem suitable. The total area of the area or areas selected must not exceed one hundred thousand English square miles (100,000 square miles), each linear mile being equivalent to 1,609 metres.

The Company shall notify to *the Government* in writing on 31st December 1938, or before that date, the area or areas which it shall have selected as above provided. The maps and data necessary to identify and define the area or areas which *the Company* shall have selected shall be attached to each notification.

(C) After 31st December 1938, *the Company* shall no longer have the right to search for and extract *petroleum* except on the area or areas selected by it under paragraph (B) above, and the territory of the Concession, after that date, shall mean only the area or areas so selected and the selection of which shall have been notified to *the Government* as above provided.

ARTICLE 3

The Company shall have the non-exclusive right to construct and to own pipelines. *The Company* may determine the position of its pipelines and operate them.

ARTICLE 4

(A) Any unutilized lands belonging to *the Government*, which *the Company* shall deem necessary for its operations in Persia and which *the Government* shall not require for purposes of public utility, shall be handed over gratuitously to *the Company*.

The manner of acquiring such lands shall be the following : whenever any land becomes necessary to *the Company*, it is bound to send to the Ministry of Finance a map or maps on which the land which *the Company* needs shall be shown in colour. *The Government* undertakes, if it has no objection to make, to give its approval within a period of three months after receipt of *the Company's* request.

(B) Lands belonging to *the Government*, of which use is being made, and which *the Company* shall need, shall be requested of *the Government* in the manner prescribed in the preceding paragraph, and *the Government*, in case it should not itself need these lands and should have no objection to make, shall give, within a period of three months, its approval to the sale asked for by *the Company*.

The price of these lands shall be paid by *the Company* ; such price must be reasonable and not exceed the current price of lands of the same kind and utilized in the same manner in the district.

(C) In the absence of a reply from *the Government* to requests under paragraphs (A) and (B) above, after the expiry of two months from the date of receipt of the said requests, a reminder shall be sent by *the Company* to *the Government* ; should *the Government* fail to reply to such reminder within a period of one month, its silence shall be regarded as approval.

(D) Lands which do not belong to *the Government* and which are necessary to *the Company* shall be acquired by *the Company*, by agreement with the parties interested, and through the medium of *the Government*.

In case agreement should not be reached as to the prices, *the Government* shall not allow the owners of such lands to demand a price higher than the prices commonly current for neighbouring lands of the same nature. In valuing such lands, no regard shall be paid to the use to which *the Company* may wish to put them.

(E) Holy places and historical monuments, as well as all places and sites of historical interest, are excluded from the foregoing provisions, as well as their immediate surroundings for a distance of at least 200 metres.

(F) *The Company* has the non-exclusive right to take within the territory of the Concession, but not elsewhere, on any unutilized land belonging to the State, and to utilize gratuitously for all the operations of the Company, any kinds of soil, sand, lime, gypsum, stone and other building materials. It is understood that if the utilization of the said materials were prejudicial to any rights whatever of third parties, *the Company* should indemnify those whose rights were infringed.

ARTICLE 5

The operations of *the Company in Persia* shall be restricted in the following manner :

- (1) The construction of any new railway line and of any new port shall be subject to a previous agreement between *the Government* and *the Company*.
- (2) If *the Company* wishes to increase its existing service of telephones, telegraphs, wireless and aviation in Persia, it shall only be able so to do with the previous consent of *the Government*.

If *the Government* requires to utilize the means of transport and communication of *the Company* for national defence or in other critical circumstances, it undertakes to impede as little as possible the operations of the Company, and to pay it fair compensation for all damages caused by the utilization above mentioned.

ARTICLE 6

(A) *The Company* is authorized to effect, without special licence, all imports necessary for the exclusive needs of its employees on payment of the custom duties and other duties and taxes in force at the time of importation.

The Company shall take the necessary measures to prevent the sale or the handing over of products imported to persons not employed by *the Company*.

(B) *The Company* shall have the right to import, without special licence, the equipment, material, medical and surgical instruments and pharmaceutical products, necessary for its dispensaries and hospitals in Persia, and shall be exempt in respect thereof from any custom duties and other duties and taxes in force at the time of importation, or payments of any nature whatever to the Persian State or to local authorities.

(C) *The Company* shall have the right to import, without any licence and exempt from any custom duties and from any taxes or payments of any nature whatever to the Persian State or to local authorities,

anything necessary exclusively for the *operations of the Company in Persia*.

(D) The exports of *petroleum* shall enjoy customs immunity and shall be exempt from any taxes or payments of any nature whatever to the Persian State or to local authorities.

ARTICLE 7

(A) *The Company* and its employees shall enjoy the legal protection of *the Government*.

(B) *The Government* shall give, within the limits of the laws and regulations of the country, all possible facilities for the *operations of the Company in Persia*.

(C) If *the Government* grants concessions to third parties for the purpose of exploiting other mines within the territory of the concession, it must cause the necessary precautions to be taken in order that these exploitations do not cause any damage to the installations and works of *the Company*.

(D) *The Company* shall be responsible for the determination of dangerous zones for the construction of habitations, shops and other buildings, in order that *the Government* may prevent the inhabitants from settling there.

ARTICLE 8

The Company shall not be bound to convert into Persian currency any part whatsoever of its funds, in particular any proceeds of the sale of its exports from Persia.

ARTICLE 9

The Company shall immediately make its arrangements to proceed with its operations in the province of Kermanshah through a subsidiary company with a view to producing and refining *petroleum* there.

ARTICLE 10

(I) The sums to be paid to *the Government* by *the Company* in accordance with this Agreement (besides those provided in other articles) are fixed as follows :

- (a) An annual royalty, beginning on the 1st January 1933, of four shillings per ton of *petroleum* sold for consumption in Persia or exported from Persia ;
- (b) Payment of a sum equal to twenty per cent (20 %) of the distribution to the ordinary stockholders of *the Anglo-Persian Oil Company, Limited*, in excess of the sum of six hundred and seventy-one thousand two hundred and fifty pounds sterling (£671,250), whether that distribution be made as dividends for any one year or whether it relates to the reserves of that Company, exceeding the reserves which, according to its books, existed on 31st December 1932 ;
- (c) The total amount to be paid by *the Company* for each calendar (Christian) year under sub-clauses (a) and (b) shall never be less than seven hundred and fifty thousand pounds sterling (£750,000).

(II) Payments by *the Company* under this Article shall be made as follows :

- (a) On 31st March, 30th June, 30th September and 31st December of each year, on each occasion one hundred and eighty-seven thousand five hundred pounds sterling (£187,500). (The payment relating to 31st March 1933 shall be made immediately after the ratification of the present Agreement.)
- (b) On 28th February 1934, and thereafter on the same date in each year, the amount of the tonnage royalty for the previous year provided for in sub-clause (I) (a) less the sum of seven hundred and fifty thousand pounds sterling (£750,000), already paid under sub-clause (II) (a).
- (c) Any sums due to *the Government* under sub-clause (I) (b) of this Article shall be paid simultaneously with any distributions to the ordinary stockholders.

(III) On the expiration of this Concession, as well as in the case of surrender by *the Company* under Article 25 *the Company* shall pay to *the Government* a sum equal to twenty per cent (20 %) of :

- (a) the surplus difference between the amount of the reserves (General Reserve) of *the Anglo-Persian Oil Company, Limited*, at the date of the expiration of the Concession or of its surrender, and the amount of the same reserves at 31st December 1932 ;
- (b) the surplus difference between the balance carried forward by *the Anglo-Persian Oil Company, Limited*, at the date of the expiration of the Concession or of its surrender and the balance carried forward by that Company at 31st December 1932. Any payment due to *the Government* under this clause shall be made within a period of one month from the date of the General Meeting of the Company following the expiration or the surrender of the Concession.

(IV) *The Government* shall have the right to check the returns relating to sub-clause (I) (a) which shall be made to it at latest on 28th February for the preceding year.

(V) To secure *the Government* against any loss which might result from fluctuations in the value of English currency, the parties have agreed as follows :

- (a) If, at any time, the price of gold in London exceeds six pounds sterling per ounce (ounce troy), the payments to be made by *the Company* in accordance with the present Agreement (with the exception of sums due to *the Government* under sub-clause (I) (b) and clause (III) (a) and (b) of this Article and sub-clause (I) (a) of Article 23) shall be increased by one thousand four hundred and fortieth part ($\frac{1}{1440}$) for each penny of increase of the price of gold above six pounds sterling (£6) per ounce (ounce troy) on the due date of the payments.
- (b) If, at any time, *the Government* considers that gold has ceased to be the general basis of values and that the payments above mentioned no longer give it the security which is intended by the parties, the parties shall come to an agreement as to a modification of the nature of the security above mentioned or,

in default of such an arrangement, shall submit the question to the Arbitration Court (Article 22) which shall decide whether the security provided in sub-clause (a) above ought to be altered and, if so, shall settle the provisions to be substituted therefor and shall fix the period to which such provisions shall apply.

(VI) In case of a delay, beyond the dates fixed in the present Agreement, which might be made by *the Company* in the payment of sums due by it to *the Government*, interest at five per cent (5 %) per annum shall be paid for the period of delay.

ARTICLE II

(I) *The Company* shall be completely exempt, for its operations in *Persia*, for the first thirty years, from any taxation present or future of the State and of local authorities; in consideration therefor the following payments shall be made to *the Government*:

- (a) During the first fifteen years of this Concession, on 28th February of each year and for the first time on 28th February 1934, nine pence for each of the first six million (6,000,000) tons of *petroleum*, on which the royalty provided for in Article 10 (I) (a) is payable for the preceding calendar (Christian) year, and six pence for each ton in excess of the figure of six million (6,000,000) tons above defined.
- (b) *The Company* guarantees that the amount paid under the preceding sub-clause shall never be less than two hundred and twenty-five thousand pounds sterling (£225,000).
- (c) During the fifteen years following, one shilling for each of the first six million (6,000,000) tons of *petroleum*, on which the royalty provided for in Article 10 (I) (a) is payable for the preceding calendar year, and nine pence for each ton in excess of the figure of 6,000,000 tons above defined.
- (d) *The Company* guarantees that the amount paid under the preceding sub-clause (c) shall never be less than three hundred thousand pounds sterling (£300,000).

(II) Before the year 1963, the parties shall come to an agreement as to the amounts of the annual payments to be made, in consideration of the complete exemption of *the Company* for its operations in *Persia* from any taxation of the State and of local authorities, during the second period of thirty years extending until 31st December 1933.

ARTICLE 12

(A) *The Company*, for its operations in *Persia* in accordance with the present Agreement, shall employ all means customary and proper, to ensure economy in and good returns from its operations, to preserve the deposits of *petroleum* and to exploit its Concession by methods in accordance with the latest scientific progress.

(B) If, within the territory of the Concession, there exist other mineral substances than *petroleum* or woods and forests belonging to *the Government*, *the Company* may not exploit them in accordance with the present Concession, nor object to their exploitation by other persons (subject to the due compliance with the terms of clause (C) of Article 7); but

the Company shall have the right to utilize the said substances or the woods and forests above mentioned if they are necessary for the exploration or the extraction of *petroleum*.

(C) All boreholes which, not having resulted in the discovery of *petroleum*, produce water or precious substances, shall be reserved for *the Government*, which shall immediately be informed of these discoveries by *the Company*, and *the Government* shall inform *the Company* as soon as possible if it wishes to take possession of them. If it wishes to take possession, it shall watch that the operations of the *Company* be not impeded.

ARTICLE 13

The Company undertakes to send, at its own expense and within a reasonable time, to the Ministry of Finance, whenever the representative of *the Government* shall request it, accurate copies of all plans, maps, sections and any other data, whether topographical, geological or of drilling, relating to the territory of the Concession, which are in its possession.

Furthermore, *the Company* shall communicate to *the Government* throughout the duration of the Concession all important scientific and technical data resulting from its work in Persia.

All these documents shall be considered by *the Government* as confidential.

ARTICLE 14

(A) *The Government* shall have the right to cause to be inspected at its wish, at any reasonable time, the technical activity of *the Company* in Persia, and to nominate for this purpose technical specialist experts.

(B) *The Company* shall place at the disposal of the specialist experts nominated to this end by *the Government*, the whole of its records relative to scientific and technical data, as well as all measuring apparatus and means of measurement, and these specialist experts shall, further, have the right to ask for any information in all the offices of *the Company* and on all the territories in Persia.

ARTICLE 15

The Government shall have the right to appoint a Representative who shall be designated "Delegate of the Imperial Government". This Representative shall have the right :

- (1) to obtain from *the Company* all the information to which the stockholders of *the Company* are entitled ;
- (2) to be present at all the meetings of the Board of Directors, of its committees and at all the meetings of stockholders, which have been convened to consider any question arising out of the relations between *the Government* and *the Company* ;
- (3) to preside *ex officio*, with a casting vote, over the Committee to be set up by *the Company* for the purpose of distributing the grant for and supervising the professional education in Great Britain of Persian nationals referred to in Article 16 ;
- (4) to request that special meetings of the Board of Directors be convened at any time, to consider any proposal that *the Government* shall submit to it. These meetings shall be convened within

15 days from the date of the receipt by the Secretary of *the Company* of a request in writing to that end.

The Company shall pay to *the Government* to cover the expenses to be borne by it in respect of the salary and expenses of the above-mentioned Delegate a yearly sum of two thousand pounds sterling (£2,000). *The Government* shall notify *the Company* in writing of the appointment of this Delegate and of any changes in such appointment.

ARTICLE 16

(I) Both parties recognize and accept as the principle governing the performance of this Agreement the supreme necessity, in their mutual interest, of maintaining the highest degree of efficiency and of economy in the administration and the *operations of the Company in Persia*.

(II) It is, however, understood that *the Company* shall recruit its artisans as well as its technical and commercial staff from among Persian nationals to the extent that it shall find in Persia persons who possess the requisite competence and experience. It is likewise understood that the unskilled staff shall be composed exclusively of Persian nationals.

(III) The parties declare themselves in agreement to study and prepare a general plan of yearly and progressive reduction of the non-Persian employees with a view to replacing them in the shortest possible time and progressively by Persian nationals.

(IV) *The Company* shall make a yearly grant of ten thousand pounds sterling in order to give in Great Britain, to Persian nationals, the professional education necessary for the oil industry.

The said grant shall be expended by a Committee which shall be constituted as provided in Article 15.

ARTICLE 17

The Company shall be responsible for organizing and shall pay the cost of the provision, control and upkeep of sanitary and public health services, according to the requirements of the most modern hygiene practised in Persia, on all the lands of *the Company* and in all buildings and dwellings, destined by *the Company* for the use of its employees, including the workmen employed within the territory of the Concession.

ARTICLE 18

Whenever *the Company* shall make issues of shares to the public, the subscription lists shall be opened at Tehran at the same time as elsewhere.

ARTICLE 19

The Company shall sell for internal consumption in Persia, including the needs of *the Government*, motor spirit, kerosene and fuel oil, produced from Persian *petroleum*, on the following basis :

- (a) On the first of June in each year, *the Company* shall ascertain the average Roumanian f.o.b. prices for motor spirit, kerosene and fuel oil and the average Gulf of Mexico f.o.b. prices for each of these products during the preceding period of twelve months ending on the 30th April. The lowest of these average prices shall

be selected. Such prices shall be the "basic prices" for a period of one year beginning on the 1st June. The "basic prices" shall be regarded as being the prices at the refinery.

- (b) *The Company* shall sell: (1) to *the Government* for its own needs, and not for resale, motor spirit, kerosene and fuel oil at the basic prices, provided in sub-clause (a) above, with a deduction of twenty-five per cent (25 %); (2) to other consumers at the basic prices with a deduction of ten per cent (10 %).
- (c) *The Company* shall be entitled to add to the basic prices mentioned in sub-clause (a), all actual costs of transport and of distribution and of sale, as well as any imposts and taxes on the said products.
- (d) *The Government* shall forbid the export of the *petroleum* products sold by *the Company* under the provisions of this Article.

ARTICLE 20

(I) (a) During the last ten years of the Concession or during the two years from the notice preceding the surrender of the Concession provided in Article 25, *the Company* shall not sell or otherwise alienate, except to *subordinate companies*, any of its immovable properties in Persia. During the same period, *the Company* shall not alienate or export any of its movable property whatever except such as has become unutilizable.

(b) During the whole of the period preceding the last ten years of the Concession, *the Company* shall not alienate any land obtained by it gratuitously from *the Government*; it shall not export from Persia any movable property except in the case when such property shall have become unutilizable or shall be no longer necessary for the *operations of the Company in Persia*.

(II) At the end of the Concession, whether by expiration of time or otherwise, all the property of *the Company* in Persia shall become the property of *the Government* in proper working order and free of any expenses and of any encumbrances.

(III) The expression "all the property" comprises all the lands, buildings and workshops, constructions, wells, jetties, roads, pipelines, bridges, drainage and water supply systems, engines, installations and equipments (including tools) of any sort, all means of transport and communication in Persia (including for example automobiles, carriages, aeroplanes), any stocks and any other objects in Persia which *the Company* is utilizing in any manner whatsoever for the objects of the Concession.

ARTICLE 21

The contracting parties declare that they base the performance of the present Agreement on principles of mutual good will and good faith as well as on a reasonable interpretation of this Agreement.

The Company formally undertakes to have regard at all times and in all places to the rights, privileges and interests of *the Government* and shall abstain from any action or omission which might be prejudicial to them.

This Concession shall not be annulled by *the Government* and the terms therein contained shall not be altered either by general or special legislation in the future, or by administrative measures or any other acts whatever of the executive authorities.

ARTICLE 22

(A) Any differences between the parties of any nature whatever and in particular any differences arising out of the interpretation of this Agreement and of the rights and obligations therein contained as well as any differences of opinion which may arise relative to questions for the settlement of which, by the terms of this Agreement, the agreement of both parties is necessary, shall be settled by arbitration.

(B) The party which requests arbitration shall so notify the other party in writing. Each of the parties shall appoint an arbitrator, and the two arbitrators, before proceeding to arbitration, shall appoint an umpire. If the two arbitrators cannot, within two months, agree on the person of the umpire, the latter shall be nominated, at the request of either of the parties, by the President of the Permanent Court of International Justice. If the President of the Permanent Court of International Justice belongs to a nationality or a country which, in accordance with clause (C), is not qualified to furnish the umpire, the nomination shall be made by the Vice-President of the said Court.

(C) The umpire shall be of a nationality other than Persian or British; furthermore, he shall not be closely connected with Persia or with Great Britain as belonging to a dominion, a protectorate, a colony, a mandated country or other country administered or occupied by one of the two countries above mentioned or as being or having been in the service of one of these countries.

(D) If one of the parties does not appoint its arbitrator or does not advise the other party of its appointment within sixty days of having received notification of the request for arbitration, the other party shall have the right to request the President of the Permanent Court of International Justice (or the Vice-President in the case provided at the end of clause (B)) to nominate a sole arbitrator, to be chosen from among persons qualified as above mentioned, and in this case the difference shall be settled by this sole arbitrator.

(E) The procedure of arbitration shall be that followed, at the time of arbitration, by the Permanent Court of International Justice. The place and time of arbitration shall be fixed by the umpire or by the sole arbitrator provided for in clause (D), as the case may be.

(F) The award shall be based on the juridical principles contained in Article 38 of the Statutes of the Permanent Court of International Justice. There shall be no appeal against the award.

(G) The expenses of arbitration shall be borne in the manner determined by the award.

ARTICLE 23

(I) In full settlement of all the claims of *the Government* of any nature in respect of the past until the date of coming into force of this Agreement (except in regard to Persian taxation), *the Company*: (a) shall pay within a period of thirty days from the said date the sum of one million pounds sterling (£1,000,000) and besides (b) shall settle the payments due to *the Government* for the financial years 1931 and 1932 on the basis of Article 10 of this Agreement and not on that of the former D'Arcy Concession, after deduction of two hundred thousand pounds sterling (£200,000) paid in 1932 to *the Government* as an advance against

the royalties and £113,403 3s. 10d. placed on deposit at the disposal of *the Government*.

(II) Within the same period, *the Company* shall pay to *the Government* in full settlement of all its claims in respect of taxation for the period from 21st March 1930 to 31st December 1932 a sum calculated on the basis of sub-clause (a) of clause I of Article 11, but without the guarantee provided in sub-clause (b) of the same clause.

ARTICLE 24

If, by reason of the annulment of the D'Arcy Concession, litigation should arise between *the Company* and private persons on the subject of the duration of leases made in Persia before the 1st December 1932 within the limits allowed by the D'Arcy Concession, the litigation shall be decided according to the rules of interpretation following :

- (a) If the lease is to terminate, according to its terms, at the end of the D'Arcy Concession, it shall retain its validity until 28th May 1961, notwithstanding the annulment of the said Concession.
- (b) If it has been provided in the lease that it shall be valid for the duration of the D'Arcy Concession and in the event of its renewal for the duration of the renewed Concession, the lease shall retain its validity until 31st December 1993.

ARTICLE 25

The Company shall have the right to surrender this Concession at the end of any Christian calendar year, on giving to *the Government* notice in writing two years previously.

On the expiry of the period above provided, the whole of the property of *the Company* in Persia (defined in Article 20 (III)) shall become free of cost and without encumbrances the property of *the Government* in proper working order and *the Company* shall be released from any engagement for the future. In case there should be disputes between the parties concerning their engagements before the expiry of the period above provided, the differences shall be settled by arbitration as provided in Article 22.

ARTICLE 26

This Concession is granted to *the Company* for the period beginning on the date of its coming into force and ending on 31st December 1993.

Before the date of the 31st December 1993, this Concession can only come to an end in the case that *the Company* should surrender the Concession (Art. 25) or in the case that the Arbitration Court should declare the Concession annulled as a consequence of default of *the Company* in the performance of the present Agreement.

The following cases only shall be regarded as default in that sense :

- (a) if any sum awarded to Persia by the Arbitration Court has not been paid within one month of the date of the award ;
- (b) if the voluntary or compulsory liquidation of *the Company* be decided upon.

In any other cases of breach of the present Agreement by one party or the other, the Arbitration Court shall establish the responsibilities and determine their consequences.

Any transfer of the Concession shall be subject to confirmation by *the Government*.

ARTICLE 27

This Agreement shall come into force after ratification by the Majlis and promulgation by Decree of His Imperial Majesty the Shah. *The Government* undertakes to submit this Agreement, as soon as possible, for ratification by the Majlis.

Made at Tehran, the twenty-ninth April one thousand nine hundred and thirty-three.

For the Imperial Government of Persia,

(Signed) S. H. TAQIZADEH.

For and on behalf of the Anglo-Persian Oil Company, Limited,

(Signed) JOHN CADMAN, Chairman.

(Signed) W. FRASER, Deputy Chairman.

Appendix No. 17 to Annex 3

LETTER, DATED 17th AUGUST 1933, FROM THE PERSIAN CHARGÉ
D'AFFAIRES IN LONDON TO THE REGISTRAR OF THE PERMANENT COURT
OF INTERNATIONAL JUSTICE

No. 518/312

Sir,

London, 17th August 1933.

I am directed by the Persian Government to transmit to you the accompanying copy of an agreement recently concluded between them and the Anglo-Persian Oil Company, Limited.

2. Acting in agreement with His Britannic Majesty's Secretary of State, Sir John Simon, the Persian Government desire to bring Article 22 of this Agreement, dealing with the arbitration of possible disputes between the two parties, to the notice of the Court. It will be observed that under this Article the two parties agree in certain circumstances to have recourse to the good offices of the President (or Vice-President) of the Permanent Court of International Justice in connection with the nomination of an umpire or a sole arbitrator.

3. The Persian Government desire me to explain that circumstances made it desirable that the formalities necessary for the entry into force of the Agreement should be accomplished with the minimum of delay; and, since it was understood that the Permanent Court was unlikely to meet again before the month of September, it appeared impracticable to obtain beforehand the formal concurrence of the Court in this provision.

4. The Persian Government trust that no obstacle will be seen to the acceptance by the Court of the functions conferred by Article 22 of the Agreement upon its President or Vice-President.

I have, etc.

(Signed) F. NOURY ESFANDIARY,
Persian Chargé. d'Affaires.

Appendix No. 18 to Annex 3

LETTER, DATED 17th AUGUST 1933, FROM THE UNITED KINGDOM
GOVERNMENT TO THE REGISTRAR OF THE PERMANENT
COURT OF INTERNATIONAL JUSTICE

E 4719/17/34

Sir,

Foreign Office, 17th August 1933.

I am directed by His Majesty's Principal Secretary of State for Foreign Affairs to transmit to you the accompanying copy of an Agreement recently concluded between the Persian Government and the Anglo-Persian Oil Company, Limited.

2. Acting in agreement with the Persian Government, the Secretary of State desires to bring Article 22 of this Agreement, dealing with the arbitration of possible disputes between the two parties, to the notice of the Court. It will be observed that under this Article the two parties agree in certain circumstances to have recourse to the good offices of the President (or Vice-President) of the Permanent Court of International Justice in connection with the nomination of an umpire or a sole arbitrator.

3. The Secretary of State desires me to explain that circumstances made it desirable that the formalities necessary for the entry into force of the Agreement should be accomplished with the minimum of delay; and, since it was understood that the Permanent Court was unlikely to meet again before the month of September, it appeared impracticable to obtain beforehand the formal concurrence of the Court in this provision.

4. The Secretary of State trusts that no obstacle will be seen to the acceptance by the Court of the functions conferred by Article 22 of the Agreement upon its President or Vice-President.

I am, etc.

(Signed) G. W. RENDEL.

Appendix No. 19 to Annex 3

LETTER, DATED 21st OCTOBER 1933, FROM THE REGISTRAR OF THE
PERMANENT COURT OF INTERNATIONAL JUSTICE TO THE UNDER-
SECRETARY OF STATE AT THE FOREIGN OFFICE

Cour permanente de
Justice internationale,
La Haye.

Permanent Court of
International Justice,
The Hague.

II, 7947

Sir,

21st October 1933.

With reference to my letter of 21st August 1933, in reply to yours of 17th August 1933, relating to the Agreement recently concluded between the Persian Government and the Anglo-Persian Oil Company, Ltd., I have the honour to inform you, under instructions from the Court, that it sees no obstacle to the acceptance by its President and Vice-President of the functions conferred upon them by Article 22 of the said Agreement.

I have, etc.

(Signed) Å. HAMMARSKJÖLD,
Registrar.

Appendix No. 20 to Annex 3

MAP SHOWING THE CONCESSIONAL AREA IN IRAN OF THE
ANGLO-IRANIAN OIL COMPANY, LIMITED

[Not reproduced]

*Appendix No. 21 to Annex 3*LABOUR CONDITIONS IN THE OIL INDUSTRY IN IRAN¹

[Not reproduced]

*Appendix No. 22 to Annex 3*TEXT OF SINGLE ARTICLE LAW PASSED BY THE IRANIAN MAJLIS ON
22ND OCTOBER 1947

(a) In view of the fact that the Prime Minister, acting in good faith and upon his inference from the provisions of Article 2 of the law of 2nd December 1944, entered into negotiations and drew up an agreement under the date of 4th April 1946, concerning the creation of a mixed Irano-Soviet Oil Company, and whereas the Iranian Majlis does not deem the said inference to be consistent with the true purport and intent of the above-mentioned law, it therefore considers the said negotiations and agreement as null and void.

(b) The Government is required to make arrangements for a technical and scientific research to be made for the exploitation of petroleum mines and to draw up and prepare within a period of five years full technical and scientific plans of the oil-bearing zones of the country, whereafter the Majlis may, with full knowledge that oil exists in sufficient quantities, arrange for the commercial exploitation of these national resources through the enactment of the necessary laws.

(c) The grant of any concession for the exploitation of oil and its derivatives in the country to foreigners and the creation of any kind of company for this purpose in which foreigners may have a share in any way whatsoever is absolutely forbidden.

(d) If, after the technical investigations mentioned in paragraph (b) above, the existence of oil in commercial quantities in the northern areas of Iran is proved, the Government is hereby authorized to enter into negotiations with the U.S.S.R. for the sale of oil products, informing the Majlis of the result.

(e) In all cases where the rights of the Iranian nation, in respect of the country's natural resources, whether underground or otherwise, have been impaired, particularly in regard to the southern oil, the Government is required to enter into such negotiations and take such measures as are necessary to regain the national rights and inform the Majlis of the result.

¹ International Labour Office. *Report of a Mission of the International Labour Office* (January-February 1950). Geneva, 1950. Studies and Reports. New Series, No. 24. IV + 87 pages.

Appendix No. 23 to Annex 3

SUPPLEMENTAL AGREEMENT BETWEEN THE IMPERIAL IRANIAN
GOVERNMENT AND THE ANGLO-IRANIAN OIL COMPANY,
LIMITED, MADE AT TEHRAN ON 17th JULY 1949

Whereas on the 29th April 1933, an Agreement (herein called "the Principal Agreement") was entered into between the Imperial Government of Persia (now known as "the Imperial Iranian Government") of the one part and the Anglo-Persian Oil Company, Limited (now known as the "Anglo-Iranian Oil Company, Limited") of the other part which established a Concession for the regulation of the relations between the two parties above mentioned,

And whereas the Government and the Company have after full and friendly discussion agreed that in view of the changes in economic conditions brought about by the World War of 1939-1945 the financial benefits accruing to the Government under the Principal Agreement should be increased to the extent and in the manner hereinafter appearing,

And whereas for this purpose the parties have agreed to enter into a Supplemental Agreement :

Now it is hereby agreed between the Imperial Iranian Government and the Anglo-Iranian Oil Company, Limited, as follows :

1. This Agreement is supplemental to and shall be read with the Principal Agreement.

2. Any of the terms used herein which have been defined in the Principal Agreement shall have the same meaning as in the Principal Agreement, save that, for the purposes of this Agreement, all references in the Principal Agreement to Persia, Persian, the Imperial Government of Persia and the Anglo-Persian Oil Company, Limited, shall be read as references to Iran, Iranian, the Imperial Iranian Government and the Anglo-Iranian Oil Company, Limited, respectively, and the references to the Permanent Court of International Justice shall be read as references to the International Court of Justice established by the United Nations.

3. (a) In respect of the calendar year ended 31st December 1948, and thereafter, the rate of the annual royalty payable to the Government under sub-clause (I) (a) of Article 10 of the Principal Agreement shall be increased from four shillings to six shillings per ton of petroleum sold for consumption in Iran or exported from Iran.

(b) The Company shall, within a period of thirty days from the date of coming into force of this Agreement, pay to the Government the sum of three million three hundred and sixty-four thousand four hundred and fifty-nine pounds sterling (£3,364,459), as a retrospective application to cover the calendar year ended 31st December 1948, of the modification introduced by sub-clause (a) of this Clause 3, taking into account the provisions of sub-clause (V) (a) of Article 10 of the Principal Agreement.

4. (a) In order that the Government may receive a greater and more certain and more immediate benefit in respect of amounts placed to the General Reserve of the Anglo-Iranian Oil Company, Limited, than that provided by sub-clause (I) (b) and sub-clause (III) (a) of

Article 10 of the Principal Agreement, the Company shall pay to the Government in respect of each amount placed to the General Reserve of the Anglo-Iranian Oil Company, Limited, in respect of each financial period for which the accounts of that Company are made up (starting with the financial period ended 31st December 1948) a sum equal to twenty per cent (20 %) of a figure to be arrived at by increasing the amount placed to General Reserve (as shown by the published accounts for the financial period in question) in the same proportion as twenty shillings sterling (s.20/-) bear to the difference between twenty shillings sterling (s.20/-) and the Standard Rate of British Income Tax in force at the relevant date.

The relevant date shall be the date of the final distribution to the ordinary stockholders in respect of the financial period in question, or, in the event of there being no such final distribution, a date one calendar month after the date of the annual general meeting at which the accounts in question were presented.

Examples of the implementation of the principle set out in this sub-clause (a) have been agreed between the parties hereto and are set out in the Schedule to this Agreement.

(b) If, in respect of any financial period for which the accounts of the Anglo-Iranian Oil Company, Limited, are made up (starting with the financial period ended 31st December 1948), the total amount payable by the Company to the Government under sub-clause (a) of this Clause 4 and sub-clause (I) (b) of Article 10 of the Principal Agreement shall be less than four million pounds sterling (£4,000,000), the Company shall pay to the Government the difference between the said total amount and four million pounds sterling (£4,000,000). Provided, however, that if during any such financial period the Company shall have ceased, owing to events outside its control, to export petroleum from Iran, the amount payable by the Company in respect of such period in accordance with the foregoing provisions of this sub-clause (b) shall be reduced by a sum which bears the same proportion to such amount as the period of such cessation bears to such financial period.

(c) Any sum due to the Government in respect of any financial period under sub-clause (a) or sub-clause (b) of this Clause 4 shall be paid on the relevant date appropriate to that financial period.

(d) The provisions of Clause (V) of Article 10 of the Principal Agreement shall not apply to any payments made by the Company to the Government in accordance with sub-clause (a) or sub-clause (b) of this Clause 4.

5. (a) In respect of the sum of fourteen million pounds sterling (£14,000,000) shown in the Balance-sheet of the Anglo-Iranian Oil Company, Limited, dated 31st December 1947, as constituting the General Reserve of that Company, the Company shall, within a period of thirty days from the date of coming into force of this Agreement, pay to the Government the sum of five million and ninety thousand nine hundred and nine pounds sterling (£5,090,909).

(b) The provisions of Clause (V) of Article 10 of the Principal Agreement shall not apply to the payment to be made by the Company in accordance with sub-clause (a) of this Clause 5.

6. The payments to be made by the Company under Clauses 4 and 5 of this Agreement shall be in lieu of and in substitution for—

- (i) any payments to the Government under sub-clause (I) (b) of Article 10 of the Principle Agreement in respect of any distribution relating to the General Reserve of the Company, and
- (ii) any payment which might become payable by the Company to the Government in respect of the General Reserve under sub-clause (III) (a) of Article 10 of the Principal Agreement on the expiration of the Concession or in the case of surrender by the Company under Article 25 of the Principal Agreement.

7. (a) In respect of the calendar year ended 31st December 1948, and thereafter, the rate of payment to be made by the Company to the Government in accordance with sub-clause (I) (c) of Article 11 of the Principal Agreement which relates to the payment to be made in respect of the excess over 6,000,000 tons shall be increased from ninepence to one shilling.

(b) The Company shall, within a period of thirty days from the date of coming into force of this Agreement, pay to the Government the sum of three hundred and twelve thousand nine hundred pounds sterling (£312,900), as a retrospective application to cover the calendar year ended 31st December 1948, of the modification introduced by sub-clause (a) of this Clause 7, taking into account the provisions of sub-clause (V) of Article 10 of the Principal Agreement.

8. (a) At the end of sub-clause (a) of Article 19 of the Principal Agreement, there shall be added a paragraph in the following terms : "If at any time either party shall consider that either Roumanian prices or Gulf of Mexico prices no longer provide suitable standards for fixing 'basic prices', then the 'basic prices' shall be determined by mutual agreement of the parties, or in default of such agreement by arbitration under the provisions of Article 22. The 'basic prices' so determined shall become binding on both parties by an agreement effected by exchange of letters between the Government (which shall have full capacity to enter into such an agreement) and the Company."

(b) As from the 1st June 1949, the prices at which the Company shall sell motor spirit, kerosene and fuel oil, produced from Iranian petroleum to consumers other than the Government for internal consumption in Iran, shall be the basic prices with a deduction of twenty-five per cent (25%), instead of a deduction of ten per cent (10%) as provided in sub-clause (b) of Article 19 of the Principal Agreement.

9. In consideration of the payment of the above sums by the Company, the Government and the Company agree that all their obligations one to another accrued up to the 31st December 1948, in respect of sub-clause 1 (a) and sub-clause 1 (b) of Article 10 and in respect of Article 11 of the Principal Agreement and also in respect of the General Reserve have been fully discharged.

10. Subject to the provisions of this Agreement, the provisions of the Principal Agreement shall remain in full force and effect.

11. This Agreement shall come into force after ratification by the Majlis and on the date of its promulgation by Decree of His Imperial Majesty the Shah. The Government undertakes to submit this Agreement, as soon as possible, for ratification by the Majlis.

Examples of the Implementation of the Principle set out in Sub-clause (a) of Clause 4 of the Within Written Agreement on the Assumption that £1,000,000 is Placed to General Reserve

	EXAMPLE I	EXAMPLE II	EXAMPLE III
1. Standard Rate of British Income Tax	10s. in the £1	9s. in the £1	5s. in the £1
2. Amount placed to General Reserve as shown by the published accounts for the financial period in question	£1,000,000	£1,000,000	£1,000,000
3. The above amount is increased as follows:			
<i>A</i> Standard Rate <i>B</i> <i>Proportionate Increase</i>			
"Twenty of British Shillings Income Tax" <i>Difference</i> <i>A</i> <i>B</i>			
20s. 10s. 10s. 20 10	£2,000,000		
20s. 9s. 11s. 20 11	—	£1,818,182	
20s. 5s. 15s. 20 15	—	—	£1,333,333
4. The "sum equal to 20%" which is therefore payable to the Iranian Government is	£400,000	£363,636	£266,667

Made at Tehran the 17th July, one thousand nine hundred and forty-nine.

For the Imperial Iranian Government :
(Sgd.) A. Q. GULSHAYAN.

For and on behalf of the Anglo-Iranian
Oil Company, Limited :
(Sgd.) N. A. GASS.

Appendix No. 24 to Annex 3

NOTE PRESENTED BY HIS BRITANNIC MAJESTY'S AMBASSADOR IN TEHRAN TO THE IMPERIAL GOVERNMENT OF IRAN ON 14th MARCH 1951

As Your Excellency is aware, His Majesty's Government in the United Kingdom attach the highest importance to relations of friendship and confidence in all matters between the people and Government of Iran and those of the United Kingdom ; and His Majesty's Government have followed with friendly interest the plans of the Imperial Government to secure administrative reforms and to provide for the improvement of the standards of living of the Iranian people. They had therefore noted with satisfaction the conclusion of an Agreement in 1949 between the Imperial Government and the Anglo-Iranian Oil Company for an increase in the annual payments to the Iranian Government, an agreement which would have secured for the Imperial Government a more advantageous return per ton of oil than that enjoyed by any other government in the Middle East and which would have enabled the Imperial Government to proceed with its plans.

His Majesty's Government were correspondingly disappointed that this agreement could not be put into force owing to the difficulties and

delays experienced by the Imperial Government in seeking its ratification by the Majlis; but meanwhile, as Your Excellency is also aware, His Majesty's Government had for some time past been considering in what way the Imperial Government could be assisted in their consequent financial difficulties. It was accordingly gratifying to His Majesty's Government to know that the Anglo-Iranian Oil Company had recently voluntarily offered, in spite of the withdrawal from the Majlis of the Supplemental Agreement, to make advances of royalties to the Imperial Government as a result of which the total payments to that Government in 1951 will be some £28½ million. This sum is considerably in excess of the total payments which might have been expected during the same period under the 1933 Agreement. This offer was accepted and the first instalment has already been paid.

His Majesty's Government cannot be indifferent to the affairs of the Anglo-Iranian Oil Company, an important British and, indeed, international interest. It is therefore with much concern that His Majesty's Government learn that the Majlis Oil Commission have indicated that they are contemplating the "nationalization" of that interest before the expiry of the Company's concession agreement. In that regard there are certain considerations to which they desire to invite the urgent attention of the Imperial Government.

- (a) It is necessary, first, to draw clear distinction between the principle of nationalization and the expropriation of an industry which has been operating in Iran on the security of a regularly negotiated agreement valid until 1993, and, relying on that security, has in all good faith spent enormous sums of money in development.
- (b) His Majesty's Government are advised that under the terms of its agreement, the Company's operations cannot legally be terminated by an act such as "nationalization".
- (c) Under Article 22 of the Agreement, the Imperial Government and the Anglo-Iranian Oil Company agreed in certain circumstances to have recourse to the good offices of the President (or Vice-President) of the Permanent Court of International Justice in connection with the nomination of an umpire or a sole arbitrator should differences of opinion occur to make recourse to arbitration desirable; that provision was made known in the Court in simultaneous and identical letters addressed by His Majesty's Government and the Imperial Government to the Registrar of the Court on 17th August 1933.
- (d) As the Imperial Government are aware, the Company are prepared to discuss a new agreement with them on the basis of an equal sharing of profits in Iran; but the Company evidently could not entertain any such proposition unless they were assured that their agreement would be permitted to run its full course.

His Majesty's Government must at the same time express their regret that public opinion in Iran has apparently not been adequately or correctly informed regarding the operations and intentions of the Anglo-Iranian Oil Company. The fact is that, as Your Excellency's Government are well aware, the Anglo-Iranian Oil Company have no desire other than to carry on legitimate business in association with the Iranian Government. His Majesty's Government for their part welcomed the initiative taken in 1948 by the Company in proposing an increase in royalties and

other benefits to Iran. The advantages of the resulting agreement, however, were never explained to the Iranian public nor was the agreement fully discussed by the Majlis, whose debates on the subject of oil have dealt with matters outside the scope of the actual Agreement. The impression was allowed to arise that the Supplemental Agreement implied some prolongation of the Agreement of 1933 or imposed obligations on the Imperial Government; whereas, as Your Excellency is aware, this was not the case. The Supplemental Agreement would have brought substantial benefits to Iran, and it did not affect either the period or the general validity of the 1933 Agreement.

Notwithstanding the lack of appreciation that has hitherto been shown of the intentions of the Anglo-Iranian Oil Company towards the Imperial Government and people of Iran, His Majesty's Government wish, in bringing these considerations to the attention of Your Excellency's Government, to express their conviction that the continued collaboration of the Anglo-Iranian Oil Company with the Government of Iran is in the best interests of the Government and people of Iran; and they earnestly hope that future discussions on the oil question will take place on a fair and reasonable basis in a friendly spirit.

Appendix No. 25 to Annex 3

TEXT OF THE IRANIAN OIL NATIONALIZATION ACT OF 1ST MAY 1951

[*Translation*]

By the grace of Almighty God

We

Pahlavi Shahinshah of Persia

hereby command, by virtue of Article 27 of the Supplementary Constitutional law that:

Art. 1. The Bill concerning the procedure for enforcement of the law concerning the nationalization of the oil industry throughout the country which was approved by the Senate and the Majlis on 9th Urdibihisht (30th April) and is hereto attached may be enforced.

Art. 2. The Council of Ministers are charged with the enforcement of this law.

The text of the Bill concerning procedure for enforcement of the law relating to the nationalization of oil, as approved by the two Houses of Parliament after amendments by the Majlis.

Art. 1. With a view to arranging the enforcement of the law of 24 and 29 Isfand 1329 (15th and 20th March 1951) concerning the nationalization of the oil industry throughout Persia, a mixed Board composed of five Senators and five Deputies selected by each of the two Houses and of the Minister of Finance or his deputy shall be formed.

Art. 2. The Government is bound to dispossess at once the former Anglo-Iranian Oil Company under the supervision of the mixed Board.

If the Company refused to hand over at once on the grounds of existing claims on the Government, the Government can, by mutual agreement, deposit in the Bank Milli Iran or in any other bank up to 25 per cent of current revenue from the oil after deduction of exploitation expenses in order to meet the probable claims of the Company.

Art. 3. The Government is bound to examine the rightful claims of the Government as well as the rightful claims of the Company under the supervision of the mixed Board and to submit its suggestions to the two Houses of Parliament in order that the same may be implemented after approval by the two Houses.

Art. 4. 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 Persian nation, the Government is bound to audit the Company's accounts under the supervision of the mixed Board which must also closely supervise exploitation as from the date of the implementation of this law until the appointment of an executive body.

Art. 5. The mixed Board must draw up, as soon as possible, the statute of the National Oil Company in which provision is to be made for the setting up of an executive body and a supervisory body of experts, and must submit the same to the two Houses for approval.

Art. 6. For the gradual replacement of foreign experts by Persian experts, the mixed Board is bound to draw up regulations for sending, after competitive examinations, a number of students each year to foreign countries to undertake study in the various branches of required knowledge and gain experience in oil industries, the said regulations to be carried out by the Ministry of Education, after the approval of the Council of Ministers. The expenses connected with the study of such students shall be met out of oil revenues.

Art. 7. All purchasers of products derived from the wells taken back from the former Anglo-Iranian Oil Company can, in future, buy annually the same quantity of oil they used to buy annually from the Company from the beginning of the Christian year 1948 up to 29th Isfand 1329 (20th March 1951) at a reasonable international price. For any surplus quantity they shall have priority in the event of equal terms of purchase being offered.

Art. 8. All proposals formulated by the mixed Board for the approval of the Majlis and submission to the Majlis must be sent to the Oil Committee.

Art. 9. The mixed Board must finish its work within three months as from the date of approval of this law and must submit the report of its activities to the Majlis in accordance with Article 8. In the event of requiring an extension, it must apply giving valid reasons for such extension. Whilst, however, the extension is before the two Houses for approval, the mixed Board can continue its functions.
